

# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 39, NUMBER 7  
TUESDAY, JANUARY 1, 2013

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, December 14, 2012.

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#### MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet January 7, 2013 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 1359-1362 of this Administrative Register.

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

**HOW TO CITE:** Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 39, Kentucky Register, page 318 (short form: 39 Ky.R. 318).

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

| Title                                    |     | Chapter                                       | Regulation             |
|------------------------------------------|-----|-----------------------------------------------|------------------------|
| 806                                      | KAR | 50:                                           | 155                    |
| Cabinet, Department,<br>Board, or Agency |     | Office, Division, Board,<br>or Major Function | Specific<br>Regulation |

#### **ADMINISTRATIVE REGISTER OF KENTUCKY**

(ISSN 0096-1493)

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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$96 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA, JANUARY 7, 2013, at 1:00 p.m., Room 149 Capitol Annex

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
Division of Student and Administrative Services

Teacher Scholarship Loan Program

11 KAR 8:030. Teacher scholarships.

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16 KAR 6:010. Examination prerequisites for teacher certification.

Advanced Certification and Rank

16 KAR 8:030. Continuing Education Option for certificate renewal and rank change.

FINANCE AND ADMINISTRATION CABINET  
Kentucky Teachers' Retirement System

General Rules

102 KAR 1:310. Benefit eligibility conditions for members providing part-time and substitute services.

102 KAR 1:340. Calculation of final average salary when there is a corresponding change in length of employment during any of the final three (3) years immediately prior to retirement.

Department of Revenue  
Office of Property Valuation

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103 KAR 5:220 & E. Installment payment plan guidelines for third party purchasers of certificates of delinquency. ("E" expires 4/1/2013) (Amended After Comments)

GENERAL GOVERNMENT CABINET  
Board of Medical Licensure

Board

201 KAR 9:001 & E. Definitions for terms used in 201 KAR Chapter 9. ("E" expires 2/16/2013) (Amended After Comments)(Deferred from December)

201 KAR 9:081 & E. Disciplinary proceedings. ("E" expires 1/16/2013) (Deferred from October)

201 KAR 9:200 & E. National Practitioner Data Bank reports. ("E" expires 1/16/2013) (Deferred from October)

201 KAR 9:210 & E. Criminal background checks required for all new applicants. ("E" expires 1/16/2013) (Deferred from October)

201 KAR 9:220 & E. Restriction upon dispensing of Schedule II controlled substances and Schedule III controlled substances containing Hydrocodone. ("E" expires 2/16/2013) (Not Amended After Comments) (Deferred from December)

201 KAR 9:230 & E. Required registration in the KASPER system; legal requirements for prescribing controlled substances in the Commonwealth of Kentucky; enforcement. ("E" expires 1/16/2013) (Deferred from October)

201 KAR 9:240 & E. Emergency orders and hearings; appeals and other proceedings. ("E" expires 1/16/2013) (Deferred from October)

201 KAR 9:250 & E. Registration and oversight of pain management facilities. ("E" expires 2/16/2013) (Amended After Comments) (Deferred from December)

201 KAR 9:260 & E. Professional standards for prescribing and dispensing controlled substances. ("E" expires 2/16/2013) (Amended After Comments) (Deferred from December)

201 KAR 9:310 & E. Continuing medical education. ("E" expires 1/16/2013) (Deferred from October)

Board of Speech-Language Pathology and Audiology

Board

201 KAR 17:090. Continuing education requirements. (Not Amended After Comments)

201 KAR 17:110. Telehealth and telepractice. (Amended After Comments)

**Board of Licensure and Certification for Dietitians and Nutritionists**

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201 KAR 33:015. Application; approved programs.

**Board of Licensure for Massage Therapy**

**Board**

201 KAR 42:020. Fees.

201 KAR 42:035. Application process, exam, and curriculum requirements.

201 KAR 42:040. Renewal.

201 KAR 42:070. Endorsement.

201 KAR 42:080. Programs of massage therapy instruction.

**Kentucky Applied Behavior Analysis Licensing Board**

**Board**

201 KAR 43:050. Requirements for supervision. (Deferred from December)

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

**Board of Emergency Medical Services**

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202 KAR 7:520. Allocation of block grant funding assistance for emergency medical services.

202 KAR 7:530. Emergency Medical Services data collection, management, and compliance.

**TOURISM, ARTS AND HERITAGE CABINET**

**Department of Fish and Wildlife**

**Game**

301 KAR 2:142. Spring wild turkey hunting.

301 KAR 2:185. Hunter education.

301 KAR 2:221 & E. Waterfowl seasons and limits. ("E" expires 4/29/2013)

301 KAR 2:222 & E. Waterfowl hunting requirements on public lands. ("E" expires 4/29/2013)

301 KAR 2:224 & E. Waterfowl hunting zones. ("E" expires 4/29/2013)

**ENERGY AND ENVIRONMENT CABINET**

**Department for Environmental Protection**

**Division of Water**

**Water Quality**

401 KAR 5:055. Scope and applicability of the KPDES Program. (Amended After Comments) (Deferred from November)

401 KAR 5:060. KPDES application requirements. (Amended After Comments) (Deferred from November)

**Water Quality Standards**

401 KAR 10:001. Definitions for 401 KAR Chapter 10. (Not Amended After Comments)(Deferred from December)

401 KAR 10:026. Designation of uses of surface waters. (Not Amended After Comments) (Deferred from December)

401 KAR 10:030. Antidegradation policy implementation methodology. (Not Amended After Comments) (Deferred from December)

401 KAR 10:031. Surface water standards. (Amended After Comments) (Deferred from December)

**Department for Natural Resources**

**Division of Mine Reclamation and Enforcement**

**Surface Effect of Noncoal Mining**

405 KAR 5:032. Permit requirements.

**JUSTICE AND PUBLIC SAFETY CABINET**

**Department of Corrections**

**Office of the Secretary**

501 KAR 6:040. Kentucky State of Penitentiary.

**TRANSPORTATION CABINET**  
**Office of the Secretary**  
**Department of Aviation**

**Airport Zoning Commission**

602 KAR 50:030. Jurisdiction of the Kentucky Airport Zoning Commission. (Not Amended After Comments)

602 KAR 50:050. Airport zoning map. (Not Amended After Comments)

**Department of Highways**

**Traffic**

603 KAR 5:050. Uniform traffic control devices.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**

**Board of Education**  
**Department of Education**

**Office of Chief State School Officer**

701 KAR 5:110. Use of local monies to reduce unmet technology need.

701 KAR 5:140. Districts of Innovation.

**School Administration and Finance**

702 KAR 3:130. Internal accounting.

**Alternative Education Programs**

704 KAR 19:002. Alternative Education Programs. (Amended After Comments)

**PUBLIC PROTECTION CABINET**

**Department of Housing, Buildings and Construction**  
**Division of Fire Prevention**

**Standards of Safety**

815 KAR 10:060. Kentucky standards of safety. (Not Amended After Comments)

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Office of Health Policy**

**State Health Plan**

900 KAR 5:020. State Health Plan for facilities and services.

**Certificate of Need**

900 KAR 6:075 & E. Certificate of Need nonsubstantive review. ("E" expires 3/20/2013) (Amended After Comments)

**Office of Inspector General**  
**Division of Health Care**

**Health Services and Facilities**

902 KAR 20:420 & E. Pain management facilities. ("E" expires 2/16/2013) (Amended After Comments) (Deferred from December)

**Division of Audits and Investigations**

**Controlled Substances**

902 KAR 55:110 & E. Monitoring system for prescription controlled substances. ("E" expires 2/16/2013) (Amended After Comments) (Deferred from December)

**Department for Medicaid Services**

**Division of Healthcare Facilities Management**

**Psychiatric Residential Treatment Facility Services and Reimbursement**

907 KAR 9:005 & E. Level I and II psychiatric residential treatment facility service and coverage policies. ("E" expires 4/1/2013) (Amended After Comments)

907 KAR 9:010 & E. Reimbursement for Level I and II psychiatric residential treatment facility services. ("E" expires 4/1/2013) (Amended After Comments)

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

**Substance Abuse**

908 KAR 1:400. Procedures for substance abuse prevention.

**Department for Community Based Services  
Division of Family Support**

**K-Tap, Kentucky Works, Welfare to Work, State Supplementation**

921 KAR 2:055. Hearings and appeals.

921 KAR 2:060 Delegation of power for oaths and affirmations.

**Food Stamp Program**

921 KAR 3:030. Application process.

921 KAR 3:042. Supplemental Nutritional Assistance Program Employment and Training Program.

921 KAR 3:050. Claims and additional administrative provisions.

921 KAR 3:060. Administrative disqualification hearings and penalties.

**Division of Child Care**

**Day Care**

922 KAR 2:090. Child-care center licensure. (Deferred from November)

922 KAR 2:100. Certification of family child-care homes. (Deferred from November)

922 KAR 2:110. Child-care center provider requirements. (Deferred from November)

922 KAR 2:120. Child-care center health and safety standards. (Not Amended After Comments)

922 KAR 2:180. Requirements for registered child care providers in the Child Care Assistance Program. (Not Amended After Comments)

922 KAR 2:190. Civil penalties. (Deferred from November)

**REMOVED FROM JANUARY 2013 AGENDA**

**GENERAL GOVERNMENT CABINET**

**Kentucky Board of Licensed Diabetes Educators**

**Board**

201 KAR 45:010. Fees. (Withdrawn 12/14/2012, SOC not filed by deadline)

201 KAR 45:020. Supervision and work experience. (Withdrawn 12/14/2012, SOC not filed by deadline)

201 KAR 45:030. Renewal, reinstatement, and inactive status. (Withdrawn 12/14/2012, SOC not filed by deadline)

201 KAR 45:040. Continuing education. (Withdrawn 12/14/2012, SOC not filed by deadline)

201 KAR 45:050. Code of ethics. (Withdrawn 12/14/2012, SOC not filed by deadline)

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Medicaid Services**

**Commissioner's Office**

**Payment and Services**

907 KAR 3:170. Telehealth consultation coverage and reimbursement. (Comments Received; SOC ext.)

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

**Filing and Publication**

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

**Public Hearing and Public Comment Period**

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

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

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

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

**Review Procedure**

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

**VOLUME 39, NUMBER 7 – JANUARY 1, 2013**  
**EMERGENCY ADMINISTRATIVE REGULATIONS**

**NONE**



ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

COUNCIL ON POSTSECONDARY EDUCATION  
(As Amended at ARRS, December 17, 2012)

13 KAR 1:020. Private college licensing.

RELATES TO: KRS 164.945, 164.946, 164.947, 164.992, 165A.320

STATUTORY AUTHORITY: KRS 164.947(1), (2), 164.020(37)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.947(1) requires the Council on Postsecondary Education to promulgate an administrative regulation to establish the procedures for the licensing of colleges as defined in KRS 164.945. KRS 164.947 provides that religious instruction or training shall not be restricted. This administrative regulation establishes the private college licensing requirements and the requirements for religious in-state colleges to apply for an exemption to those licensing requirements.

Section 1. Definitions. (1) "Accredited" means the approval of an accrediting agency.

(2) "Accrediting agency" means a national or regional agency which evaluates colleges and is recognized by the United States Department of Education, the Council on Higher Education Accreditation, or the Council on Postsecondary Education.

(3) "Agent" means any person employed by a college to act as a solicitor, broker, or independent contractor to procure students for the college by solicitation in any form made at any place other than the main campus of the college.

(4) "College" is defined by KRS 164.945(1).

(5) "Degree" is defined by KRS 164.945(2).

(6) "Diploma" is defined by KRS 164.946(3).

(7) "In-state college" means a college that is chartered by, organized within, and has its principal location in Kentucky.

(8) "Operating or soliciting" means having a physical presence within Kentucky and includes:

(a) An instructional or administrative site within Kentucky whether owned, leased, rented, or provided without charge;

(b) Instruction, whether theory or clinical, originating from or delivered within Kentucky utilizing teachers, trainers, counselors, advisors, sponsors, or mentors;

(c) An agent, recruiter, in-state liaison personnel, institution, or business located in Kentucky that advises, promotes, or solicits for enrollment, credit, or award of an educational or occupational credential;

(d) An articulation agreement with a Kentucky licensed college or state-supported institution; or

(e) Advertising, promotional material, or public solicitation in any form that targets Kentucky residents through distribution or advertising in the state.

(9) "Out-of-state college" means a college that is chartered, organized, or has its principal location outside of Kentucky.

(10) "President" means the president of the Council on Postsecondary Education.

(11) "Unearned tuition" means the excess of cumulative collections of tuition and other instructional charges over the cumulative amount of earned tuition and other institutional charges prior to the first date of refund in accordance with the college's refund policy.

Section 2. General Requirements. (1)(a) Except as provided in paragraph (b) of this subsection or subsection (7) of this section, an in-state or out-of-state college that is operating or soliciting in Kentucky shall be licensed.

(b) If a college is operating or soliciting in Kentucky solely for on-ground instruction at a location outside of Kentucky in which students leave Kentucky to attend, licensure shall not be required.

(2) An out-of-state college shall be licensed separately for each instructional site in Kentucky. An out-of-state college that is operat-

ing or soliciting using on-line instruction to Kentucky residents shall be considered to have an online campus which shall be licensed separately as an instructional site.

(3) A college awarding a certificate, diploma, associate degree, baccalaureate degree, master's degree, doctoral degree, or other degree, whether the degree is earned or honorary, shall be licensed. If a college's program is also required to be licensed or approved by another state agency as well as the Council on Postsecondary Education, the president shall attempt to coordinate the licensing function with that agency.

(4) A college shall offer only those programs, courses, and degrees, including honorary degrees, specifically authorized in the license.

(5) If a college ceases offering a licensed program, course, or degree, the college shall notify the president in writing and request that the program, course, or degree be removed from the college's license.

(6) Providing false or misleading information shall be grounds for denial of a license, or suspension or revocation of an existing license.

(7) A religious in-state college may operate or solicit in Kentucky if the college submits to the council an Application for Religious In-State College Letter of Exemption per KRS 164.947(2). The institution shall submit an application each year by the anniversary of its initial submission date. As part of the application, the institution shall verify compliance with the requirements established in this subsection.

(a) The institution shall be nonprofit, owned, maintained, and controlled by a church or religious organization which is exempt from property taxation under the laws of Kentucky.

(b) The name of the institution shall include a religious modifier or the name of a religious patriarch, saint, person, or symbol of the church.

(c) The institution shall offer only educational programs that prepare students for religious vocations as ministers or laypersons in the categories of ministry, counseling, theology, religious education, administration, religious music, religious fine arts, media communications, or social work.

(d) The titles of degrees issued by the institution shall be distinguished from secular degree titles by including a religious modifier that:

1. Immediately precedes, or is included within, any degree title, including an Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Science, Advanced Practice ~~Doctorate~~**[Doctor]**, Doctor of Philosophy, or Doctor of Education degree; and

2. Is placed on the title line of the degree, on the transcript, and whenever the title of the degree appears in official school documents or publications.

(e) The duration of all degree programs offered by the institution shall be consistent with Section 8(8)(b) of this administrative regulation.

(f) The institution shall comply with the truth in advertising requirements established in Section 8(11)~~(a)~~ of this administrative regulation.

(g)1. The institution shall disclose to each prospective student:  
a. A statement of the purpose of the institution, its educational programs, and curricula;

b. A description of its physical facilities;

c. Its status regarding licensure;

d. Its fee schedule and policies regarding retaining student fees if a student withdraws;

e. Its refund policy on tuition and other instructional charges; and

f. A statement regarding the transferability of credits to and from other institutions.

2. The institution shall make the disclosures required by subparagraph 1. of this paragraph in writing at least one (1) week prior to enrollment or collection of any tuition from the prospective student. The required disclosures may be made in the institution's current catalog.

(h) The institution shall not seek to be eligible for state or federal financial aid.

Section 3. Licensure Application Procedures. (1)[(a)] An application for a license shall be submitted on the form entitled:

(a)[4-] Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an in-state college; or

(b)[2-] Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an out-of-state college. ~~[(b) A college that is not licensed as of the effective date of this administrative regulation shall submit an application for a license within sixty (60) working days of the effective date of this administrative regulation.]~~

(2) An application shall be accompanied by a copy/copies of the following:

- (a) College charter;
- (b) College catalog;
- (c) College constitution and bylaws;
- (d) Student enrollment application;
- (e) Student contract or agreement;

(f)1. Documentation of accreditation, licensure, or approval by appropriate agencies; and

2. Disclosure of any prior loss or denial of:

a. Accreditation with the dates and reason for the[and] loss or denial; or

b. Licensure or approval by an agency in this state or another state with the dates and reason for the loss or[ef] denial; and

(g) Disclosure of any former names of the college with the dates each former name was used.

Section 4. Site Visits. (1) Within ninety (90) working days of the receipt of a full and complete application for a license, a supplementary application, or Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020, the president may conduct, or may have conducted, a site visit. Personnel conducting the site visit shall possess the expertise appropriate to the type of college to be visited. The purpose of a site visit shall be to make an assessment of a college using the standards for licensure as set forth in Section 8 of this administrative regulation.

(2) The president may conduct, or may have conducted, an announced or unannounced site visit of a licensed college during reasonable business hours to inspect the files, facilities, and equipment as well as conduct interviews to determine the college's compliance with this administrative regulation and KRS 164.945, 164.946, and 164.947.

(3) Failure to provide full access to the college's files, facilities, and equipment or prevention of interviews shall be grounds for denial of a license, or suspension or revocation of an existing license.

(4) Cost of site visits.

(a) Costs connected with a site visit and subsequent visits as may be necessary, such as travel, meals, lodging, and consultant honoraria, shall be paid by the college.

(b) The estimated cost of the site visit shall be paid by the college prior to the site visit.

(c) The final settlement regarding actual expenses incurred shall be paid by the college no later than thirty (30) days after receipt of the invoice[following the site visit].

(d) Failure to pay these costs shall be grounds for denial of a license, or suspension or revocation of an existing license.

Section 5. Action on Licensure Application. (1) Within ninety (90) working days of the completion of the site visit, or within sixty (60) working days of the submission of a complete licensure application if a site visit is not conducted, the president shall do one (1) of the following:

(a) Issue a license for a period of no less than one (1) year, nor more than two (2) years;

(b) Deny the application for a license;

(c) Notify the applicant college of deficiencies which shall be corrected before a license is issued; or

(d) Issue a conditional license in accordance with subsection (2) of this section if the college has:

1. Not met all of the standards for licensure at the time the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) A conditional license shall not exceed a period of two (2) years and shall include the conditions the[a] college shall meet in order for the[a] college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The[A] college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the[a] college's written request for an extension with supporting justification.

(b) If the[a] college satisfies all the conditions with the timeframe specified, the president shall issue a license in accordance with subsection (1)(a) of this section.

Section 6. Supplementary Application Procedures. (1)(a) A ["]Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020["] shall be submitted to the council[required] at least ninety (90) days prior to the effective date of a change in the name of a college.

(b) A Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020["] shall be required at least (90) days prior to the effective date of a change in the principal location of a college or the location of a licensed instructional site in Kentucky.

(c) A ["]Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020["] shall be submitted to the council[required] at least ninety (90) days prior to the effective date of a change in ownership or governance of a college.

(d) An out-of-state college shall submit a ["]Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020["] at least ninety (90) days prior to implementation of a change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at the main campus.

(e) A ["]Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020["] shall be submitted by an in-state college at least ninety (90) days prior to the effective date of:

1. A change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at the main campus; or

2. The establishment of an instructional site away from the main campus of an in-state college for the purpose of offering courses for college credit which comprise at least twenty-five (25) percent of the course requirements for a degree program.

(f) A college shall submit a ["]Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020["] at least ninety (90) days prior to the establishment of an administrative site, recruitment office, or advising center in Kentucky, or the change of location of a licensed administrative site, recruitment office, or advising center in Kentucky, if the site, office, or center is not part of a licensed instructional site or proposed instructional site for which the college is seeking licensure.

(g) A college shall submit a ["]Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020["] within thirty (30) days following action by

an accrediting agency or another state licensing agency which results in:

1. A college being placed in a probationary status;
2. A college losing accreditation or licensure; or
3. A college being denied accreditation or licensure.

(2) A site visit may be conducted as part of the supplementary application process in accordance with Section 4 of this administrative regulation.

(3) Failure to submit a complete and accurate supplementary application, if required, shall be sufficient cause for denial of a license, or suspension or revocation of an existing license. The president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 7. Action on Supplementary Applications. Within thirty (30) working days of the submission of a complete supplementary application if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall do one (1) of the following:

- (1) Approve the supplementary application and amend the current license without changing the renewal date;
- (2) Deny the supplementary application without amendment to the college's license;
- (3) Suspend or revoke the college's license; or
- (4) Notify the applicant college of deficiencies which shall be corrected before the supplementary application is approved and the license is amended.

Section 8. Standards for Licensure. A college shall meet the requirements and standards established in this section in order to be licensed.

(1) Financial requirements. The college shall adhere to generally accepted accounting practices and present evidence of financial stability, including the following:

(a) Financial statements including:

1. A statement of financial position of unrestricted net assets and liabilities, including foundation and trust agreements;
2. An audit report prepared by an independent certified public accountant for each corporation of the college; and
3. If available, audit reports for the past three (3) years;

(b) The name of a bank or other financial institution used by the college as a reference;

(c) A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the U.S. Department of Education related to programs administered by that department that the college is in good standing; and

(d) An annual operating budget for the college.

(2) Agents. A college shall be responsible for the actions of its agents when acting on behalf of the college.

(3) Guarantee of refund of unearned tuition. A college shall guarantee the refund of any unearned tuition held by the college as established in this subsection.

(a) An in-state college shall:

1. Secure and maintain a surety bond equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year, executed by a surety company qualified and authorized to do business in Kentucky, and made payable to the Council on Postsecondary Education;
2. Maintain an unrestricted endowment equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or
3. Provide a letter of credit equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(b) An out-of-state college shall secure and maintain a surety bond equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year, executed by a surety company qualified and authorized to do business in Kentucky, and made payable to the Council on Postsecondary Education.

(c) A college applying for a license for the first time shall estimate the amount of unearned tuition based on projected enrollment and tuition and other instructional charges.

(d) A college shall provide a statement from an independent certified public accountant confirming that the college is in compliance with this subsection.

(4) Notice required.

(a) If a surety bond is terminated, a college shall notify the president and the license shall automatically expire with the bond unless a replacement bond is provided without a lapse in bonding.

(b) An in-state college using an unrestricted endowment or letter of credit to satisfy the provisions of subsection (3) of this section shall notify the president if the unrestricted endowment or letter of credit falls below the required amount, and the college shall obtain a surety bond for the required amount.

(5) Personnel requirements.

(a) The college shall furnish information regarding the administrative officers, the directors, the owners, and the faculty, as required by the appropriate application form.

(b) The chief administrator shall hold at least an earned baccalaureate degree from an accredited or licensed college and shall have sufficient experience to qualify for the position.

(c) Faculty members shall possess academic, scholarly, and teaching qualifications similar to those required for faculty in accredited colleges that offer degrees at comparable levels.

(d) There shall be a sufficient number of full-time faculty to ensure continuity and stability of the educational program.

(e) Teaching loads of faculty members shall be consistent with recognized educational practices, and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

(6) Facilities and equipment.

(a) An instructional program shall be conducted in a facility in accordance with the requirements specified on the appropriate application form.

(b) Enrollment shall not exceed the design characteristics of the facilities.

(c) A college shall have facilities and equipment that are:

1. Maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law; and
2. Adequate and appropriate for instruction in classrooms and laboratories.

(7) Library resources. The library shall be appropriate to support the programs offered by the college in accordance with this subsection.

(a) A college, through ownership or formal agreements, shall provide and support student and faculty access to adequate library collections, and to other learning and information resources where courses and programs are offered. Library resources shall be appropriate to the degree level offered by the college, and shall be sufficient to support all educational, research, and public service programs.

(b) A college that does not provide its own library facilities, but instead relies on another institution, shall demonstrate that it has permission to utilize the resources of the other institution, by providing a copy of the written agreement to the president at the time of license application, and prior to the offering of any courses.

(c) A college that is dependent on another college or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the president and to students and faculty.

(d) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited colleges of similar types.

(e) Library staff shall be qualified as required for accredited colleges of similar types.

(f) Sufficient seating and work space for a reasonable proportion of the faculty and students to be accommodated at one (1) time shall be provided as observed in accredited colleges of similar types.

(g) The physical environment of the library shall be conducive to reflective intellectual pursuits common to institutions of higher learning.

(8) Curriculum. Earned degrees awarded by a college shall be bona fide academic degrees and the courses offered in degree programs shall be of collegiate quality as determined by the president using the criteria established in this section.

(a)1. Except as provided in subparagraph 2. of this paragraph, a course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited colleges where the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level.

2. A course may be offered that is not transferable based on the uniqueness of a program.

(b) A college shall require a minimum of:

1. Sixty (60) student credit hours for an associate degree;
2. 120 student credit hours for a baccalaureate degree; or
3. Thirty (30) student credit hours for a post-baccalaureate, graduate, or first professional degree.

(c) A minimum of twenty-five (25) percent of the student credit hours required for a degree shall be earned through instruction offered by:

1. The college awarding the degree; or
2. A college that is:
  - a. A party to a joint, cooperative, or consortia agreement; and
  - b. Either:
    - (i) Licensed by the Council on Postsecondary Education; or
    - (ii) A Kentucky state-supported postsecondary education institution~~[created by KRS 164.004]~~.

(d) A majority of the student credit hours required for a graduate degree may be met through a joint, cooperative, or consortia agreement in which the instruction is offered by a college that is:

1. A party to the agreement; and
2. Either:
  - a. Licensed by the Council on Postsecondary Education; or
  - b. A Kentucky state-supported postsecondary education institution~~[created by KRS 164.004]~~.

(e) A college shall have a systematic program of curriculum revision in order to maintain the general standards of accredited colleges with similar programs.

(f) A college shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.

(9) General education.

(a) A minimum of fifteen (15) student credit hours for associate degree programs~~[.]~~ and thirty (30) student credit hours for baccalaureate degree programs shall be earned in general education, including science, mathematics, social and behavioral sciences, and humanities. A college which offers an interdisciplinary general education program, a block-type program, or other unique general education program shall be considered to be in compliance with the general education requirement if the president determines that the program content and distribution are appropriately related to the degree and institutional purposes.

(b) A new college, or any existing college which initiates a new associate degree or baccalaureate degree program or major, or other concentration or specialty, after March 5, 2010~~[the effective date of this administrative regulation]~~, shall comply fully from the outset with the general education requirements.

(10) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program for which degree credit is awarded shall include [the following]:

(a) Adequate supervision by the college; and

(b) Other instructional support necessary to maintain the program.

(11) Truth in advertising. A college shall meet the requirements established in this subsection regarding advertising.

(a) Advertisements, announcements, or promotional material of any kind which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the college, its personnel, its services, or the content, accreditation status, or transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the college shall not indicate that the college is "supervised", "recommended", "endorsed", or "accredited" by the Commonwealth of Kentucky, by the Council on Postsecondary Education, or by any other state agency. A statement using the name of the Council on Postsecondary Education, if any, shall be in exactly the following form, based on which statement is applicable to the college:

1. "(Name of College) is licensed by the Kentucky Council on Postsecondary Education." ; or

2. "(Name of College) has a religious exemption from the Kentucky Council on Postsecondary Education to operate or solicit in Kentucky."

(12) Recruitment and enrollment procedures. A college shall furnish the following to each student prior to enrollment:

- (a) The college's policies on grades, attendance, and conduct;
- (b) A description of the instructional program;
- (c) A detailed schedule of all charges, rentals, and deposits;
- (d) The schedule of refunds of all charges, rentals, and deposits; and
- (e) The student enrollment application, contract, or agreement.

(13) Student affairs.

(a) Students admitted to the college shall have completed a state-approved secondary school program or its equivalent.

(b) The college shall provide academic counseling by faculty or staff to each student at the time of admission and throughout the program.

(c) The college shall make assistance and counseling available to each student who completes a technical or vocational program for the purpose of assisting the student with an appropriate job placement or with transfer.

(d) The college shall maintain sufficient records for each student to provide an understanding of his or her background, to record ~~[his]~~ progress through the instructional program, and for reference purposes.

(e) Administrative officers of the college shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with those laws and administrative regulations.

(f) A college shall make provision for the maintenance of student records ~~if [in the event]~~ the college ceases operations in accordance with KRS 164.020(23). The location of student records shall be approved in advance by the president.

(14) College policies.

(a) The college shall maintain records in an orderly manner and make them available for inspection by the president or his or her designated representative.

(b) A catalog shall be published and distributed at least every two (2) years and shall include general information, administrative policies, and academic policies of the college including [as indicated below]:

1. General information:
  - a. Official name and address of the college, name of the chief administrative officers, members of the governing body, and names of principal owners;
  - b. The college's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates;
  - c. Names of faculty, including relevant education and experience; and
  - d. Full disclosure of the philosophy and purpose of the college;
2. Administrative policies:
  - a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education;
  - b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal;
  - c. Schedules for all tuition and instructional charges, and refund schedules for the tuition and instructional charges;
  - d. Statement of financial aid available to students; and
  - e. Procedures for obtaining transcripts in a timely fashion and at reasonable cost; and

3. Academic policies:
  - a. Policy on class attendance;
  - b. Description of grading system;
  - c. Description of the degree, diploma, certificate, or other programs, including the course requirements and the time normally required to complete each degree, diploma, certificate, or other program; and
  - d. Full description of the nature and objectives of all degrees offered.

(c) Refund policy on tuition and other instructional charges. The refund policy shall meet the minimum requirements established in this paragraph.

1. If tuition and other instructional charges are collected in advance of enrollment and the student fails to enroll, the college shall retain not more than \$100, or not more than ten (10) percent of the tuition and other instructional charges for a term or semester, whichever is less.

2. a. Except as provided in clause b<sub>2</sub> of this subparagraph, tuition and other instructional charges shall be charged by the enrollment period, and the student shall not be obligated for tuition or other instructional charges relating to an enrollment period that had not begun when the student withdrew.

b. The president may approve program tuition for a specific program at a college if a student may only enroll at the beginning of the program sequence and shall remain in phase. If program tuition is approved, the college shall refund tuition and other instructional charges in accordance with its published refund policy that considers both the coursework completed prior to withdrawal and the coursework that remains.

3. If a student withdraws from the college, or if a student fails to attend classes for a period of thirty (30) days during which classes are in session, the college shall officially withdraw the student from the college and shall refund an amount reasonably related to the period for which the student is not enrolled and shall refund 100 percent of all other tuition and other fees collected by the college for subsequent enrollment or registration periods unless the student is enrolled in a program for which program tuition is charged as specified in subparagraph 2<sub>2</sub> of this paragraph.

a. After completion of fifty (50) percent of the enrollment period, the college shall not be required to make refunds of tuition or other fees for that period.

b. In all other cases, including illness or accident, the college shall make a refund settlement.

c. Refunds shall be made within thirty (30) days after notification of withdrawal has been received by the college.

4. If a college is accredited by an accrediting agency which has a specific refund policy which is more favorable to the student, that policy shall be followed.

5. An out-of-state college shall refund in accordance with this section unless its policy is more favorable to the student, in which case the latter shall be followed.

Section 9. Failure to Apply for a License. (1) If a college which is subject to this administrative regulation fails to apply for a license, the president shall notify the college by registered mail of the requirement to obtain a license.

(2) If a license application is not then received within sixty (60) days of notification by the president, the president shall require the chief administrative officer to appear for a hearing as provided in Section 14 of this administrative regulation.

(3) If the chief administrative officer does not appear for the hearing, the president shall refer the case to the appropriate county attorney for enforcement.

Section 10. Annual Maintenance of a College's License and Renewal of a College's License. (1) A college shall submit an ["Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020"] to the president **by April 1 of each year**~~[in accordance with subsection (2) of this section]~~. The application shall contain the following information:

(a) Financial Information:~~;~~

1. A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the United States Department of Education related to pro-

grams administered by that department that the college is in good standing;

2. A statement prepared by an independent certified public accountant confirming that the college is in compliance with Section 8(3) of this administrative regulation; and

3. Financial statement including assets and liabilities and an audit report prepared by an independent certified public accountant within the last year;

(b) Institutional information:~~;~~

1. Name and address of college;

2. Chief executive officer's name, title, address, phone number, fax number, and email address;

3. Institutional liaison's name, title, address, phone number, fax number, and email address;

4. A current list of the college's agents;

5. Copies of articles of incorporation, charter, constitution, and by-laws if there have been any changes to the documents within the last year; and

6. ~~A copy of each~~**Copy of any** articulation agreement the college has with a Kentucky licensed college or state-supported institution entered into or changed within the last year;

(c) Accreditation status:~~;~~

1. If the college is accredited by an accrediting agency, verification of the college's accreditation status; or

2. If the college is not accredited by an accrediting agency, a statement indicating if, when, and from whom the college will seek accreditation;

(d) Tuition for ~~the~~current enrollment period per credit hour, specifying semester hour, quarter hour, or other basis, and per full-time student;

(e) A copy of the college's current catalog;

(f) For an in-state college, a list of all licensed instructional sites away from the main campus of ~~the~~[an] in-state college for the purpose of offering courses for college credit which comprise at least twenty-five (25) percent of the course requirements for a degree program, including the name and title of the primary contact of the off-campus site, address, phone number, and program or programs by CIP code offered at the site, or course or courses if not offering an entire degree program at the site;

(g) Program information:~~;~~

1. Changes, if any, in program requirements for each program within the last year including admission requirements, courses required, and the number of credit hours required for the program or major;

2. Results of the most recent program evaluation;

3. Methods used to assess student achievement;

4. Results of the most recent assessment of student achievement; and

5. A list of programs withdrawn within the last year in which there are no longer students enrolled including program title, degree level, CIP code, and address where the program is no longer being offered;

(h) Faculty information:~~;~~ Vitae for each program faculty member employed within the last year;

(i) Facilities information:~~;~~ Verification of compliance with all applicable local, state, and federal safety and fire codes; and

(j) Library information regarding the library collection and budget, and lease, contract, or letter of agreement authorizing use of another library collection, if any.

~~(2)(a) A college whose license expires by July 1, 2010 shall complete and submit the "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020" for maintenance of its license by May 1, 2010. If that college's license is subsequently renewed, the college shall complete the "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020" in accordance with paragraph (b) of this subsection for future renewals.~~

~~(b)[A college] whose license expires after July 1, 2010 [shall complete the] ["Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020"] [by April 1 of each] [every] [year] [beginning April 1, 2011].~~

~~[(3)]~~ The president may conduct, or may have conducted, a site visit as part of the annual maintenance of a license or renewal

of a license process in accordance with Section 4 of this administrative regulation.

~~(3)~~~~(4)~~ Within ninety (90) working days of the submission of a complete and accurate ["]Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020["] if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall:

- (a) Notify the college of any deficiencies which shall be corrected before the college's license is maintained or renewed;
- (b) Deny maintenance or renewal of the college's license;
- (c) Maintain the college's license without changing the college's license renewal date; or
- (d) Renew the college's license to June 30 of the next year.

~~(4)~~~~(5)~~ A college's failure to submit a complete and accurate ["]Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020["] shall be grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 11. Required Data Submission. (1) A licensed college shall submit student attendance and performance data in an electronic format. The required data fields, the format and method of submission, and the dates for submission shall be in accordance with the ["]Licensure Compliance Reporting Manual["].

(2) The president may conduct, or may have conducted, a site visit as part of the data submission process in accordance with Section 4 of this administrative regulation.

(3) A college's failure to submit complete, timely, and accurate data shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 12. License Expiration. (1) A license shall automatically expire if the college ceases operating or soliciting.

(2) A college that ceases operating or [of] soliciting shall comply with Section ~~8(13)(f)~~~~8(13)(g)~~ of this administrative regulation and KRS 164.020(23).~~]~~

Section 13. Consumer Complaint Procedure. A person with a complaint or grievance involving misrepresentation against a college licensed under this administrative regulation shall make a reasonable effort to resolve the complaint or grievance directly with the college. If a mutually satisfactory solution cannot be reached, the procedures established in this section shall be followed.

(1) A person shall submit a written complaint to the president which contains evidence relevant to the complaint and documentation that a reasonable effort was made to resolve the complaint directly with the college.

(2) The president shall require an institution to file a written response setting forth the relevant facts concerning the consumer complaint, including a statement on the current status of the complaint, and any resolution of the complaint.

(3) The president shall review the facts as presented and may intervene to bring the matter to a satisfactory conclusion through facilitation, but the facilitation shall not include legal action on behalf of any party.

Section 14. Hearings and Appeals. (1) The president shall, for cause, require the chief administrative officer, or other officers, of a college to appear for a hearing consistent with the provisions of KRS 13B.005-13B.170, in order to determine the facts if the president has determined that there is sufficient cause for a suspension or revocation of a license or placement of a college's license in a probationary status.

(2) The officer, or other officers, of the college may be accompanied at the hearing by counsel of their own choosing and at their expense.

(3) Within thirty (30) working days after a hearing is held, the president shall reach a determination and shall issue findings, in writing, to the council and to the chief executive officer of the college.

~~(4)~~~~[If the findings warrant, the president shall impose the sanctions authorized in this section.~~

~~(5)~~ If it is determined that the public interest requires that sanctions be imposed, the president shall ~~[take one (1) or more of the following steps]~~:

- (a) Impose one (1) of the following sanctions:
  1. Place the college's license in a probationary status for a designated period not to exceed one (1) year while deficiencies are being corrected;
  2. Suspend the college's license for a period not to exceed one (1) year; or
  3. Revoke the college's license; or
- (b) Refer the case to other officials for appropriate legal action.

~~(5)~~~~(6)~~ A college which is sanctioned, whether the sanction is probation, suspension of license, or revocation of license, shall comply with the terms of the sanction.

~~(6)~~~~(7)~~ A college may appeal the actions of the president regarding the denial of issuance of a license or license renewal or the imposition of sanctions according to the procedures established in this subsection.

(a) A college shall notify the president of the intent to appeal an action within fourteen (14) days of the receipt of the letter notifying the college of the action taken.

(b) The president shall request that the Office of Administrative Hearings appoint a hearing officer who shall conduct an administrative hearing consistent with the provisions of KRS 13B.005-13B.170.

(c) The appeal shall be presented in writing no later than sixty (60) days following the receipt of notification of intent to appeal. The appeal shall be considered on the written record alone.

(d) The appeals officer shall review findings of fact, consider testimony, draw conclusions, and formulate a recommendation consistent with the facts and this administrative regulation.

(e) ~~Upon completion~~~~[Within fourteen (14) days]~~, the report of the appeals officer shall be forwarded to the college and to the president of the Council on Postsecondary Education.

(f) Within thirty (30) working days of receiving the report of the appeals officer, the president shall take one (1) of the following actions:

1. Issue a license;
2. Renew the license;
3. Impose one (1) of the sanctions authorized in this section; or
4. Refer the case to other officials for appropriate action.

Section 15. License Fees. (1) The president shall assess a fee in accordance with the ["]Kentucky Licensure Fee Schedule["] ~~that is incorporated by reference in Section 16 of this administrative regulation]~~.

(2) Failure to pay a fee shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license.

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

(a) "Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", November 2009;

(b) "Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", November 2009;

(c) "Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020", November 2009;

(d) "Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020", November 2009;

(e) "Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020", November 2009;

(f) "Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", November 2009;

(g) "Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", November 2009;

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(h) "Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020", November 2009;

(i) "Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020", November 2009;

(j) "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020", November 2009;

(k) "Licensure Compliance Reporting Manual", September 8, 2009;[and]

(l) "Kentucky Licensure Fee Schedule", January 2010; and

(m) "Application for Religious In-State College Letter of Exemption per KRS 164.947(2)", September 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PAM MILLER, Chair

TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: October 3, 2012

FILED WITH LRC: October 9, 2012 at 10 a.m.

CONTACT PERSON: Sarah Levy, Director of Postsecondary Licensing, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone (502) 573-1555 ext. 350, fax (502) 573-1535, email [sarah.levy@ky.gov](mailto:sarah.levy@ky.gov).

### FINANCE AND ADMINISTRATION CABINET

#### Kentucky Teachers' Retirement System

(As Amended at ARRS, December 17, 2012)

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

RELATES TO: KRS 161.716, 161.600, 161.470, 26 C.F.R., 26 C.F.R. 401(a)(7),(8), (25), 26 U.S.C. 414(d), (p), (u), 26 U.S.C. 401(a), 414(d), 414(p), 414(u), 503(b), 3401(h), 38 U.S.C. 4301-4335~~503(b), 38 U.S.C. 4301-4335~~

STATUTORY AUTHORITY: KRS 161.310(1), 161.716

NECESSITY, FUNCTION AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the board of trustees to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of the members of the retirement system. Kentucky Teachers' Retirement System shall administer the Retirement System as a qualified defined benefit plan pursuant to 26 U.S.C. 401(a) and 26 U.S.C. 414(d) of the Internal Revenue Code,~~[f]~~ 26 U.S.C., 26 C.F.R., and such other Internal Revenue Code Sections as applicable. This administrative regulation establishes Kentucky Teachers' Retirement System's compliance with 26 U.S.C. 401(a) and 503(b) in order for the Kentucky Teachers' Retirement System to maintain its tax qualified status as a public defined benefit plan. This administrative regulation also includes provisions intended to comply with the Heroes Earnings Assistance and Relief Tax Act of 2008, "HEART Act". This administrative regulation adds provisions that have been required as part of the determination letter process regarding vested benefits.

Section 1. Compliance with 26 U.S.C. 401(a)(7) and (8) for Vesting and Forfeitures. (1) A plan member shall be 100 percent vested in the member's accumulated contributions at all times.

(2)(a) In conformity with 26 U.S.C. 401(a)(8), a forfeiture of benefits by a member or former member of the plan shall not be used to pay benefit increases.

(b) Forfeitures shall be used to reduce employer contributions.

(3) Upon termination or partial termination of the Kentucky Teachers' Retirement System, or the complete discontinuance of contributions, a member shall have a nonforfeitable interest in his accrued benefit to the extent funded.

(4) In order to comply with Internal Revenue Service interpretations, subject to the provisions of KRS 161.470, a member shall

have a nonforfeitable interest in his accrued benefit at attainment of age sixty (60) with[and] the completion of five (5) years of service.

(5) Subject to the provisions of KRS 161.470, a member who completes at least five (5) years of service and terminates employment shall be vested in his accrued benefit and shall be entitled to that benefit upon the attainment of normal retirement age, which is age sixty (60), unless the member withdraws his accumulated contributions.

Section 2. Compliance with 26 U.S.C. 414(p) for Qualified Domestic Relations Orders. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in 26 U.S.C. 414(p), then the applicable requirements of 26 U.S.C. 414(p) shall be followed by the retirement system.

Section 3. Compliance with 26 U.S.C. 414(u) for Reemployed Veterans. (1) Effective December 12, 1994, Contributions, benefits, and service credit with respect to qualified military service shall be governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301 – 4335.

(2) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualifying military service, as defined in 38 U.S.C. Chapter 43 to the extent required by section 26 U.S.C. 401(a)(37) of the Internal Revenue Code, survivors of a member of the Kentucky Teachers' Retirement System~~[f]~~ shall be entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

(3) Beginning January 1, 2009, to the extent permitted by 26 U.S.C. 3401(h) and 414(u)(2)~~(sections 3401(h) and 414(u)(2))~~ of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service, as defined in 38 U.S.C. Chapter 43)~~[f]~~ from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as annual compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Section 4. Compliance with 26 U.S.C. 503(b) for Prohibited Transactions. The board shall not engage in a transaction prohibited by 26 U.S.C. 503(b).

Section 5. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions. (1) Kentucky Teachers' Retirement System shall comply with 26 U.S.C. 401(a)(25) to determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by resolution for specific benefit calculation purposes.

(2) These benefits shall not be subject to employer discretion.

DR. TOM SHELTON, Chairperson

APPROVED BY AGENCY: September 17, 2012

FILED WITH LRC: October 15, 2012 at 9 a.m.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

### GENERAL GOVERNMENT CABINET

#### Kentucky Board of Pharmacy

(As Amended at ARRS, December 17, 2012)

#### 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 reciproci-



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ty. 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 a[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 fingerprint[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;[-]

(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 em-

ployment, 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.

### GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (As Amended at ARRS, December 17, 2012)

#### 201 KAR 2:040. Registration of pharmacist interns.

RELATES TO: KRS 315.010(16), 315.020(3), (4), 315.050(4), (5), 315.191(1)(h)

STATUTORY AUTHORITY: KRS 315.050(4), (5), 315.191(1)(a), (h)

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Board of Pharmacy is required by KRS 315.050(4) to establish standards for pharmacy intern certification. KRS 315.191(1)(h) authorizes the board to establish an apprentice program for training, qualifications, and registration of applicants for registration of pharmacist interns. This administrative regulation establishes the standards for training, qualifications, and registration of pharmacist interns.

Section 1. Definitions. (1) "Academic experience program" means a course or series of courses taken by a pharmacist intern at a school or college of pharmacy approved by the board that involves actual practice of pharmacy experiences.

(2) "Preceptor" means the pharmacist who is responsible to the board for the practice of pharmacy experiences of a pharmacist intern.

Section 2.~~[(1)]~~ An applicant for registration as a pharmacist intern shall:

~~(1) File[register with the board by filing] an ["Application for Registration as a Pharmacist Intern,"] Form 1, with the board;[-]~~

~~(2)[The applicant shall] Attach a recent head and shoulders passport photograph, that is not a proof copy or plastic identification[-]~~

~~(2) Prior to registration, an applicant shall have:~~

~~(a) Been accepted by a college or school of pharmacy ap-~~



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proved by the board]; and

(3) ~~Submit~~~~(b) Submitted~~ proof of acceptance by a college or school of pharmacy approved by the board.

Section 3.~~[(4)]~~ An applicant for examination for licensure as a pharmacist shall:

(1) ~~Complete~~~~[have completed]~~ 1,500 hours of internship;~~[-]~~

(2) ~~Be awarded~~ credit for internship~~[shall be awarded]~~ for hours worked in a pharmacy or in related research during the time the pharmacist intern is enrolled in an approved school or college of pharmacy;

~~(3)[completing the academic coursework. Credit shall]~~ Not be awarded credit for hours worked in a pharmacy or in related research during the period the pharmacist intern is completing the academic experience program;

~~(4)[clinical rotations. (3) Credit for internship shall]~~ Be limited to internship credit;

(a) Of forty-eight (48) hours per week during non-academic sessions if the pharmacist intern is in good standing with a college or school of pharmacy and the board~~[not actively enrolled in a college or school of pharmacy]; and~~

(b) Of twenty (20) hours per week during academic sessions~~[if the pharmacist intern is actively enrolled]~~ in a college or school of pharmacy. The maximum credit allowed for this enrolled time shall be 500 hours;~~[-]~~

~~(5)[(4)(a) Credit shall]~~ Be given credit for the following forms of internship:

~~(a)[4]. Completion of an academic experience program;~~

~~(b)[2]. Work performed in a pharmacy under the supervision of a preceptor;[or]~~

~~(c)[3]. Work or research related to the practice of pharmacy that was performed under the supervision of a preceptor for a government body, college or university, pharmacy business, or other entity if the pharmacist intern has received prior approval by the board. The maximum credit allowed for this time shall be 400 hours and the pharmacist intern shall also file an essay of at least 500 words describing the work or research experience and the relation of the work or research to the practice of pharmacy, which shall be approved by the board president; or~~

~~(d)[-(b)] An internship performed outside of Kentucky[shall be credited] if the:~~

1. Requirements for internship in that state are at least equivalent to the requirements established in this administrative regulation; and

2. Board of licensure in that state has certified that the preceptor, pharmacy, government body, college or university, pharmaceutical business, or other entity is in good standing; and

~~(6)[-(5) Credit shall]~~ Not be awarded credit for an internship completed prior to registration with the board.

Section 4. A pharmacist intern shall:

(1)~~[A pharmacist intern shall]~~ Be issued a ~~["]~~Registration Identification Card~~["~~;~~[-]~~

(2)~~[A pharmacist intern shall: (a)]~~ Carry the ~~["]~~Registration Identification Card~~["~~ when on duty; and

~~(3)[(b)]~~ Show it upon request to a member of the board or its authorized agent.

Section 5.~~[(1)(a) Except as provided by paragraph (b) of this subsection.]~~ The registration of a pharmacist intern shall be revoked if the pharmacist intern is not:

~~(1)[4-]~~ Currently enrolled in a college or school of pharmacy approved by the board;

~~(2)[2-]~~ A current applicant for licensure as a pharmacist in Kentucky; or

~~(3)[3-]~~ Awaiting the results of an examination.

Section 6.~~[(b)]~~ The registration of a pharmacist intern shall not be revoked when the intern is not currently enrolled in a college or school of pharmacy approved by the board if the board finds that:

~~(1)[4-]~~ The intern is on a semester break; or

~~(2)[2-]~~ Personal or family health concerns or other reasons beyond the control of the pharmacist intern necessitate~~[that necessitates]~~ a temporary absence from enrollment and the absence is

approved by the board.

Section 7.~~[(2)]~~ A person who is not registered as a pharmacist intern shall not:

~~(1)[(a)]~~ Hold himself out as a pharmacist intern; or

~~(2)[(b)]~~ Perform the duties of a pharmacist intern.

Section 8[6]. (1)~~[A Beginning August 1, 2000;]~~ A preceptor shall be a pharmacist:

~~(a) Whose license is in good standing;~~

~~(b)[whose license is in good standing and[who];~~

~~(a)]~~ Has been licensed by the board for at least one (1) year; and

~~(c)[(b)]~~ Has requested in writing to be designated as a preceptor~~[1-]~~ Is a community-based faculty member of a college or school of pharmacy approved by the board; or

2. Meets the standards established by a college or school of Pharmacy approved by the board for a community-based faculty member].

(2) A preceptor shall be actively engaged in the practice of pharmacy in the location where the pharmacist intern performs his internship.

(3) The preceptor shall supervise only one (1) pharmacist intern at a time for the purpose of the intern obtaining credit for the practice of pharmacy experience, unless the pharmacist is supervising interns as a faculty member at a school or college pharmacy approved by the board during an academic experience program.

Section 9[7]. Credit for Non-Academic Experience Programs.

(1) Within ten (10) days of beginning an internship credit for non-academic experience program, a pharmacist intern shall submit a ~~["]~~Pharmacist Preceptor's Affidavit, Form II~~["~~].

(2) On or before graduation from a college or school of pharmacy~~(October 1 of each year of an internship)~~, a pharmacist intern shall submit an ~~["]~~Internship Report, Form III~~["~~ A pharmacist intern who performs work or research related to the practice of pharmacy that was performed under the supervision of a preceptor for a government body, college or university, pharmaceutical business, or other entity shall also file an essay of at least 500 words describing the work or research experience and the relation of the work or research to the practice of pharmacy.

~~(3) An academic experience program shall be reported on an "Academic Experience Affidavit, Form IV" which shall be filed with the board upon completion of the academic experience program or prior to certification for examination].~~

Section 10[8]. Credit for Academic Experience Programs. (1) For a Doctor of Pharmacy degree, credit shall be awarded for each hour of successful completion of an academic experience program at a college or school of pharmacy approved by the board.

~~(2) An academic experience program shall be reported on an Academic Experience Affidavit, Form IV, which shall be filed with the board upon completion of the academic experience program or prior to certification for examination.~~

Section 11[9]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Registration as a Pharmacist Intern", Form I, 11/2012[1-(5/99)];

(b)~~["]~~Registration Identification Card~~["~~; (c) ~~["]~~Pharmacist Preceptor's Affidavit~~["]~~, Form II, 11/2012[2-(5/99)];

~~(d)[(d)"]~~Internship Report~~["]~~, Form III, 11/2012[9-(9/99)]; and

~~(d)[(e)"]~~Academic Experience Affidavit~~["]~~, Form IV, 11/2012[5-(9/99)].

(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 Administrative 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: September 12, 2012

FILED WITH LRC: October 11, 2012 at 4 p.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**  
**Kentucky Board of Pharmacy**  
**(As amended at ARRS, December 17, 2012)**

**201 KAR 2:061. Procedures followed by the Kentucky  
Board of Pharmacy in the investigation and hearing of com-  
plaints.**

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 relat-  
ing 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 merito-  
rious.

(3) A complaint shall not be required to be sworn to or nota-  
rized. [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 conclu-  
sions 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 com-  
plaint, 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 mem-  
ber, 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, or the  
attorney for that person.

(2) If a settlement conference is requested, it shall be  
scheduled. The settlement conference shall include the  
board's attorney, the licensee, permit or certificate holder, and  
the attorney for that person. [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 stipula-  
tions, proposed terms, and conditions for an agreed order to re-  
solve 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. All hearings shall be conducted in  
accordance with the provisions of KRS 315.131(1). [(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 pre-  
sented by the counsel for the board.

(3)(a) Evidence may be admitted if it is of the type com-  
monly 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 admit-  
ted 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 fol-  
lowing 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 deposi-  
tion, 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 deli-  
berate on all cases in closed session.

(2) Board counsel shall not attend, or be involved in any man-

ner 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.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Pharmacy  
(As Amended at ARRS, December 17, 2012)**

**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 ~~2~~**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 ~~3~~**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 ~~4~~5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Home Medical Equipment License", Form 1, 10/2012~~07/2012~~; and

(b) "Application for Home Medical Equipment License Renewal", Form 2, 10/2012~~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.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Optometric Examiners  
(As Amended at ARRS, December 17, 2012)**

**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. ~~(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:

~~(a)~~ (1) A completed Application for License to Practice Optometry;

~~(b)~~ (2) ~~in addition to a completed application:~~ ~~(1)~~ Birth certificate;

~~(c)~~ A~~(3)~~ (2) certified copy of college transcripts received directly from the registrar's office;

~~(d)~~ A~~(4)~~ (3) certified copy of optometry school transcripts received directly from the registrar's office;

~~(e)~~ (5) (4) National board results;

~~(f)~~ (6) (5) Therapeutic Management of Ocular Disease, "TMOD" results;

~~(g)~~ (7) (6) Two (2) letters of recommendation, one (1) of which shall be from a licensed optometrist;

~~(h)~~ (8) (7) Proof of successful completion of State Law Exam results;

~~(i)~~ (9) (8) A passport-sized, recent photograph of head and shoulders, front view;

~~(j)~~ (10) ~~and~~

~~(9)~~ A money order or cashier's check payable to the Kentucky State Treasurer in the amount of \$500; and

~~(k)~~ (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.

~~(2)(a) Prior to approval for examination, the board shall receive and consider:~~

~~1. A national and state, fingerprint-supported criminal record check conducted by the:~~

~~a. Federal Bureau of Investigation; or~~

~~b. Kentucky State Police; and~~

~~2. A query for any relevant data from the National Practitioner Data Bank of the U.S. Department of Health and Human Services.~~

~~(b) Both of the items required to be furnished by this subsection shall be less than sixty (60) days old when reviewed by the board 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. ~~(1)~~ 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:

~~(a)~~ (1) A completed Application for License by Endorsement to Practice Optometry;

~~(b)~~ (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;

~~(c)~~ (3) (2) Information regarding any resolved, pending, or unresolved board action or malpractice suit in any state or territory;

~~(d)~~ A~~(4)~~ (3) certified copy of college transcripts received directly from the registrar's office;

~~(e)~~ A~~(5)~~ (4) certified copy of optometry school transcripts received directly from the registrar's office;

~~(f)~~ A~~(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;

~~(g)~~ A~~(7)~~ (6) copy of the credential that proves the applicant is therapeutically licensed;

~~(h)~~ (8) (7) Two (2) letters of recommendation, one (1) of which shall be from a licensed optometrist;

~~(i)~~ (9) (8) Proof of successful completion of Kentucky State Law Exam;

~~(j)~~ (10) (9) A passport-sized, recent photograph of head and shoulders, front view;

~~(k)~~ (11) (10) A certified check or money order made payable to the Kentucky State Treasurer in the amount of \$700;

~~(l)~~ (12) ~~and~~

~~(14)~~ A notarized statement explaining why the applicant wishes to be admitted to practice in Kentucky; and

~~(m)~~ (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.

~~(2)(a) Prior to approval for licensure, the board shall receive and consider:~~

~~1. A national and state, fingerprint-supported criminal record check conducted by the:~~

~~a. Federal Bureau of Investigation; or~~

~~b. Kentucky State Police; and~~

~~2. A query for any relevant data from the National Practitioner Data Bank of the U.S. Department of Health and Human Services.~~

~~(b) Both of the items required to be furnished by this subsection shall be less than sixty (60) days old when reviewed by the board; 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.~~

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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.

### GENERAL GOVERNMENT CABINET Board of Dentistry (As Amended at ARRS, December 17, 2012)

#### 201 KAR 8:520. Fees and fines.

RELATES TO: KRS 218A.205(3)(e)4., 313.022, 313.030, 313.100(2)(c)[, 2012 Extra. Sess. Ky. Acts ch. 1]

STATUTORY AUTHORITY: KRS 218A.205(3)(e)4., 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

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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 or[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 shall be[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.

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.

### GENERAL GOVERNMENT CABINET Board of Dentistry (As Amended at ARRS, December 17, 2012)

#### 201 KAR 8:532. Licensure of dentists.

RELATES TO: KRS ~~39A.350-39A.366~~[39A.350 — 366], 214.615, ~~218A.205, 304.040-075~~[304.040 — 075], 313.010(9), 313.030, ~~313.254~~[313.035, 313.080, 313.130, 313.245, 2012 Extra Sess. Ky. Acts ch. 1]

STATUTORY AUTHORITY: KRS 214.615(2), ~~218A.205~~[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 ~~218A.205~~ require~~[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 by 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 the[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 a[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 Common-

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

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

(d) Submit an official final transcript of the applicant's dental coursework with the 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.350-39A.366~~[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 or her dental coursework with the 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 required by~~[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 or her postgraduate 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 8:581~~[8:580]~~;

(b) Only perform procedures allowed by KRS 313.254(4) and (5)~~[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; and;

(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.

~~(3)(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 (9) 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 ~~f,~~ 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 address provided by the licensee on the Retirement of License form ~~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 of 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 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~~; 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



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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", July 2010~~[January 2011]~~;
  - (b) "Statement Regarding Student Licensure Limitations", July 2010;
  - (c) "Statement Regarding Faculty Licensure Limitations", July 2010;
  - (d) "Application for Charitable Dental Licensure," March 2011~~[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 Request 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.

## GENERAL GOVERNMENT CABINET Board of Dentistry (As Amended at ARRS, December 17, 2012)

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

RELATES TO: KRS 218A.205(3), 313.060, 313.085, 422.317, 42 U.S.C. 300ee-2 note~~[, 2012 Extra. Sess. Ky. Acts ch. 4]~~

STATUTORY AUTHORITY: KRS 218A.205(3), 313.060(1)~~[, 2012 Extra. Sess. Ky. Acts ch. 4]~~

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 and Prevention 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 and Prevention 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 201 KAR Chapter 8~~[this chapter]~~ and within the dentist's~~[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 the dentist and a description of each evaluation or consultation,~~[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) In accordance with KRS 313.035, a dentist may prescribe any drug necessary within the scope of the dentist's practice if~~[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; **and**

(c) Has enrolled with and utilizes the Kentucky **All Schedule**~~[All-Scheduled]~~ Prescription Electronic Reporting System as required by **KRS 218A.202**~~[2012 Extra. Sess. Ky. Acts ch. 1 and Section 2(4)(b) of this administrative regulation]~~.

(2) A dentist **shall**~~[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) **Except as provided in subsection (2) of this section**~~[Obtain]~~ and review a KASPER report for all available data on the patient;

(b)~~;~~ Document relevant information in the patient's record;

(c)~~[and]~~ Consider the available information to determine ~~if~~~~whether~~ it is medically appropriate and safe to prescribe a controlled **substance**;

(d) **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;**

(e) **Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;**

(f) **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**

(g) **Obtain written consent for the treatment.**

(2) **A dentist shall not be required to obtain and review a KASPER report if:**

(a1). **The dentist prescribes a Schedule III controlled substance or one (1) of the Schedule IV controlled substances listed in subsection (3) of this section after the performance of oral surgery; and**

2. **No more than a seventy-two (72) hour supply of the controlled substance is prescribed;**

(b) **The dentist prescribes or dispenses a Schedule IV or V controlled substance not listed in subsection (3) of this section; or**

(c1). **The dentist prescribes pre-appointment medication for the treatment of procedure anxiety; and**

2. **The prescription is limited to a two (2) day supply and has no refills.**

(3) **A 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**~~[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[.~~

(4)~~[(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.

(5)~~[(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, **shall be** 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 **be permanently banned from prescribing or dispensing a controlled substance**~~[, have a lifetime 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 **ban from prescribing or dispensing a controlled substance**~~[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 a **fine of \$1,000 for each failure to report**~~[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

~~schedule~~**[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 ~~fin~~**ed a minimum of \$500 to a maximum of \$10,000**~~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)~~(a)~~ 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.

~~(b)~~ The dentist may receive a second inspection after the thirty (30) days have passed.

~~(c)~~ 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 ~~the dentist pays~~**[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.

**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(As Amended at ARRS, December 17, 2012)**

**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)~~(a)~~ Complete an "Application for Licensure as an Advanced Practice Registered Nurse" as required by 201 KAR 20:370, Section 1(1);

~~(b)~~~~(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;

~~(c)~~~~(3)~~ Submit the fee required by 201 KAR 20:240, Section 1(2)(k); and

~~(d)~~~~(4)~~ Comply with the requirements established in KRS 314.042 and Sections 2 and 4 through 10 of this administrative regulation.

~~(2)~~~~(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.

~~(3)~~~~(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.

**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(As Amended at ARRS, December 17, 2012)**

**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 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 in writing 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, and patient and prescribing records shall be made available for immediate inspection.

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) This section shall not apply to:

(a) Administering or prescribing a controlled substance or anesthesia immediately prior to, during, or for up to seven (7) days following surgery or an invasive procedure;

(b) Administering a controlled substance necessary to treat a patient in an emergency situation:

1. At the scene of an emergency;

2. In a licensed ground or air ambulance; or

3. In an emergency department of a hospital, except as provided in subsection (11) of this section.

(c) Prescribing a controlled substance for a hospice patient or any end of life care;

(d) A patient admitted to a licensed hospital as an inpatient, outpatient, or observation patient, during and as part of the patient's normal and expected course of care at that hospital;

(e) A patient who is a registered resident of a long term care facility as defined in KRS 216.510;

(f) Prescribing during the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

(g) Prescribing a single dose of a controlled substance to relieve anxiety, pain, or discomfort related to a diagnostic test or procedure;

(h) Prescribing a limited amount of a controlled substance for a short period of time for an established patient to assist the patient in responding to the anxiety of a nonrecurring event;

(i) Treatment associated with cancer;

(j) Administering or prescribing controlled substances to prisoners in a state or county correctional facility;

(k) Prescribing of a Schedule V controlled substance; and

(l) Schedule II controlled substances and Schedule III controlled substances with hydrocodone as established in KRS 218A.172.

(3) The APRN shall, prior to initially prescribing a controlled substance for a medical complaint 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. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient~~/for the twelve (12) month period immediately preceding the patient encounter~~;

(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss 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:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

2. That the controlled substance should be discontinued when the condition requiring its use has resolved; and

3. Document that the discussion occurred and that the patient consented to the treatment.

(4) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(5) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:

(a) ~~Update~~~~/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 ~~clinically appropriate~~~~/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.

(6) 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.

(7) These requirements may be satisfied by other~~/standards may be accomplished by different~~ licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession~~/practitioner performing an action to meet these standards shall be acting within the legal scope of their practice~~; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(8) If prescribing a controlled substance for the treatment of chronic, noncancer pain, the APRN, in addition to the requirements of this section, may obtain a baseline drug screen or further random drug screens if the APRN:

(a) Deems a drug screen to be clinically appropriate; or

(b) Believes that it is appropriate to determine whether or not the controlled substance is being taken by the patient~~/shall, if appropriate, obtain a baseline drug screen and further random drug screens as deemed necessary by the APRN~~.

(9) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section.

(10) If prescribing a controlled substance for a patient~~/patients~~ younger than sixteen (16) years of age, the APRN shall obtain and review an initial KASPER report. If prescribing a controlled substance for an individual sixteen (16)



years of age or older, the requirements of this section shall apply.

(11) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital *that is not an emergency situation as specified in subsection (2) of this section*, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record; *and*

(b) Query KASPER for all available data *covering at least the previous twelve (12) months* 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 document that the discussion occurred and that the patient consented to the treatment;

(12) *If an APRN is unable to conform to the standards set in this section or to those set in KRS 218A.172 due to circumstances beyond their control, or if the APRN makes a professional judgment that it is not appropriate to comply with a specific standard based upon the facts applicable to a specific patient, the APRN shall document the circumstances and the APRN's response to the inability to conform to the specific standard or the rationale for not complying with the standard and the impact upon the continuing care of the patient.* 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", **2011[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: November 15, 2012 at 10 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](mailto:nathan.goldman@ky.gov).

## VOLUME 39, NUMBER 7 – JANUARY 1, 2013

### GENERAL GOVERNMENT CABINET Kentucky Board of Podiatry (As Amended at ARRS, December 17, 2012)

#### 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;[f.]

(b) California College of Podiatric Medicine, San Francisco, California;[f.]

(c) College of Podiatric Medicine and Surgery, Des Moines, Iowa;[f.]

(d) Dr. William M. Scholl College of Podiatric Medicine, Chicago, Illinois;[f.]

(e) New York College of Podiatric Medicine, New York, New York;[f.]

(f) Ohio College of Podiatric Medicine, Cleveland, Ohio;[f.]

(g) Pennsylvania College of Podiatric Medicine, Philadelphia, Pennsylvania;[f.]

(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 shall not prescribe any controlled substance before he or she is registered with KASPER.

(3) The board shall temporarily suspend a license pursuant to 201 KAR 23:051, Section 5 of this administrative regulation, if a licensee:

(a)1. Fails to register with KASPER after the approval for licensure by the board; or

2. Prescribes a controlled substance prior to registration with KASPER.

(b) In addition to the temporary suspension, the board may take additional disciplinary action against a license pursuant to KRS 311.480, 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[It] 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. 42th 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

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.



VOLUME 39, NUMBER 7 – JANUARY 1, 2013

GENERAL GOVERNMENT CABINET  
Kentucky Board of Podiatry  
(As Amended at ARRS, December 17, 2012)

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 current 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), a licensee[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 additional disciplinary action against a licensee pursuant to KRS 311.480.[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

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.

GENERAL GOVERNMENT CABINET  
Kentucky Board of Podiatry  
(As Amended at ARRS, December 17, 2012)

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. Definitions. (1) "Board" means the Kentucky State Board of Podiatry.

(2) "Complaint review committee" means a committee of the board members appointed by the board that:

(a) Reviews an initiating complaint;

(b) Determines whether an investigation should be conducted; and

(c) Directs and reviews an investigation of the respondent.

(2) "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.

(3) "Order" means the whole or any part of a final disposition of an adjudication.

(4) "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.

(5) "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency.

(6) "Respondent" means the licensee against whom a complaint has been filed.[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. **Form of Complaints.** ~~(1)[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.

~~(3)[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.

~~(4)[(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.

~~(5)[(d)]~~ In making its determination, the board shall consider whether the charges if proven would warrant sanction by the board.

~~(6)[(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.

~~(7)[(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.

~~(8)[(4)]~~ The filing of formal charges shall require the affirmative vote of a majority of the board.

~~(9)[(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) 1. The board is also entitled to resolve the matter informally through mediation or negotiation.

2. 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(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 4(2) of this administrative regulation or after the expiration of the twenty (20) day period referred to in Section 3(3)(2) 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 pur-

poses 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.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Podiatry  
(As Amended at ARRS, December 17, 2012)**

**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 **standards[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) **If[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 sub-

stances 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 *if[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) *if[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. *if[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: Beverley White, Executive Director,  
Kentucky Board of Podiatry, P.O. Box 174; Glasgow, Kentucky  
42142-0174, phone 270-834-8932, fax 270-834-1437.

VOLUME 39, NUMBER 7 – JANUARY 1, 2013

ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Technical and Administrative Support  
(As Amended at ARRS, December 17, 2012)

418 KAR 1:010. Definitions for 418 KAR Chapter 1.

RELATES TO: KRS ~~[146.415(1),]~~ 146.550-146.570, 446.010(18)

STATUTORY AUTHORITY: KRS ~~[Chapter 13A,]~~ 146.550-146.570

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) ~~requires[directs]~~ the board to promulgate ~~[in accordance with the provisions of KRS Chapter 13A,]~~ administrative regulations ~~[deemed]~~ necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. It also ~~re-quires[directs]~~ the board to promulgate administrative regulations on land acquisition. ~~[The purpose of]~~ This administrative regulation ~~defines[is to define]~~ terms used in 418 KAR Chapter 1.

Section 1. Definitions. ~~[for 418 KAR Chapter 1. The following definitions shall apply to 418 KAR Chapter 1:]~~

(1) "Access land" means land necessary for reasonable and planned ingress and egress from the project site.

(2) "Acquisition" means the procurement of land and includes options ~~[required carrying costs and relocation assistance]~~, appraisals, maps, surveys, ~~[studies]~~ title opinions, title insurance and environmental audits, inspections, and remediation.

(3) "Areas important to migratory birds" means those areas important to the reproduction and survival of migratory birds, including ~~[but not limited to]~~:

- (a) Large tracts of contiguous forest;
- (b) Wooded greenspace areas;
- (c) Shallow open water habitats with expansive areas of shoreline; ~~[and]~~
- (d) Wetlands or wetland complexes including marshes, deep water sloughs, and swamps;
- (e) Natural grasslands; and
- (f) Riparian corridors.

(4) "Board" means the Kentucky Heritage Land Conservation Fund Board.

(5) "Buffer land" means land that will aid in protecting the project site from harm, or will prevent degradation of the visitor experience at the project site.

(6) ~~["Carrying costs" include, but are not limited to, interest on borrowed money, reasonable management costs consistent with the preliminary RMP and incurred while land is being held pending sale, and reimbursement of reasonable overhead costs not to exceed three (3) percent of the sale price. (7)]~~ "Chair" means the chairperson of the ~~[Kentucky Heritage Land Conservation Fund]~~ board.

~~(7) [(8)]~~ "Fund" means the Kentucky Heritage Land Conservation Fund.

~~(8) [(9)]~~ "Grant" means an award of money from the Kentucky Heritage Land Conservation Fund pursuant to KRS 146.570(4)(f)[146.570(f)].

~~(9) [(10)]~~ "Greenspace" means undeveloped land in or around urban areas, including ~~[but not limited to,]~~ forests ~~or[and]~~ other natural vegetation, stream-side corridors, natural areas, and abandoned rights-of-way.

~~(10) [(11)]~~ "Land" ~~the definition of "land" is governed by KRS 446.010(18). (12)]~~ "Local governments" means ~~[local government entities, including, but not limited to,]~~ county governments, municipalities, school districts, and special districts, or a combination thereof.

~~(11) [(13)]~~ "Management" means the stewardship necessary to fulfill the purposes of KRS 146.550 through 146.570 and 418 KAR Chapter 1 and encompasses ~~[the initial]~~ site development costs and reasonable operating costs ~~[including, but not limited to,]~~ consultant and contractor fees, facility development, supplies, materials, site-specific equipment, and staff costs.

~~(12) [(14)]~~ "Money" means money received from the Kentucky Heritage Land Conservation Fund. ~~(15)]~~ "Natural area" means any

area of land or water, or of both land and water, which:

~~(a) [either]~~ Retains or has reestablished in the judgment of the board its natural character, or which has natural flora ~~or[,]~~ fauna; ~~or~~

~~(c) Has[,]~~ biological, ecological, geological, scenic, or archaeological features of scientific, aesthetic, cultural, or educational interest to the public ~~[the definition of "natural area" is governed by KRS 146.415(1)].~~

~~(13) [(16)]~~ "Natural functions" means the interrelationships among the living and nonliving components of ecosystems and includes ~~[, but is not limited to,]~~

- (a) Energy fixation and conversions;
- (b) Ecosystem productivity and biomass accumulation;
- (c) Nutrient cycling;
- (d) Storage, transport, release, and retention of water and other nutrients;
- (e) Food web relationships and dynamics;
- (f) Weathering, development, and stabilization of substrates;

~~(g) Absorption and neutralization of pollutants[but is not limited to, energy fixation and conversions; ecosystem productivity and biomass accumulation; cycling; storage, transport, release, and retention of water and other nutrients; food web relationships and dynamics; weathering; and development of substrates].~~

~~(14) [(17)]~~ "Natural state" means the condition of any area which retains, has substantially reestablished, or is in the process of reestablishing, an indigenous ecosystem.

~~(15) [(18)]~~ "Outdoor recreation" means activity on a subject property that does not cause ~~[meaningful]~~ harm to the property or its natural state, or hinder the heritage land conservation purposes of KRS 146.550 through 146.570.

~~(16) [(19)]~~ "RMP" means resource management plan.

~~(17) [(20)]~~ "Project" means land acquisition and management activities for the purposes set forth in KRS 146.550 through 146.570. ~~(21)]~~ "State agency" means any department, program cabinet, institution, board, commission, office, or agency of the Commonwealth of Kentucky.

~~(18) "State colleges and universities" means accredited colleges and universities located in the Commonwealth of Kentucky. [(22)]~~ "Tract" means, in the case of final RMPs, all parcels of land within a project boundary approved by the board, and, in the case of preliminary RMPs, all parcels of land within the project boundary included in the application to the board.

~~(23) "USGS" means United States Geological Survey.~~

~~(24) "Wetlands" the definition of "wetlands" is governed by KRS 146.550(1).]~~

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 12, 2012

FILED WITH LRC: September 13, 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](mailto:Michael.Mullins@ky.gov).

ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Technical and Administrative Support  
(As Amended at ARRS, December 17, 2012)

418 KAR 1:040. Grant applications ~~[Competitive grants].~~

RELATES TO: KRS 146.550-146.570, 382.800-382.860

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes the procedures for review and approval of grants funded to state agencies, local governments, and state colleges and universities pursuant to KRS 146.570(4)(a)-(f)[and KRS 146.570(4)][(f)].

Section 1. Application. (1) A state agency, local government,

and state college or university seeking a grant pursuant to KRS 146.570(4)(f) shall submit to the board a completed[competitive] grant application package. ~~[Application shall be made on the Kentucky Heritage Land Conservation Fund Board Application, Form HL-1(a) through (c) dated July 2012[HL-1].]~~

(2) The application package shall include:

(a) A cover letter[The application form];

(b) The Kentucky Heritage Land Conservation Fund Board Grant Application Form, HL-1A[application form][Cover letter];

(c) Location map[Site map];

(d) Site or project description;

(e) Preliminary Resource Management Plan, HL-1C, using the Preliminary Resource Management Plan Instructions, HL-1B;

(f) Copy of the portion of a 1:24,000 topographical map showing the approximate project boundaries; and

(g) Project costs worksheet;[(h) Comparison of the project site to the surrounding landscape (competitive applicant only);

(i) A statement of the importance of the project to the applicant and to the Commonwealth of Kentucky (competitive applicant only);

(j) Explanation of why the project qualifies for fund money (competitive applicant only);

(k) Two (2) or more project endorsements (competitive applicant only); and

(l) Description of partnerships with other agencies.]

(3) Money expended by an applicant in connection with a denied application for funds, a grant, or project under this section shall not be reimbursed to the applicant.

(4) An applicant shall not supply false or misleading information to the board and shall provide to the board verification that all information in the grant application is true and accurate.

(5) Grant applicants may submit joint applications. The preliminary RMP for a joint application shall specify which entity will perform each aspect of management. Each joint applicant shall remain responsible for all aspects of management.

Section 2. Review of Application. (1) After reviewing the report received from the Projects Review Committee pursuant to 418 KAR 1:020, Section 6(2)(a)[8(2)(a) of this administrative regulation], each board member shall review the application package and evaluate it based on the following criteria:

(a) Whether the Fund[fund] contains adequate money to fund the proposed project;

(b) Whether the proposed project meets one (1) or more of the[following] priorities for acquisition listed in~~fat~~ KRS 146.560(2)(a) through (d);

(c) Whether the proposed acquisition is one (1) of the areas referred to in~~fat~~ KRS 146.565[: 1. A natural area that meets the priorities for acquisition as set forth in KRS 146.560(2)(a) through (d);

2. An area important to migratory birds;

3. An area that performs an important natural function that is subject to alteration or loss; and

4. An area to be preserved in its natural state for:

a. Public use;

b. Outdoor recreation; and

c. Education;

(c) Whether the proposed acquisition is a natural area or wetland and whether access or buffer land is necessary;

(d) Property costs, seeking to maximize public benefit by taking advantage of:

1. A priority area below fair market value; and

2. Public or private funds available on a matching basis;]

(d)[(e)] The completeness and accuracy of the application package;[(f) The information in the application package;]

(e)[(g)] Whether the preliminary RMP furthers the purposes of KRS 146.550 through 146.570;

(f)[(h)] The applicant's ability to complete the acquisition and manage the land consistent with the preliminary RMP;

(g)[(i)] The significance of the natural and educational resources on the project site;

(h)[(j)] The prevalence of this type of project and project site in public systems; and

(i)[(k)] The threat of loss or degradation of the project site if not

protected;]; and

(l) The overall cost compared to the benefit to the Commonwealth of Kentucky.];

(2) The board:

(a) Shall approve or deny a[competitive-] grant application by the vote of a majority of those present at a meeting at which there is a quorum; and[;]

(b) May:

1. Amend or attach conditions to the approval of

a[competitive]grant application; and

2. Conduct a series of votes to narrow a list of grant applications if the total cost of the applications exceeds the available funds.[(c) Shall not approve an expenditure that exceeds currently available funds.];

(3) Consideration of a grant application may be carried over from meeting to meeting and the board may decline to approve a grant application at a given meeting.

(4) The board may, itself or through an agent, verify the accuracy of the information in a grant application and make[such] further investigation of the merits of a proposed acquisition as the board deems appropriate.

(5) The board shall mail to the applicant, within fifteen (15) days of board action, written notice of the approval or denial of a grant application and, if denied, the reasons for denial.

Section 3. Agreements. Funds shall not be disbursed until the applicant has entered into a written memorandum of agreement with the board which requires the applicant to comply with:

(1) The requirements of KRS 146.550 through 146.570;

(2) 418 KAR Chapter 1;

(3)[Other applicable laws of the Commonwealth of Kentucky;

(4)] The application;

(4)[(5)] A conservation easement which pertains to the project site; and

(5)[(6)] The latest RMP approved by the board.[Section 4. Conservation Easements. A local government shall convey to the Commonwealth of Kentucky a conservation easement in perpetuity over all land acquired, in whole or in part, with fund proceeds. This conveyance shall occur simultaneously with the conveyance of the property to the applicant. The conservation easement shall meet the requirements of KRS 382.800 through 382.860 and ensure that lands acquired are maintained in perpetuity for the purposes set out in KRS 146.560.];

Section 4[5]. Incorporation by Reference. (1)The following material is incorporated by reference:

(a) "Kentucky Heritage Land Conservation Fund Board Grant Application Form", HL-1A, July 2012;[(July 2012), Form Number HL-1(a)."]

(b) "Preliminary Resource Management Plan Instructions", HL-1B, July 2012; and[(July 2012), Form Number HL-1(b)."]

(c) "Preliminary Resource Management Plan Template", HL-1C, July 2012.[(July 2012), Form Number HL-1(c).]"[HL-1 (January 1999)" is incorporated by reference.];

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Heritage Land Conservation Fund, 375 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: November 14, 2012

FILED WITH LRC: November 14, 2012 at 3 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.



## VOLUME 39, NUMBER 7 – JANUARY 1, 2013

### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Technical and Administrative Support (As Amended at ARRS, December 17, 2012)

#### 418 KAR 1:050. Procedures for acquisition of land.

RELATES TO: KRS 45.450, 146.550-146.570, 382.800-382.860

STATUTORY AUTHORITY: KRS 146.560(2), 146.565  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires[directs] the board to promulgate administrative regulations [in accordance with the provisions of KRS Chapter 13A.] on acquisition. This administrative regulation governs the acquisition of land purchased, in whole or in part, with Fund[fund] money.

Section 1. An applicant shall attempt to acquire:

- (1) Land at a price below its fair market value; and
- (2) Available matching funds for the purchase of land from a public or private entity.

Section 2. Transfer of Funds. An expenditure approved by the board shall be disbursed promptly after a Memorandum of Agreement has been signed by the grant applicant and the board[by the Environmental and Public Protection Cabinet, if the recipient of fund money has entered into the written memorandum of agreement required by Section 5 of 401 KAR 1:030 or Section 3 of 401 KAR 1:040].

Section 3. Deadline for Acquisition. The project site shall be acquired within two (2) years of board approval of the acquisition. An extension may be granted by the board upon receipt of a written request for extension.

Section 4. Verification. (1) Within ninety (90) days of purchase, a recipient of fund money shall provide to the board, a [certified] copy of the recorded deed of conveyance for land acquired.

(2) The deed shall:

- (a) Indicate that it has been filed of record in the courthouse of the county where the real estate is located; and
- (b) Indicate the amount of consideration paid for the real estate, in accordance with KRS 45.450.

Section 5. Deed Restriction. A state agency that has been awarded grant funds pursuant to KRS 146.570(4) shall include in all deeds conveying ownership of property to that agency, as grantee, the following language: "Grantor and grantee hereby acknowledge that a source of funding for the purchase of the property is the Kentucky Heritage Land Conservation Fund, and that as consideration for receiving said funding, Grantee, including its successors and assigns, is required to maintain the property in perpetuity in accordance with the purpose, intent and requirements of the Kentucky Heritage Land Conservation Fund set forth at KRS 146.570[145.570] and 418 KAR Chapter 1. Grantee, including its successors and assigns, further acknowledges that it is prohibited from selling, exchanging, encumbering or disposing of any interest in the property without the prior written consent of the Kentucky Heritage Land Conservation Fund, its successors and assigns, and the Kentucky Finance and Administration Cabinet, and that the Grantee, including its successors and assigns, shall ensure that any future owner of the property agrees in writing to be bound in perpetuity to the same restrictions and terms as stated herein."

Section 6. Conservation Easements. A local government, state college, or state university that has been awarded grant funds pursuant to KRS 146.570(4)(f) shall convey to the Commonwealth of Kentucky a conservation easement in perpetuity over all land acquired, in whole or in part, with fund proceeds. This conveyance shall occur simultaneously with the conveyance of the property to the applicant. The conservation easement shall meet the requirements of KRS 382.800 through 382.860 and ensure that lands acquired are maintained in perpetuity for the purposes set out in KRS 146.560.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: November 14, 2012

FILED WITH LRC: November 14, 2012 at 3 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](mailto:Michael.Mullins@ky.gov).

### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Technical and Administrative Support (As Amended at ARRS, December 17, 2012)

#### 418 KAR 1:060. Management.

RELATES TO: KRS 146.550-146.570

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, and review and approval of projects and grants. This administrative regulation establishes the procedures for management of land acquired with fund money.

Section 1. Purpose. Each recipient of fund money shall maintain in perpetuity for the purposes set forth in KRS 146.560 land acquired with fund money. Management practices shall also meet the requirements of KRS 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth, the application, any memorandum of agreement between the board and the recipient of fund money, any conservation easement or land use restrictions pertaining[which pertains] to the project site, and the most recent RMP approved by the board.

Section 2. Preliminary RMP. ~~[(1)]~~ An applicant for fund money shall submit to the board a preliminary RMP simultaneously with an application submitted pursuant to 418 KAR ~~[1:030 or]~~ 1:040. The applicant shall follow the preliminary RMP instructions incorporated by reference in 418 KAR 1:040, Section 4[6] as HL-1B and HL-1C[HL-1(b) and (c)] ~~Section 16 of this administrative regulation.~~

~~(2) The preliminary RMP shall include at least the following information:~~

~~(a) The purpose for which the project site will be acquired and managed;~~

~~(b) A description of the management activities that will occur on the project site, including those related to natural resource protection, resource restoration and enhancement, archeological and historical resource protection, security, safety, and maintenance of the project site;~~

~~(c) An explanation of how the management activities will further the purpose of the project site;~~

~~(d) A description of physical improvements, existing and proposed, at the project site, and an explanation of how these activities will be coordinated with the protection of plant and animal species and communities;~~

~~(e) A description of how public access will be provided;~~

~~(f) A description of all agreements, existing and anticipated, which affect, or may affect, the project site and its use, including, but not limited to, management agreements, leases, easements, and licenses;~~

~~(g) A description of existing and anticipated types of public use and restrictions at the project site; and~~

~~(h) The approximate costs, including staffing costs, and potential funding sources for the items listed in paragraphs (a) through (g) of this subsection.]~~

Section 3. Final RMP. (1) A recipient of fund money shall submit to the board, within two and one-half (2 1/2) years of receipt of funding, a final RMP which is consistent with the preliminary RMP and application, and which meets the requirements of KRS 146.550 through 146.570, this chapter, any memorandum of agreement between the board and the recipient, and any conservation easement which pertains to the project site. The applicant shall follow the final RMP instructions incorporated by reference as

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Forms HL-2A and HL-2B[Form HL-2] in Section 14[Section 15] of this administrative regulation.

(2) The applicant shall develop the final RMP using the findings contained in biological and archeological inventories. The board may grant an exception to the inventory requirements if the applicant demonstrates that either inventory would be nonproductive considering the conditions at the project site.

(3)[(2)] The final RMP shall include at least the following information:

- (a) A table of contents;
  - (b) General information including the name of the project, the location of the project site, the name, address, and phone number of the property owner and contact persons, a description of natural resources, and historical information relative to site management;
  - (c) The purpose and proposed future use of the project site;
  - (d) An explanation of how commitments made in the application, preliminary RMP, memorandum of agreement and conservation easement are reflected in the management plan;
  - (e) Any biological or archaeological inventories that have been conducted;
  - (f) A monitoring plan to ensure the continued viability of natural communities and endangered, threatened and special concern plant and animal species on the project site;
  - (g) A description of the management activities that will occur on the project site, including those related to natural resource protection, resource restoration and enhancement, archeological and historical resource protection, staffing, security, safety, maintenance of the project site, and coordination of management activities with adjacent landowners and other resource protection agencies;
  - (h) An explanation of how the proposed management activities will further the purpose of the project site;
  - (i) The identification and location of physical improvements, existing and proposed, on a master site plan;
  - (j) A description of how public access will be provided;
  - (k) A description of all agreements, existing and anticipated, which affect, or may affect, the project site and its use, including management agreements, leases, easements, and licenses;
  - (l) A description of existing and anticipated types of public use and restrictions at the project site;
  - (m) An explanation of the procedures that will be utilized to assess progress in achieving the goals set forth in the final RMP;
  - (n) An explanation of the procedures that will be utilized to ensure that the project site is identified by one (1) or more appropriate signs and if the site will be identified on literature or advertising; and
  - (o) The estimated costs of the activities listed in paragraphs (e) through (n) of this subsection.
- (3) An applicant may request that its preliminary RMP serve as the final RMP if the preliminary RMP meets all the requirements of subsection (2) of this section.

(3)[(4)] The board shall vote to accept or reject the final RMP. If it is rejected, the board shall identify the deficiencies and notify the applicant of those deficiencies. The applicant shall correct these deficiencies within sixty (60) days of notification from the board or other time deadline approved by the board.

Section 4. Land acquired, in whole or in part, with money from the fund shall be managed in[strict] accordance with the most recent RMP approved by the board.

Section 5. Amendment of RMPs. RMPs may be amended only upon prior written board approval. Until board approval of an amendment is obtained, the recipient of fund money shall adhere[strictly] to the most recent RMP approved by the board.

Section 6. Management Agreements. A recipient of fund money may, with prior approval of the board, enter into agreements with third parties for management of land. Despite the terms of any management agreement, the recipient of fund money retains full responsibility for management of the land in accordance with the requirements of KRS 146.550 through 146.570, this chapter,[any other applicable laws of the Commonwealth of Kentucky,] any memorandum of agreement between the board and the recipient, any conservation easement or deed restriction pertaining[which

pertains] to the project site, and the most recent RMP approved by the board.

Section 7. Time Limits. Money initially approved by the board for management shall be expended within two and one-half (2 1/2) years of the board's approval of the Final RMP[receipt of funds from the board]. An extension may be granted by the board upon receipt of a written request for extension, including an explanation of and reason for the request.

Section 8. Application for Additional Management Funds. (1) The board may, at its discretion, grant written requests for additional management money.

(2) The board shall consider the following factors in its evaluation of requests for additional management money:

- (a) The applicant's past management record;
- (b) The applicant's need for additional management funds; and
- (c) Funds available.

Section 9.[Verification. Recipients of fund money shall provide to the board, within three (3) years of land acquisition or six (6) months of expenditure of funds, whichever comes first, verification of money expended on land management.

Section 10.] Joint RMPs. Applicants may submit joint RMPs which specify which entity will perform each aspect of management. Each applicant shall remain responsible for all aspects of management.

Section 10[14]. Reports. (1) Recipients of fund money shall submit to the board Annual Management Reports using Form HL-2C[HL-2(c)], which is incorporated by reference in Section 14 of this administrative regulation[management reports] detailing:

- (a) The status of the project;
- (b) The applicant's compliance with the most recent RMP approved by the board; and
- (c) The status of any final RMP that has yet to be submitted to, or approved by, the board.

(2) Management reports shall be submitted annually[until the final RMP has received board approval. Following approval of the final RMP, additional management reports shall be submitted upon request of the board]. State agency reports are due on or before the date of the first board meeting of the year. Local government and state college and university reports are due on or before the date of the third board meeting of the year.

Section 11. Verification. Recipients of fund money shall provide to the board, along with their annual report, verification of money expended on land management.[Section 12. Right of Entry. Recipients of fund money shall permit members or agents of the board to enter, at any reasonable time, with or without notice, property purchased, in whole or in part, with fund money to ensure that the property is being managed in accordance with KRS 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth, the application, any memorandum of agreement between the board and the recipient, any conservation easement that pertains to the project site, and the most recent RMP approved by the board.]

Section 12[13]. Transfer or Encumbrance of Land. Recipients of fund money shall not, without prior board approval, sell, give, devise, or otherwise convey or encumber land acquired, in whole or in part, with fund money.

Section 13[14]. Identification. The project site shall be identified by one (1) or more signs, and literature or advertising, where appropriate, shall also identify the site as having been purchased with money from the fund.

Section 14[15]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Final Resource Management Plan Instructions", HL-2A, July 2012;[(July 2012), Form Number HL-2(a)];
- (b) "Final Resource Management Plan", HL-2B, July 2012;



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~~and[(July 2012), Form Number HL-2(b)"];]~~

~~(c) "Annual Management Report", HL-2C, July 2012.[(July 2012), Form Number HL-2(c)";~~

~~(d) "Annual Management Reporting Form (July 2012)";~~

~~(e) "Site Management (July 2012)";~~

~~(f) Preliminary Resource Management Plan Instructions (July 2012), Form Number HL-2".[(a) "Preliminary Resource Management Plan Instructions (January 1999), Form Number HL-2". (b) "Final Resource Management Plan Instructions (January 1999), Form Number HL-3".]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Heritage Land Conservation Fund, 375 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: November 14, 2012

FILED WITH LRC: November 14, 2012 at 3 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 Technical and Administrative Support (As Amended at ARRS, December 17, 2012)

#### 418 KAR 1:070. Remedies.

RELATES TO: KRS 146.550-146.570

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes the requirements for maintaining land acquired with fund money and enables the board to ensure that fund money is used for acquisition and management, in accordance with KRS 146.560.

Section 1. Forfeiture of Funds[Money]. (1) (a) Except as provided by paragraph (b) of this subsection, Funds approved by the board pursuant to KRS 146.570(4)(f) for land acquisition which, within two (2) years of board approval, are[is] not expended on acquisition of approved land shall revert to the fund.

(b) The board may grant an extension upon receipt of a written request.

(2)(a) Except as provided by paragraph (b) of this subsection, funds[Money] initially approved by the board for management pursuant to KRS 146.570(4)(f) which, within two and one-half (2 1/2) years of receipt of funds from the board, are[is] not expended on management of approved land shall revert to the fund.

(b)[, unless the recipient has requested and received an extension of time.] The board may grant an extension upon receipt of a written request.

Section 2. Forfeiture of Land. (1) Land acquired with fund money shall be subject to forfeiture. The board may initiate legal proceedings for forfeiture~~The board may initiate legal proceedings to forfeit land~~Land[acquired with fund money]~~shall be subject to forfeiture~~ if any of the following occurs:

(a) Failure to maintain and manage land acquired with fund proceeds for the purposes established[set forth] in KRS 146.560(2)(a)-(d)[146.560];

(b) Violation of a memorandum of agreement between the board and the recipient of fund money;

(c) Violation of the terms of a[any] conservation easement pertaining[which pertains] to land purchased, in whole or in part, with fund proceeds;

(d) Falsification of information or inaccurate information in the grant application~~for a competitive grant or state agency project~~;

(e) Failure to provide, within ninety (90) days of acquisition, verification of land acquisition and money expended for acquisition;

(f) Falsification of information or inaccurate information in the preliminary or final RMP;

(g) Failure to adhere~~strictly~~ to, or implement, the most recent RMP which has received board approval;

(h) Failure to submit a final RMP to the board~~;~~ within two and one-half (2 1/2) years~~;~~ of receipt of funds from the board;

(i) Expenditure of fund money on anything other than items which have received prior board~~;~~ approval;

(j) Failure to provide verification~~within three (3) years of land acquisition or six (6) months of expenditure of funds, whichever comes first,~~ of money expended on management of the land, unless the recipient has requested and received an extension of time. The board may grant an extension upon receipt of a written request;

~~(k)[Failure to permit entry of members or agents of the board pursuant to 418 KAR 1:060, Section 13; (l)]~~ Failure to submit reports to the board pursuant to 418 KAR 1:060, Section 10[12]~~14~~;

~~(l)(m)]~~ An[Any] attempt to transfer land in violation of 418 KAR 1:060, Section 12[14]; or

~~(m)(n)]~~ Dissolution of the recipient entity.

(2)[Any] Land forfeited pursuant to this administrative regulation shall be transferred to an appropriate land management entity, as designated by the board. Forfeited land shall continue to be managed in accordance with 418 KAR 1:060, Section 1.

Section 3. Remedies. The board may utilize all remedies available to it by law, including an injunction and restraining order to enforce the provisions of KRS 146.550 through 146.570, 418 KAR Chapter 1[this chapter], and any other applicable laws of the Commonwealth of Kentucky; any application submitted to the board; any memorandum of agreement between the board and a recipient of fund money; any conservation easement which pertains to land purchased, in whole or in part, with fund money; and any RMP approved by the board.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 12, 2012

FILED WITH LRC: September 13, 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](mailto:Michael.Mullins@ky.gov).

### JUSTICE AND PUBLIC SAFETY CABINET

#### Department of Corrections

#### (As Amended at ARRS, December 17, 2012)

#### 501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures," December 17[October]~~June~~ 12, 2012, are incorporated by reference. Department of Corrections Policies and Procedures include:

1.2 News Media (Amended 12/08/09)

1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)

2.1 Inmate Canteen (Amended 10/12/12[2/15/06])

2.12 Abandoned Inmate Funds (Amended 6/12/12)

3.1 Code of Ethics (Amended 07/09/07)

3.5 Sexual Harassment and Anti-Harassment (Amended 5/15/08)

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- 3.9 Student Intern Placement Program (Added 9/13/2010)
  - 3.10 Appearance and Dress for Nonuniformed Staff (Amended 9/13/10)
  - 3.11 Drug Free Workplace Employee Drug Testing (Amended 9/13/10)
  - 3.14 Employee Time and Attendance Requirements (Added 9/13/2010)
  - 3.17 Uniformed Employee Dress Code (Amended 4/10/06)
  - 3.23 Internal Affairs Investigation (Added 8/25/09)
  - 4.4 Educational Assistance Program (Amended 8/25/09)
  - 5.1 Research and Survey Projects (Amended 5/15/08)
  - 5.3 Program Evaluation and Measurement (Amended 6/12/12)
  - 6.1 Open Records Law (Amended 5/14/07)
  - 8.2 Fire Safety (Amended 2/15/06)
  - 8.7 Notification of Extraordinary Occurrence (Amended 12/13/05)
  - 9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 12/17/12~~[10/12/12]~~[11/9/04])
  - 9.6 Contraband (Amended 6/12/12)
  - 9.8 Search Policy (Amended 11/9/10)
  - 9.13 Transport to Court - Civil Action (Amended 07/09/07)
  - 9.18 Informants (Amended 9/13/10)
  - 9.19 Found Lost or Abandoned Property (Amended 10/14/05)
  - 9.20 Electronic Detection Equipment (Amended 10/14/05)
  - 10.2 Special Management Inmates (Amended 12/17/12~~[10/12/12]~~[6/12/12])
  - 10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
  - 11.2 Nutritional Adequacy of Inmate Diet (Amended 5/15/08)
  - 11.4 Alternative Dietary Patterns (Amended 5/15/08)
  - 11.1 Pharmacy Policy and Formulary (Amended 8/25/09)
  - 13.2 Health Maintenance Services (Amended 11/9/10)
  - 13.3 Medical Alert System (Amended 10/14/05)
  - 13.5 Advance Healthcare Directives (Added 4/12/05)
  - 13.6 Sex Offender Treatment Program (Amended 5/15/08)
  - 13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
  - 13.8 Substance Abuse Program (Amended 10/12/12~~[11/9/10]~~)
  - 13.9 Dental Services (Amended 10/14/05)
  - 13.10 Serious Infectious Disease (Amended 12/13/05)
  - 13.11 Do Not Resuscitate Order (Amended 8/9/05)
  - 13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
  - 14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
  - 14.2 Personal Hygiene Items (Amended 10/12/12~~[9/13/10]~~)
  - 14.3 Marriage of Inmates (Amended 10/14/05)
  - 14.4 Legal Services Program (Amended 07/09/07)
  - 14.5 Board of Claims (Amended 10/14/05)
  - 14.6 Inmate Grievance Procedure (Amended 6/12/12)
  - 14.7 Sexual Abuse Assault Prevention and Intervention Programs (Amended 11/15/06)
  - 15.1 Hair, Grooming and ID Card Standards (Amended 10/12/12~~[9/13/10]~~)
  - 15.2 Rule Violations and Penalties (Amended 9/13/10)
  - 15.3 Meritorious Good Time (Amended 12/13/05)
  - 15.4 Program Credit (Amended 6/12/12)
  - 15.5 Restoration of Forfeited Good Time (Amended 5/14/07)
  - 15.6 Adjustment Procedures and Programs (Amended 10/14/05)
  - 15.7 Inmate Account Restriction (Amended 11/9/10)
  - 15.8 Unauthorized Substance Abuse Testing (Amended 10/14/05)
  - 16.1 Inmate Visits (Amended 10/12/12~~[6/12/12]~~)
  - 16.2 Inmate Correspondence (Amended 10/12/12~~[11/9/10]~~)
  - 16.3 Inmate Access to Telephones (Amended 10/12/12~~[9/13/10]~~)
  - 16.4 Inmate Packages (Amended 07/09/07)
  - 17.1 Inmate Personal Property (Amended 6/12/12)
  - 17.2 Assessment Center Operations (Amended 11/15/06)
  - 17.3 Controlled Intake of Inmates (Amended 5/15/08)
  - 17.4 Administrative Remedies: Sentence Calculations (Amended 4/10/06)
  - 18.1 Classification of the Inmate (Amended 07/09/07)
  - 18.2 Central Office Classification Committee (Amended 10/14/05)
  - 18.5 Custody and Security Guidelines (Amended 6/12/12)
  - 18.7 Transfers (Amended 07/09/07)
  - 18.9 Out-of-state Transfers (Amended 2/15/06)
  - 18.11 Placement for Mental Health Treatment in CPTU, KCIW-PCU, or KCPC (Amended 1/9/07)
  - 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
  - 18.13 Population Categories (Amended 07/09/07)
  - 18.15 Protective Custody (Amended 11/15/06)
  - 18.16 Information to the Parole Board (Effective 11/15/06)
  - 18.17 Interstate Agreement on Detainers (Amended 07/09/07)
  - 18.18 International Transfer of Inmates (Amended 5/14/07)
  - 19.1 Governmental Services Program (Amended 10/12/12~~[07/09/07]~~)
  - 19.2 Sentence Credit for Work (Added 2/13/04)
  - 19.3 Inmate Wage/Time Credit Program (Amended 12/08/09)
  - 20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
  - 22.1 Privilege Trips (Amended 10/14/05)
  - 23.1 Religious Programs (Amended 10/12/12~~[9/13/10]~~)
  - 25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
  - 25.3 Prerelease Program (Effective 11/15/06)
  - 25.4 Institutional Inmate Furloughs (Amended 07/09/07)
  - 25.6 Community Center Program (Amended 07/09/07)
  - 25.8 Extended Furlough (Amended 4/12/05)
  - 25.10 Administrative Release of Inmates (Amended 11/9/10)
  - 25.11 Victim Services Notification (Amended 8/25/09)
  - 26.1 Citizen Involvement and Volunteer Service Program (Amended 10/12/12~~[Added 9/15/04]~~)
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner  
 APPROVED BY AGENCY: October 9, 2012  
 FILED WITH LRC: October 12, 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.

### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Driver Licensing (As Amended at ARRS, December 17, 2012)

#### 601 KAR 13:110. Driver education programs.

RELATES TO: KRS 45A.365, 186.018, 186.410, 186.535, 186.574, 189A.010(2), 189A.410, 332.204, 332.206, 332.210  
 STATUTORY AUTHORITY: KRS 186.400(1), 186.574(3)  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.400(1) authorizes the Transportation Cabinet to promulgate administrative regulations regarding the licensing of a motor vehicle operator. KRS 186.574 requires the Transportation Cabinet to promulgate administrative regulations regarding the supervision and operation of state traffic schools for new drivers and traffic offenders. This administrative regulation establishes the minimum standards for a new driver state traffic school. This administrative regulation also designates those persons eligible for ~~a~~who will attend this new driver education program, and ~~establishes the~~ application and approval procedures to teach the program for private driving schools, ~~licensed pursuant to KRS 332.030~~ and establishes the method of notification to the cabinet of completion of the program.

Section 1. State Traffic School. (1) The Transportation Cabinet shall establish a separate curriculum and class for the new driver

state traffic school, or graduated driver licensing education, [(graduated driver licensing education)] and the traffic offender state traffic school. (2) The Transportation Cabinet shall select[secure] instructors and secure classroom locations for the[both of the] state traffic schools established in KRS 186.574(1).

(3) The Transportation Cabinet shall conduct at least two (2) new driver state traffic schools in each Kentucky[every] county during each[every] calendar year.

(4) A person eligible for new driver state traffic school may:

(a) Attend class in a classroom setting free of charge as established in KRS 186.410(4)(c); or

(b) Attend class by accessing a cabinet-approved traffic school Web site.

(5) The traffic school Web site shall be offered by a vendor selected by the cabinet pursuant to the competitive bidding process established in KRS 45A.365.

(6) A vendor shall charge a convenience fee for the use of the vendor's on-line driver education course[(a) A person under the age of eighteen (18) years who obtained an operator's license prior to October 1, 1996:

(a) Shall not be required to attend a KRS 186.410(4) driver education course;

(b) May attend a new driver state traffic school free of charge].

Section 2. High School Driver Education Course. If a high school in Kentucky offers a driver education course for credit to its students, the school shall notify the Transportation Cabinet of a student who receives credit for successfully completing the course. The notice shall contain the following information:

(1) Student's name;

(2) Student's Social Security or operator's license number;

(3) School district;

(4) Name of high school;

(5) Copy of the certification of course completion and credit given;

(6) Date of course completion; and

(7) Name and telephone number of person at school to contact.

Section 3. ~~[KRS Chapter 332]~~ Licensed Driver Training Schools.

(1) A driver training school licensed pursuant to KRS 332.204 shall[under KRS Chapter 332 may] apply to the Transportation Cabinet for approval to conduct a driver training program [pursuant to KRS 186.410] if the driver training school[it]:

(a) [1-] Has been licensed [by the Kentucky State Police] for the prior two (2) calendar years;

(b) [or 2-] Is operated by a person with[who has] a driver education teaching certification from the Kentucky Department of Education[and] who has taught driver education pursuant to that endorsement for a minimum of two (2) years;

(c) [or

—3-] Is operated by a person who has taught driver education at a school approved as established in KRS 332.204 ~~[KRS Chapter 332 approved school]~~ for a minimum of five (5) years;

(d) [-

—b)] Has at least twenty (20) ~~[hours of]~~ office hours each week routinely staffed by a person familiar with the school's curriculum and requirements; or

(e) [(e)] Uses a curriculum that[which] meets the requirements of Section 4(6) of this administrative regulation.

(2) The applicant shall submit the following to the Transportation Cabinet, Division of Driver Licensing:

(a) A detailed copy of the curriculum used, including a copy of ~~[all]~~ handouts and audio or video material;

(b) The resume of each instructor proposed to teach the course;

(c) The business address, telephone number, and office hours;

(d) A copy of the ~~[KRS Chapter 332]~~ certificate issued pursuant to KRS 332.206[by the Kentucky State Police]; and

(e) A fee of \$300 as established in KRS 332.204(2)[\$250 fee] to pay for the initial evaluation of the application. [(3) A school which has been approved to participate in the program may request that a student who began a driver education course at the school after September 30, 1996 and who completed the course by

February 28, 1997, be given credit for compliance with the requirements of KRS 186.410.]

Section 4. Class Requirements. (1) A class offered pursuant to KRS 186.410(4)(b) or (c) in a classroom setting shall be limited to a maximum of fifty (50)[twenty-five (25)] students.

(2) A class ~~[offered pursuant to KRS 186.410(4)(b) or (c)]~~ shall contain a minimum of four (4) hours of ~~[classroom]~~ highway safety training that[which] shall include an administrative activity[administrative activities] related to the class.

(3)(a) A Transportation Cabinet approved preclass and post-class test shall be administered to ~~[all]~~ students and the results tabulated for each class taught.

(b) The results and the attendance roster shall be submitted to the Transportation Cabinet, Division of Driver Licensing ~~[with the attendance roster required by subsection (5) of this section].~~

(4) ~~[At least two (2) weeks prior to each class to be taught under the provisions of this administrative regulation, the school shall notify the Transportation Cabinet of the following:~~

(a) ~~Date, time, and location of the scheduled class; and~~

(b) ~~Instructor scheduled to teach the class.~~

(5) The school shall notify the Transportation Cabinet of a[each] student who successfully completes the course. The notice shall contain the following information:

(a) Student's name;

(b) Student's Social Security or operator's license number;

(c) Name of school;

(d) Date of course completion;

(e) Course instructor; and

(f) The name and telephone number of a person at school to contact.

(5) ~~[(6)]~~ The curriculum taught to each class shall consist of the following ~~[sections]:~~

(a) A section on the dangers of alcohol and drugs that[which] shall last for a minimum of forty-five (45) minutes and include:

1. Information about Kentucky's "Under 21" license and implied consent law;

2. Types of substances that[which] impair driving ability;

3. Blood alcohol content and the presumptive levels established in KRS 189A.010(2);

4. Legal, monetary, and social sanctions or penalties for the[of] a conviction of a violation of KRS 189A.010(1);

5. Restricted criteria for obtaining a hardship license as established in[pursuant to] KRS 189A.410;

6. Psychological and physiological effects of alcohol consumption;

7. The penalties in foreign countries ~~[Other country's penalties]~~ for operating a motor vehicle under the influence of alcohol; and

8. National and state statistics related to alcohol or drug use while operating a motor vehicle; ~~[and alcohol or drug consumption.]~~

(b) A section on defensive and perceptive driving that[which] shall last for a minimum of forty-five (45) minutes and include:

1. ~~Traits of good drivers~~

2. ~~Traits of safe drivers;~~

2. ~~3-] Mental skills needed for safe driving;~~

3. ~~4-] The "Scan Identify Predict Decide Execute" (SIPDE) approach to perceptive driving;~~

4. ~~5-] Driving emergencies including[such as]~~

a. Brake or tire failure; ~~[-]~~

b. Skidding; ~~[-]~~

c. Stuck accelerator; ~~and[-or]~~

d. Running off the roadway; ~~[-]and]~~

5. Information on ~~[6-]~~ crash-producing locations or situations; and

6. Information on ~~[such as intersections, hydroplaning, railroad crossings, many vehicle types in the traffic mix, and pedestrian traffic. (c)]~~ seatbelt usage that[which] shall last a minimum of ~~[for at least]~~ thirty (30) minutes and include:

a. ~~1-] Kentucky's seatbelt law;~~

b. ~~2-] Kentucky's child restraint law;~~

c. ~~3-] Information on vehicle airbags; and~~

d. The ~~[4-]~~ number of fatalities and injuries in crashes from not wearing seatbelts;

(c) ~~and~~

—5. Seatbelt usage;

—(d) Driver behavior training that~~[which]~~ shall last for a minimum of forty-five (45) minutes and include:

1. Information on the~~[Driving requires]~~ physical, social, and mental skills required by driving;
2. Personality changes that~~[which]~~ occur while driving;
3. How driving behaviors and reaction are related to attitude;
4. Need for and importance of self-control while driving; and
5. National, state, and local statistics on vehicle crashes; and
- (d) A presentation for a minimum of thirty (30) minutes on the~~[-~~  
—(e) rules of the road that shall~~[which shall last for a minimum of thirty (30) minutes and]~~ include:
  1. The purpose and significance of the Graduated Driver Licensing Program;
  2. The role of the Division of Driver Licensing in maintaining driving records;
  3. The content of driving records available to insurance companies;
  4. Recognition of the need for and purpose of traffic laws;
  5. The most commonly violated traffic laws;
  6. Speeding as a major contributing factor in vehicle crashes; and
  7. Sanctions or penalties assessed for violating traffic laws.

Section 5. Instructor Requirements. (1) An instructor employed to teach the driver education class~~[KRS 186.410 course by a school approved pursuant to the requirements of Section 3 of this administrative regulation]~~ shall ~~[meet the following requirements]:~~

- (a) Be at least twenty-one (21) years of age;
  - (b) Have a four (4) year college degree. Experience as a professional driver education instructor may substitute year for year for the college education;
  - (c) Not~~[Never]~~ have been convicted of a felony;
  - (d) Not~~[Never]~~ have been convicted of a violation of KRS 189A.010 or its equivalent from another jurisdiction;
  - (e) Not~~[Never]~~ have been convicted or administratively found guilty of refusing to submit to a test to determine blood alcohol content or drugs in system;
  - (f) Have fewer than six (6) penalty points as established in~~[points assigned pursuant to]~~ 601 KAR 13:025 on his or her driving history record;
  - (g) Not have had his or her driving privilege withdrawn~~[for any reason]~~ in the past five (5) years; and
  - (h) Successfully enroll in, pay the \$100 fee for, and complete the instructor training course offered by the Transportation Cabinet;
  - (i) Have good communication skills as demonstrated~~[indicated]~~ during an interview~~[-~~; and
  - (j) Be of good moral character.
- (2) The approved school shall review the driving history record of an instructor annually.

Section 6. Evaluations. (1) The Transportation Cabinet shall perform a random or routine performance audit of an approved school or its instructor.

(2) A school shall be notified in writing of a deficiency discovered in an audit. The deficiency shall be corrected prior to its next scheduled class or the school's approval shall be withdrawn by the Transportation Cabinet.

(3) The license of a driver training school or instructor shall be suspended or revoked as established in KRS 332.210~~[The Kentucky State Police shall be provided a copy of each performance evaluation of a school licensed pursuant to KRS Chapter 332].~~

(4) A representative from the Transportation Cabinet may~~[shall be allowed free of any charge to]~~ monitor, without cost, a class taught by the driver training school~~[school pursuant to the provisions of this administrative regulation].~~

THOMAS O. ZAWACKI, Commissioner

MIKE HANCOCK, Secretary

APPROVED BY AGENCY: September 30, 2012

FILED WITH LRC: October 1, 2012 at 4 p.m.

CONTACT PERSON: D. Ann D'Angelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-

5238.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Kentucky Board of Education  
Department of Education  
(As Amended at ARRS, December 17, 2012)

704 KAR 7:160. Use of physical restraint and seclusion in public schools.

RELATES TO: KRS 156.160(1)~~(h)~~~~(g)~~, 158.444(1)

STATUTORY AUTHORITY: KRS 156.160(1)~~(h)~~~~(g)~~, 156.070, 158.444 (1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160(1)~~(h)~~~~(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 physical 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 physical restraint or]~~~~[and]~~~~[seclusion is effective in reducing the occurrence of inappropriate behaviors, physical 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. Physical restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and school personnel]~~~~[staff].]~~ This administrative regulation establishes the requirements for the use of physical restraint and seclusion in districts and the notification and data reporting requirements for the use of physical restraint and seclusion in districts and does not prohibit the lawful exercise of law enforcement duties by sworn law enforcement officers.

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) "Behavioral~~[Behavior]~~ intervention" means the implementation of strategies to address behavior that is dangerous or~~[-]~~ 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.

(4)~~(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.

(5)~~(6)~~ "De-escalation" means the use of behavior management techniques intended to:

- (a) Mitigate and defuse dangerous behavior of a student; or
- (b) Reduce, that reduces the imminent danger of [serious] physical harm to self or others.

(6) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(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[mean]:

(a) A device[include]/[Devices] implemented by trained school personnel[,], or utilized by a student that has[have] been prescribed by an appropriate medical or related services professional that is[are] used for the specific and approved purposes for which the device was[such devices were] designed;

(b) An adaptive device or mechanical support[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 the device[such devices] or mechanical support[supports];

(c) A vehicle safety restraint if[restraints when] used as intended during the transport of a student in a moving vehicle;

(d) Restraint for medical immobilization; or

(e) An orthopedically prescribed device that permits[devices that permit] a student to participate in activities without[with] risk of harm.

(9) [(40)] "Parent" means a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian of the[a] student.

(10) [(41)] "Physical Restraint" means a personal restriction that immobilizes or reduces the ability of a student to move the student's[his or her] torso, arms, legs, or head freely, but does not include[mean]:

(a) [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;

(b) A behavioral intervention[Behavioral interventions], such as proximity control or verbal soothing, used as a response to calm and comfort an upset student;

(c) Less restrictive physical contact or redirection to promote student safety; or[and]

(d) Physical guidance or prompting when teaching a skill or[when] redirecting the student's attention.

(11) [(42)] "Positive behavioral supports" means a school-wide systematic approach to embed evidence-based practices and data-driven decision-making to:

(a) Improve school climate and culture in order to achieve improved academic and social outcomes;

(b) [, to] Increase learning for all students, including those with the most complex and intensive behavior needs;

(c) [and to] Encompass a range of systemic and individualized positive strategies to reinforce desired behaviors;

(d) [, to] Diminish reoccurrence of inappropriate or dangerous behaviors; and

(e) [, and to] Teach appropriate behaviors to students.

(12) [(43)] "Prone restraint" means the student is restrained in a face down position on the floor or other surface, and physical pressure is applied to the student's body to keep the student in the prone position.

(13) [(44)] "School personnel" means teachers, principals, administrators, counselors, social workers, psychologists, paraprofessionals, nurses, librarians, school resource officers,[other/ sworn law enforcement officers], 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)].~~

(14) "School resource officer" is 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 mean[include] classroom timeouts, supervised in-school detentions, or out-of-school suspensions.

(16) "Student" means any person enrolled in a preschool, school level as established in 703[defined in 704] KAR 5:240, Section 5, or other educational program offered by a local public school district.

(17) "Supine restraint" means the[a] student is restrained in a face up position on the student's[his or her] back on the floor or other surface, and physical pressure is applied to the student's body to keep the student in the supine position.

(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) Each local school district[districts] shall establish~~[local]~~ policies and procedures that:

(a) Ensure school personnel are aware of and parents are notified how to access the[its] policies and procedures regarding physical 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 6[7] of this administrative regulation;

(d) Outline procedures to be followed during and after each use[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, ~~to[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 shall require[requires] the district and school to investigate the circumstances surrounding the physical restraint or seclusion, make written findings, and if[where] appropriate, take corrective action; and

(g) Outline a procedure to regularly review data on physical restraint and seclusion usage and revise policies as needed.

(2) Each local school district[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 in a public school[schools] or educational program[programs]:

(a) As punishment or discipline;

(b) [As a means of coercion] To force compliance or to retaliate[retaliation];

(c) As a substitute for appropriate educational or behavioral support;

(d) To prevent property damage, except as permitted under KRS Chapter 503[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 shall not impose[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; or[and]

(f) Physical restraint if they know that physical restraint is contraindicated based on the student's disability, health care needs, or medical or psychiatric condition[that is prohibited by a licensed medical professional].

(3) Physical restraint may only be implemented in a public school[schools] or educational program[programs] if:

(a) The student's behavior poses an imminent danger of [serious] physical harm to self or others and as permitted under KRS 503.050, 503.070, and 503.110;

(b) The physical restraint does not interfere with the student's ability to communicate in the student's primary language or mode of communication, unless the student uses sign language or an augmentative mode of communication as the student's primary mode of communication and the implementer determines that freedom of the student's hands for brief periods during the restraint appears likely to result in [serious] physical harm to self or others;

(c) The student's physical and psychological well-being is[shall be][face is] monitored for the duration of the physical restraint;

(d) Less restrictive behavioral 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) School personnel implementing the physical restraint are appropriately trained as required by[is] Section 6(3) of this administrative regulation, except to the extent necessary to prevent [serious] physical harm to self or others in clearly unavoidable emergency circumstances where other school personnel intervene and summon trained school personnel[or school resource officers or other sworn law enforcement officers] as soon as possible[Assigned staff is appropriately trained to use physical restraint].

(4) When implementing a physical restraint, school personnel[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 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 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 in a public school[schools] or educational program[programs]:

(a) As punishment or discipline;

(b) [As a means of coercion] To force compliance or to retaliate[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 in a public

school[schools] or educational program[programs] if[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) School personnel implementing the seclusion are[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 physical restraints and seclusions[incidents of the use of restraint and seclusion] shall be documented by a written record of each use[episode] of seclusion or physical restraint and be maintained in the student's education record. Each [incident] record of a use of physical restraint or seclusion shall be informed by an interview with the student and shall include:

(a) The student's name;

(b) A description of the use of physical restraint or seclusion[incident] and the student behavior that resulted in the physical restraint or seclusion;

(c) The date of the physical restraint or seclusion and school personnel[incident and staff members] involved;

(d) The beginning and ending times of the physical restraint or seclusion[incident];

(e) A description of any events leading up to the use of physical restraint or seclusion including possible factors contributing to the dangerous behavior;

(f) A description of the student's behavior during physical[in] restraint or seclusion;

(g) A description of techniques used in physically restraining or secluding the student and any other interactions between the student and school personnel[staff] during the use of physical restraint or seclusion;

(h) A description of any behavioral interventions used immediately prior to the implementation of physical restraint or seclusion;

(i) A description of any injuries [whether] to students, school personnel[staff], or others;

(j) A description as to how the student's[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 physical restraint or seclusion in de-escalating the situation; [and]

(m) A description of the school personnel[staff] response to the dangerous behavior;

(n) A description of the planned positive behavioral interventions which shall be used to reduce the future need for physical restraint or seclusion of the student; and

(o) For any student not identified as eligible for services under either Section 504 of the Rehabilitation Act or the Individuals with Disabilities Education Act, documentation of a referral under either law or documentation of the basis for declining to refer the student.

(2) If the student is not an emancipated youth, the parent of the student shall be notified of the physical 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 mailed to the parent via U.S. mail[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 physical restraint or seclusion[incident] record as outlined in subsection (1) of this section[Section 5(1) of this administrative regulation] shall be completed by the end of the next school day[within twenty-four (24) hours] following the use[incident] of seclusion or physical restraint.

(5) If the parent or emancipated youth requests a debriefing session under Section 2(1)(d) of this administrative regulation, a debriefing session shall be held after the imposition of physical restraint or[and] seclusion upon a student.

(6) The following persons shall participate in the debriefing session:

(a) The implementer of the physical restraint or seclusion;

(b) At least two (2) of any other school personnel who were in the proximity of the student immediately before or during the physical restraint or seclusion;

(c) The parent of an emancipated student;

(d) The student, if the parent requests or if the student is an emancipated youth; and

(e) Appropriate supervisory and administrative school personnel, which may include appropriate Admissions and Release Committee members, Section 504 team members, or response to intervention team members[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 recommended appropriate positive behavioral supports and interventions to assist school personnel responsible for implementing the student's IEP, or Section 504 plan, or response to intervention plan, if applicable, and consideration of whether positive behavioral supports and interventions were implemented with fidelity[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, consideration[evidence] of a referral under either law and[, or] documentation of the referral 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)(a) All school personnel shall be trained in state administrative regulations and school district policies and procedures regarding physical restraint and seclusion.

(b) All school personnel shall be trained annually to use an array of positive behavioral supports and interventions[intervention][behavior interventions, strategies, and supports] to:

1. Increase appropriate student behaviors;  
2.[, to][and] Decrease inappropriate or dangerous student behaviors ; and

3.[and to] Respond to dangerous behavior.

(c) This[- (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.

(d) This[The] training shall include:

1.[(a)] Appropriate procedures for preventing the need for physical restraint and seclusion[crisis intervention], including positive behavioral supports and interventions[behavior management strategies];

2.[(b)] State administrative regulations and school district policies and procedures regarding physical restraint and seclusion;

3.[(c)] Proper use of positive reinforcement;

4.[(d)][(e)] The continuum of use for alternative behavioral interventions;

5.[(e)][(d)] Crisis prevention;

6.[(f)][(e)] De-escalation strategies for responding to inappropriate or dangerous[of problematic] behavior, including verbal de-escalation, and relationship building; and

7.[(g)] Proper use of seclusion as established[outlined] in Section 4 of this administrative regulation, including instruction on monitoring physical signs of distress and obtaining medical assistance if[when] necessary.

(2) All school personnel shall receive annual written or electronic communication from the district identifying core team members in the school setting who have been trained to implement physical restraint[(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 dangerous behavior and to implement[emergency situations, including the] physical restraint[or seclusion] of students. The core team, except school resource officers and other sworn law enforcement officers, shall receive additional yearly training in the following areas:

(a) Appropriate procedures for preventing the use of physical restraint except as permitted by this administrative regulation[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[effect(s)] on the person physically restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;

(d) Instruction regarding documentation and notification[reporting] requirements and investigation of injuries; and

(e) Demonstration by core team members of proficiency in the prevention and use of physical restraint[participants of proficiency in administering physical restraint and crisis intervention].

Section 7. The following data shall be reported by the district in the student information system related to incidents of physical 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 instances of substantial risk of death, extreme physical pain, protracted and obvious disfigurement

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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 school personnel~~[staff]~~ related to physical restraint and seclusion; and

(7) Aggregate number of instances in which a school resource officer or other sworn law enforcement officer is involved in the physical restraint or seclusion of a student.

TERRY HOLLIDAY, Ph.D.

DAVID KAREM, Chairperson

APPROVED BY AGENCY: November 14, 2012

FILED WITH LRC: November 14, 2012 at 4 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.

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Assistive Technology Loan Corporation (As Amended at ARRS, December 17, 2012)

#### 789 KAR 1:010. General eligibility criteria for assistive technology loans.

RELATES TO: KRS 151B.450-~~151B.475~~, ~~151B.465~~

STATUTORY AUTHORITY: KRS 151B.465(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.465(9) requires the Board of Directors of the Kentucky Assistive Technology Loan Corporation to promulgate administrative regulations through the cabinet to establish and administer a program for providing low-interest loans to qualified borrowers through qualified lenders for the acquisition of assistive technology. This administrative regulation prescribes when, and under what conditions, assistive technology loans shall be provided, in order to distribute limited funds equitably over the population of qualified borrowers.

Section 1. Definitions. (1) ~~["Debt-to-income ratio" means the ratio of all monthly installment payments to total monthly income.~~

~~(2) "KATLC" means the Kentucky Assistive Technology Loan Corporation.~~

~~(2) [(3)] "Nonprofit organization" means an incorporated entity under the provisions of KRS 273.163 to 273.387 that is in good standing with the Kentucky Office of the Secretary of State.~~

Section 2. Loan Purposes. The board shall:

(1) Consider:

(a) A loan for the acquisition of assistive technology equipment if the equipment is essential to compensate for the limitations caused by the disability; or

(b) An additional loan to finance a repair or provide maintenance; and

(2) Depending on the availability of funds and the applicant's eligibility for a loan, include in the amount of the loan:

(a) The cost of an assistive technology service, including an assessment or training, if the service is directly related to the assistive technology device; or

(b) An extended service agreement or warranty.

Section 3. Eligibility~~[Eligible]~~ to Apply for a Low Interest Loan~~[Eligibility]~~. (1) Except as provided in subsection (2) of this section, to be eligible to apply for a low interest loan~~[from the board]~~, an applicant shall:

(a) Be an individual who meets the definition of qualified borrower established in KRS 151B.450(6) with a disability that is not of a temporary, transient, or acute nature;

(b) ~~Have a debt-to-income ratio no greater than that stipulated in the agreement between the board and qualified lender pursuant~~

~~to Section 10 of this administrative regulation; (c) Be eighteen (18) years old~~[of legal age]~~ and have the legal authority to enter into a contract; and~~

~~(c) [(d)] Be a resident of Kentucky for at least six (6) continuous months prior to the date of application.~~

(2) To be eligible to apply for a low interest loan~~[from the board]~~, a nonprofit organization shall:

(a) Provide assistive technology to an individual with disabilities who is a resident of Kentucky; and

(b) Affirm that, and explain how, the adaptive equipment will be used for a current or potential employee, client, customer, or other associated individual with disabilities as required by KRS 151B.450(6).

Section 4. Initial Verification of Disability. An applicant for an initial loan shall verify disability by furnishing one (1) or more of the following:

(1) A statement from a licensed medical professional indicating how the disability substantially affects one (1) or more major life activities as described in KRS 151B.450;

(2) Proof of enrollment in one of the following:

(a) State vocational rehabilitation program;

(b) Social Security Disability Insurance (SSDI);

(c) Medicare enrollment based on disability;

(d) Medicaid enrollment based on disability;

(e) Veterans Administration enrollment based on current disability; or

(f) Educational services enrollment under an individualized family service plan or individualized education plan; or

(3) Other proof of a disability that affects a major life activity as required by KRS 151B.450(6).

Section 5. Required KATLC Application Information. The following material shall be required as part of the loan request:

(1) Legal name, current address and telephone number, and Social Security number (if a nonprofit organization, the employer identification number shall substitute for the Social Security number);

(2) Nature of relationship to a person with a disability (if applicant does not have a disability);

(3) Nature of disability and how it affects one (1) or more major life activities as described in KRS 151B.450;

(4) Description of the assistive technology being requested and how it will compensate for the limitations of a disability and improve the quality of life of an individual with a disability;

(5) Amount of money requested including the cost for an extended warranty,~~[insurance,~~ necessary training, or other item requested to be included in the amount of the loan. An itemized price quote from the potential seller shall be attached;

(6) Total current monthly income with sources;

(7) Total monthly installment payments, which shall:

~~(a) include the amount paid in rent, mortgage, credit card payments, or unsecured loans; and~~

~~(b) Not include maintenance amounts for food and utilities;]~~

(8) A signed statement that all submitted information is truthful and accurate;

(9) A signed waiver allowing the release of information about the individual between the board and the qualified lender; and

(10) If the applicant is~~[In the case of]~~ a nonprofit organization, proof of that status as defined in Section ~~1(2) [(4) (3)]~~ 1(2) [(4) (3)] of this administrative regulation.

Section 6. Loan Application Procedure. (1) A loan request shall:

(a) Include as attachments all required information and documentation; and

(b) Be submitted to the KATLC, 275 E Main Street Mail Drop 2-EK, Frankfort Kentucky 40621, 1-877-675-0195~~[Office of Vocational Rehabilitation, 209 St. Clair Street, Frankfort, Kentucky 40601, (502) 564-4440.]~~

(2) After review of the request, the board of directors shall require the applicant to obtain an evaluation from an assistive technology professional, medical professional, or other professional if more information is needed for the board to make a decision.



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(3) An application shall include a quote for the total price of the equipment or service for which the loan is being requested. The board shall require the applicant to obtain additional price quotes if it considers the submitted quote to be unusually high, unless the applicant can demonstrate that the equipment is available from a single source.

(4) The applicant shall be referred to a qualified lender that has previously entered into an agreement with the board that specifies the terms and conditions under which the qualified lender may make a loan.~~[If the board preapproves a loan, the applicant shall be referred to a qualified lender that has previously entered into an agreement with the board that specifies the terms and conditions under which the qualified lender may make a loan.]~~ The qualified lender shall~~[may]~~ conduct a credit check of the applicant.

(5) The qualified lender may reject the loan application. The board may override the denial based upon the following criteria:

- (a) Medical debt;
- (b) Payment of current obligations;
- (c) Financial support from family;
- (d) Existence of co-signer~~[co-signer]~~;
- (e) Down payment; and
- (f) No credit history or limited credit history.

(6) KATLC~~[(5) The board]~~ shall notify the applicant of its decision in writing, or in appropriate alternative format as requested, within fifteen (15) days after the decision is made~~[-If an application is denied, the reasons for the denial shall be specified based on eligibility requirements and loan requirements].~~

(7)(a) [(6)(a)] If desired, an applicant who is aggrieved by a decision of the board shall petition the board for reconsideration, in writing or in appropriate alternative format, and may provide additional documentation related to credit history, income, or assistive technology that addresses the stated reasons for denial.

(b) The board shall:

1. Consider the new information;
2. Provide the applicant with an opportunity to be heard; and
3. Inform the applicant of its decision at the meeting or in writing or in appropriate alternative format within seven (7) days if the applicant is not present at the meeting. The decision of the board shall be final.

Section 7. General Loan Requirements. (1) The minimum amount of a loan shall be \$500 and the maximum amount of a loan shall be \$25,000, except that the maximum amount for home modifications shall be \$15,000.

(2) The period of a loan shall be from a minimum of one year to a maximum of ten years or the estimated life of a device, whichever is less. The loan period shall be congruent with the agreement between the board and the qualified lender pursuant to Section 10 of this administrative regulation.

(3) The assistive technology that can~~[device shall]~~ be titled shall be titled in the name of the qualified borrower with the board or its agent as lien holder~~.[If the board is supplying secondary funding, the board or its agent shall become the holder of a secondary encumbrance.]~~

(4) The board or the qualified lender may require a qualified borrower to insure the equipment for the remaining value of the loan.

(5) The qualified borrower shall be responsible for the repair or maintenance of the equipment. An additional loan may be considered to finance a repair or maintenance.

(6) An individual may obtain~~[secure]~~ more than one (1) loan if the total amount of all loans do not exceed \$25,000.

(7) The qualified lender may require a down payment.

Section 8.~~[(7)]~~ Priority Consideration. An application shall be considered in the order in which it was received according to the following order of preference:

(1) An individual with a disability or parent or legal guardian of a person with a disability who has no current loans through the board;

(2) An individual with a disability or parent or legal guardian of a person with a disability who has one (1) or more existing loans through the board; and

(3) A nonprofit organization.

Section 9. Confidentiality. The application and all submitted information shall be held confidential.

(1) KATLC~~[A board member]~~ shall use an identification number for each application. Unless otherwise required, the name, Social Security number, address, telephone number, and electronic mail address of the applicant shall not be revealed.

(2) The board shall meet in closed session if discussing an appeal of an individual application and shall refer to an application in open session by its identification number.

(3) The secretary of the cabinet or a designee shall maintain access to all records relating to an application or loan.

Section 10. Agreement with a Qualified Lender. (1) In contracting with one (1) or more qualified lenders, the board shall give primary consideration to:

- (a) The lender's ability to provide loans statewide;
- (b) The most favorable interest rate available for technology loans;
- (c) The most favorable interest rate to be paid on corporation deposits; and
- (d) The funds to be made available for technology loans over and above the amount of corporation funds on deposit.

(2) A qualified lender shall:

- (a) Execute a written agreement with the board that establishes the requirements and conditions for issuing a loan, [including the required debt-to-income ratio and] the length of the loan, and procedures for collecting on delinquent or defaulted loans; and
- (b) Agree to abide by all administrative regulations pertinent to the corporation in relation to loans.

SHEILA LEVY, Chairperson

APPROVED BY AGENCY: October 15, 2012

FILED WITH LRC: October 15, 2012 at 11 a.m.

CONTACT PERSON: Patrick B. Shirley, Education and Workforce Development Cabinet, Office of Legal and Legislative Services, 500 Mero Street, Room 306, Frankfort, Kentucky 40601. phone (502) 564-1481, fax (502) 564-9990.

### PUBLIC PROTECTION CABINET Department of Insurance Financial Standards and Examination Division (As Amended at ARRS, December 17, 2012)

#### 806 KAR 7:110. Derivative instruments.

RELATES TO: KRS 304.7-361, 304.7-405, 304.7-417, 304.7-419, 304.7-421, 304.7-457, 304.7-469, 304.48-060, 304.49-010, 304.49-020, 304.50-035, 15 U.S.C. §§ 78 *et seq.*

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.7-367

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 304.7-367 authorizes the commissioner to promulgate administrative regulations to implement the provisions of KRS Chapter 304, Subtitle 7. This administrative regulation sets standards for the prudent use of derivative instruments in accordance with KRS 304.7-419.

Section 1. Definitions. (1) "Business entity" is defined by KRS 304.7-012(8)[includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy or other similar form of business organization, whether for-profit or not-for-profit].

(2) "Commissioner" is defined by KRS 304.1-050(1).

(3) "Counterparty exposure amount" is defined by KRS 304.7-012(19)[means the net amount of credit risk attributable to a derivative instrument entered into with a business entity other than through a qualified exchange, qualified foreign exchange, or cleared through a qualified clearinghouse].

(4) "Department" is defined by KRS 304.1-050~~(2)~~(1).

(5) "Derivative instrument" is defined by KRS 304.7-012(22)~~[means an agreement, option, instrument, or a series or combination thereof:~~

~~(a) To make or take delivery of, or assume or relinquish, a specified amount of one (1) or more underlying interests, or to make a cash settlement in lieu thereof; or~~

~~(b) That has a price, performance, value or cash flow based primarily upon the actual or expected price, level, performance, value or cash flow of one (1) or more underlying interests.~~

~~(c) "Derivative instruments" include:~~

~~1. Options;~~

~~2. Warrants;~~

~~3. Caps;~~

~~4. Floors;~~

~~5. Collars;~~

~~6. Swaps;~~

~~7. Forwards;~~

~~8. Futures;~~

~~9. Any other substantially similar agreements, options, or instruments including any series or combination of those identified in subsection (5)(c)1. through 9. of this section; and~~

~~10. Any agreements, options or instruments permitted under administrative regulations adopted pursuant to KRS 304.7-367.~~

~~(d) Derivative instruments shall not include an investment authorized by KRS 304.7-405, 304.7-417, 304.7-421, 304.7-457 or 304.7-469].~~

(6) "Insurer" is defined in KRS 304.1-040.

(7) "Over-the-counter derivative" means a derivative instrument entered into with a business entity other than through a qualified exchange, qualified foreign exchange, or cleared through a qualified clearinghouse.

(8) "Qualified clearinghouse" is defined by KRS 304.7-012(67)~~[means a clearinghouse for, and subject to the rules of, a qualified exchange or a qualified foreign exchange, which provides clearing services, including acting as a counterparty to each of the parties to a transaction such that the parties no longer have credit risk as to each other].~~

(9) "Qualified exchange" is defined by KRS 304.7-012(68)~~[means:~~

~~(a) A securities exchange registered as a national securities exchange, or a securities market regulated under the Securities Exchange Act of 1934 (15 U.S.C. §§ 78 et seq.), as amended;~~

~~(b) A board of trade or commodities exchange designated as a contract market by the Commodity Futures Trading Commission or any successor thereof;~~

~~(c) Private Offerings, Resales and Trading through Automated Linkages (PORTAL);~~

~~(d) A designated offshore securities market as defined in Securities Exchange Commission Regulation S, 17 C.F.R. Part 230, as amended; or~~

~~(e) A qualified foreign exchange].~~

(10) "Qualified foreign exchange" is defined by KRS 304.7-012(69)~~[means a foreign exchange, board of trade or contract market located outside the United States, its territories or possessions:~~

~~(a) That has received regulatory comparability relief pursuant to Commodity Futures Trading Commission Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30);~~

~~(b) That is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief pursuant to Commodity Futures Trading Commission Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30) as to futures transactions in the jurisdiction where the exchange, board of trade or contract market is located; or~~

~~(c) Upon which foreign stock index futures contracts are listed that are the subject of no-action relief issued by the CFTC's Office of General Counsel, but an exchange, board of trade or contract market that qualifies as a "qualified foreign exchange" only under this paragraph shall only be a "qualified~~

~~foreign exchange" as to foreign stock index futures contracts that are the subject of such no-action relief under this paragraph].~~

Section 2. Applicability. The provisions of this administrative regulation shall not apply to:

(1) Captive insurers licensed in accordance with KRS 304.49-020, except for industrial insured captive insurers pursuant to KRS 304.49-010(8);

(2) Workers' compensation self-insured groups certified in accordance with KRS 304.50-035; and

(3) Liability self-insurance groups certified in accordance with KRS 304.48-060.

Section 3. Amount of credit risk. (1) The amount of credit risk shall equal/equal:

(a) The market value of the derivative instrument issued through a qualified clearinghouse if the liquidation of the derivative instrument would result in a final cash payment to the insurer; or

(b) Zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.

(2) If derivative instruments are entered into through a qualified clearinghouse pursuant to a written master agreement which provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counterparty is either within the United States or if not within the United States, within a foreign jurisdiction listed by the Securities Valuation Office as eligible for netting, the net amount of credit risk shall be the greater of zero or the net sum of:

(a) The market value of the derivative instruments issued through a qualified clearinghouse entered into pursuant to the agreement, the liquidation of which would result in a final cash payment to the insurer; and

(b) The market value of the derivative instruments issued through a qualified clearinghouse entered into pursuant to the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

(3) For open transactions, market value shall be determined at the end of the most recent quarter of the insurer's fiscal year and shall be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one (1) or both parties.

Section 4. Guidelines and Internal Control Procedures. (1) Before engaging in a derivative transaction, an insurer shall establish written guidelines, approved by the commissioner pursuant to Section 5 of this administrative regulation, that shall be used for effecting and maintaining derivative transactions. The guidelines shall:

(a) Specify insurer objectives for engaging in derivative transactions and derivative strategies and all applicable risk constraints, including credit risk limits;

(b) Establish counterparty exposure limits and credit quality standards;

(c) Identify permissible derivative transactions and the relationship of those transactions to insurer operations including a precise identification of the risks being hedged by a derivative transaction; and

(d) Require compliance with internal control procedures.

(2) An insurer shall have a written methodology for determining whether a derivative instrument used for hedging has been effective.

(3) An insurer shall have written policies and procedures describing the credit risk management process and a credit risk management system for over-the-counter derivative instrument transactions that measures credit risk exposure using the counterparty exposure amount.

(4) An insurer's board of directors shall, in accordance with KRS 304.7-361:

(a) Approve:

1. The written guidelines, methodology, and policies and procedures required by subsections (1), (2), and (3) of this section; and

2. The systems required by subsections (1) and (2) of this section;

(b) Determine whether the insurer has adequate professional personnel, technical expertise, and systems to implement investment practices involving derivatives;

(c) Review whether derivatives transactions have been made in accordance with the approved guidelines and consistent with stated objectives; and

(d) Take action to correct any deficiencies in internal controls relative to derivative transactions.

Section 5. Commissioner Approval. Written documentation explaining the insurer's internal guidelines and controls governing derivative transactions shall be submitted for approval to the commissioner. The commissioner shall have the authority to disapprove the guidelines and controls proposed by the insurer if the insurer cannot demonstrate the proposed internal guidelines and controls would be adequate to manage the risks associated with the derivative transactions the insurer intends to engage in.

Section 6. Documentation Requirements. An insurer shall maintain the following documentation and records relating to each derivative transaction:

- (1) The purpose or purposes of the transaction;
- (2) The assets or liabilities to which the transaction relates;
- (3) The specific derivative instrument used in the transaction;
- (4) For over-the-counter derivative instrument transactions, the name of the counterparty and the market value; and
- (5) For exchange traded derivative instruments, the name of the exchange and the name of the firm that handled the trade and the market value.

Section 7. Trading Requirements. Each derivative instrument shall be:

- (1) Traded on a qualified exchange;
- (2) Entered into with, or guaranteed by, a business entity;
- (3) Issued or written with the issuer of the underlying interest on which the derivative instrument is based; or
- (4) Entered into with a qualified foreign exchange.

Section 8. Effective Date. The requirements of this administrative regulation shall not be implemented or enforced prior to the effective date determined pursuant to KRS 13A.330, or July 15, 2014, whichever is later.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

CONTACT PERSON: DJ Wasson, Administrative Coordinator  
Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of HVAC**  
**(As Amended at ARRS, December 17, 2012)**

**815 KAR 8:060. Requirements for approval of continuing education courses and providers.**

RELATES TO: KRS ~~[198B.684]~~ 198B.658, 198B.660, 198B.664, 198B.672, ~~198B.684~~, EO 2009-535]

STATUTORY AUTHORITY: KRS 198B.654(1), 198B.684[~~EO 2009-535~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689. KRS 198B.684 authorizes the board to promulgate an administrative regulation to establish requirements for approval of continuing education courses and providers.~~[EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings, and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department.]~~ This administrative regulation establishes the requirements for approval of con-

tinuing education courses and providers.

Section 1. Requirements for Continuing Educational Provider Approval. (1) Continuing Education Providers shall either be a:

- (a) Trade Association with affiliation to the HVAC Trade;
- (b) Trade school;
- (c) College;
- (d) Technical school;
- (e) Business dedicated solely to providing continuing education and that provides at least one (1) HVAC course in each of Kentucky's~~[the]~~ congressional districts quarterly;
- (f) HVAC Company that employs full-time training personnel to conduct continuing education programs providing continuing education for journeymen only; or
- (g) HVAC manufacturer or distributor that employs full-time~~[a full-time]~~ training personnel to conduct continuing education programs providing continuing education for journeymen 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 HVAC 8, Application for Approval as a Continuing Education Course Provider for HVAC Licensure, provided by the department 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 any 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~~[in the format provided by the department]~~ 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 HVAC 9, Application for Continuing Education Course for HVAC Licensure, for each course offered by the course provider.

(2)(a) An Application for Approval as a Continuing Education Course Provider for HVAC Licensure shall be submitted only by an approved provider registered with the department.

(b) Applications shall be submitted at least thirty (30)~~[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 8:050, Section 1(3)(a) through (d) and Section 2(3)(a) through (d).

(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 HVAC trade.

(5) Content changes made to the course shall require a subsequent submission to the department for review and approval.

(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.

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(9) Providers may submit additional courses to their quarterly schedule if done at least thirty (30) days prior to the course offerings.

(10) 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 Director of the Division of HVAC.

(11)~~(10)~~ Cancellations.

(a) The provider shall give notice of cancellation to registrants 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/has 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) Providers 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 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 may attend an approved continuing education course to ensure that the course meets the stated objectives and that applicable requirements are being met.

Section 5. Disciplinary Action. Provider approval shall be de-nied or revoked if the department determines that 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) Form HVAC 8, "Application for Approval as a Continuing Education Course Provider for HVAC Licensure", January 2010; and

(b) Form HVAC 9, "Application for Continuing Education Course for HVAC Licensure", January 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing,

Buildings and Construction, HVAC Division, 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: October 11, 2012

FILED WITH LRC: October 12, 2012 at 4 p.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 Office of Occupations and Professions (As Amended at ARRS, December 17, 2012)

**830 KAR 1:010. Forms for application, certificate of registration, and fees.**

RELATES TO: KRS 433.900-433.906[433.902(4)]

STATUTORY AUTHORITY: KRS 433.902

NECESSITY, FUNCTION, AND CONFORMITY: KRS 433.902(4) requires the cabinet to promulgate administrative regulations to establish registration forms and fees for secondary metals recyclers. This administrative regulation establishes the required forms and fees for registration as a secondary metals recycler. [implement administrative regulations in accordance with KRS Chapter 13A to prescribe the required forms for registration or renewal registration, for a secondary metals recycler's certificate of registration and for fees. This administrative regulation establishes the required forms and incorporates by reference those forms.]

Section 1. (1) Pursuant to KRS 433.902(1)(b), Form SMR-1, Application for Registration as a Secondary Metals Recycler, shall be completed in order to receive a certificate of registration.

(2) The application shall be accompanied by:

(a) Payment of the fee by check or money order made payable to the Kentucky State Treasurer in the amount of \$100[required by Section (2) of this administrative regulation]; and

(b) A copy of the results of a name-based[name-based criminal] background check on the applicant performed by the Kentucky State Police [Proper] in accordance with KRS 433.902(2).

(3) Pursuant to KRS 433.902(1)(f), Form SMR-2, Registry for Secondary Metals Recyclers, shall be issued if the application is approved.

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

(a) Form SMR-1, "Application for Registration as a Secondary Metals Recycler", 12/2012[9/2012]; and

(b) "Form SMR-2, Registry for Secondary Metal Recyclers", 12/2012[9/2012].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602, Monday through Friday, 8:00 a.m. to 4:30 p.m.

COURTNEY BOURNE, Executive Director

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: October 11, 2012

FILED WITH LRC: October 12, 2012 at 3 p.m.

CONTACT PERSON: Lucie Duvall, Registry Administrator, Office of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296 ext.230, fax (502) 564-4818.

VOLUME 39, NUMBER 7 – JANUARY 1, 2013

CABINET FOR HEALTH AND FAMILY SERVICES  
Office of Inspector General  
Division of Health Care  
(As Amended at ARRS, December 17, 2012)

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 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" ~~means~~**[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 ~~(1) 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" ~~means~~**[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 ~~a~~ controlled ~~substance~~**[substances]**.

Section 2. Ownership. ~~(1) 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 10(3)(1)(3)] of this administrative regulation if:~~

~~(a) An administrative sanction or criminal conviction relating to a controlled substance~~**[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.~~

~~(2)(a)(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 ~~3~~**[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 ~~each individual is~~**[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 ~~4~~**[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, ~~per facility~~**[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 ~~5.6.]~~**[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 ~~6.7.]~~**[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 ~~each service~~**[the service(s)]** offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of ~~each service~~**[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 ~~biologicals~~**[biological]**; and

(g) Procedures for compliance with KRS 218A.175(4), ~~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. ~~Each prescriber~~**[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 (50) percent 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. Meet one (1) of the requirements established in KRS 218A.175(3); or~~

~~2. Be/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 ~~practice~~**[practices]** in the specific facility applying for licensure as a pain management facility and ~~who~~**[meets]**~~[meet]~~**[the following qualifications]**:

a. ~~Has~~ 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 **established in KRS 218A.175(e)[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) **practical nurse, licensed practical nurse, or** 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:

**(a)[1.]** Name, address and social security number;

**(b)[2.]** Evidence of current certification or licensure of personnel;

**(c)[3.]** Records of training and experience;

**(d)[4.]** Records of **each** performance evaluation; and

**(e)[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. **[, and] Each licensed physician who prescribes or dispenses a controlled substance to a patient/substances to patients in the facility as part of his or her employment agreement with the facility shall successfully complete a minimum of ten (10) hours of Category I continuing medical education in pain management during each registration period throughout his or her employment agreement with the facility.**

(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 **this[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) **Each[All]** licensed **prescriber[prescribers]** in a pain management facility shall comply with the professional standards relating to the prescribing and dispensing of controlled substances established by **the respective[their]** professional licensing **board[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 **7.[8.]** Equipment. Equipment used for direct patient care by a pain management facility shall comply with the **requirements established in this section.[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 **8.[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, or[and] contaminated wastes, which shall include the requirements established in this subsection.[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 9.[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 2.b.[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 shall[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 10.[14.] Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Pain Management Facility received if:

(a) The initial application is received by the cabinet after close of business on July 20, 2012;

(b) The facility fails to comply with Section 3(2) or 6(6)[4(2) or Section 7(6)] 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 9(3)[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) In accordance with KRS 216B.105(2), 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 9(3)(4)(3) of this administrative regulation; or

(f) The facility fails to comply with Section 3(2), 6(6)(a), (b), or (c), or 6(7)(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 11[12] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [1]JOIG 20:240, "Application for License to Operate a Pain Management Facility", June 2012 edition; and

(b) [1]JOIG 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: November 13, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

## CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Audits and Investigations

(As Amended at ARRS, December 17, 2012)

### 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 establishes/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 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) "Health facility" is defined by KRS 216B.015(13).

(5) "KASPER" means Kentucky All-Schedule Prescription Electronic Reporting System.

(6)(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.

(7) "Practitioner" is defined by KRS 218A.010(33).

(8)(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 health 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 the 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.

(3)(4)(a) Prior to July 1, 2013, (3) the data identified in subsection (2)(3)(2) of this section shall be transmitted within seven (7) days of the date of dispensing unless the cabinet grants an extension as provided in subsection (4) or (5) of this section.

(b) Prior to July 1, 2013, a dispenser that dispenses a controlled substance for the direct administration of the controlled substance to or for a patient in a licensed health facility shall not be required to transmit the data identified in subsection (2) of this section.

(c) Effective July 1, 2013, the data identified in subsection (2)(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 as provided in subsection (4) or (5) of this section.

(4)(5)(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 (3)(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.

(5)(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.

(6)(7)(6) Except as provided in subsection (8)(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 magnet-tape;

(d) Secure File Transfer Protocol;

(e) https protocol; or

(f) CD/DVD; or

(g) Secure Virtual Private Network connection.

(7)(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.

(8)(9)(8) A dispenser who does not have an automated recordkeeping 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 (2)(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/KASPER) [http://chfs.ky.gov/oig/kasper].

(3) A request for a KASPER provider report made by 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 query request a KASPER for a 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 in the Social Security field.

(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 in the Social Security field.

(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 and Records Commission[Center].

Section 8. Error Resolution. (1) A patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic to whom a report has been disclosed under KRS 218A.202(8) or this administrative regulation may request that information contained in KASPER be corrected if the patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic believes that any information ~~[related to himself or herself]~~ is inaccurate. The patient, ~~[or]~~ patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic shall:

(a) Contact the dispenser who reported the information required by Section 2(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, practitioner, pharmacist, health facility, or private practitioner's office or clinic 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 within seven (7) days of the request for the correction; and

(b) Notify the patient, ~~[or]~~ patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic 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)(4) of this section, cabinet staff shall notify the patient, ~~[or]~~ patient's representative, practitioner, pharmacist, health facility, private practitioner's office or clinic 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. Disclosure of Data or Report. (1) The cabinet shall only disclose data to the persons and entities authorized to receive that data under KRS 218A.202(6) and this administrative regulation.

(2)(a) In addition to the purposes authorized under KRS 218A.202(6), the cabinet shall disclose data or a report to a designated class of employees or to a designated employee or employees in a health facility, or a private practitioner's office or clinic with twenty (20) or more practitioners, if a practitioner has given written consent for the health facility, office, or clinic to query KASPER.

(b) A private practitioner's office or clinic with fewer than twenty (20) practitioners may submit a written request to the cabinet for a KASPER account in which data or a report is

disclosed to a designated class of employees or to a designated employee or employees.

(3) As a condition precedent to the disclosure of data or a report pursuant to subsection (2) of this section, a health facility or a private practitioner's office or clinic shall maintain, and provide upon request by the cabinet, a copy of the health facility, or private office or clinic's policy for the management of KASPER data and reports which:

(a) Describes the health facility, or private office or clinic's process for designating an employee or employees, or class of employees;

(b) Describes the health facility, or private office or clinic's process for maintaining a record of practitioners who have granted written consent for the health facility, or private office or clinic to request KASPER data or a report;

(c) Describes the health facility, or private office or clinic's internal procedures for educating the designated employee or employees, or class of employees on the:

1. Proper use of the KASPER system;

2. Prohibition on the improper use or intentional disclosure of KASPER data to unauthorized individuals; and

3. Sanctions imposed for the improper use or intentional disclosure of KASPER data to unauthorized individuals, including criminal misdemeanor offenses; and

(d) Describes the health facility, or private office or clinic's internal procedures for auditing the account, including:

1. The manner in which an employee is added to or removed from access to the account if the employee ends employment or is no longer designated to query KASPER; and

2. The actions taken if a designated employee with access to the employer's KASPER account intentionally misuses his or her privileges to KASPER data or a report, which shall include a report of the incident to the Office of Inspector General.

(4)(a) An individual authorized to receive data under KRS 218A.202(6) and this administrative regulation shall not provide the data to any other entity except as provided in KRS 218A.202(8) and paragraph (b) of this subsection.

(b) In addition to the purposes authorized under KRS 218A.202(8)(d), and pursuant to KRS 218A.205(2)(a) and (6), a practitioner or pharmacist who obtains KASPER data or a report under KRS 218A.202(6)(e)1. or who in good faith believes that any person, including a patient, has violated the law in attempting to obtain a prescription for a controlled substance, may report suspected improper or illegal use of a controlled substance to law enforcement or the appropriate licensing board.

(5) A health facility or the private office or clinic of a practitioner[offices or clinics of practitioners] shall maintain and adhere to the entity's internal policy regarding the management of KASPER data and reports.

Section 11. 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, November 2009; 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

## VOLUME 39, NUMBER 7 – JANUARY 1, 2013

APPROVED BY AGENCY: November 13, 2012  
FILED WITH LRC: November 14, 2012 at 3 p.m.  
CONTACT PERSON: Jill Brown, Office of Legal Services, 275  
East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502)  
564-7905, fax (502) 564-7573.

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Community Alternatives (As Amended at ARRS, December 17, 2012)

#### 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 covered service policies and requirements~~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 until individuals transition to receiving services via 907 KAR 12:010. [The policies and requirements established in Section 4 of this administrative regulation 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 Section 4 of this administrative regulation shall apply to the SCL waiver recipient and to any provider who provides SCL waiver services to the SCL waiver recipient. Additionally, the consumer directed option policies and requirements established in Section 5 of this administrative regulation shall apply to individuals receiving consumer directed option services until the individuals transition to receiving services pursuant to 907 KAR 12:010 and to providers of consumer directed option services to individuals receiving consumer directed option services pursuant to this administrative regulation. The SCL recipient, eligibility, enrollment, and termination policies and requirements established in Section 2 of this administrative regulation shall also apply to individuals until individuals transition to applying for or receiving services pursuant to 907 KAR 12:010.]

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;

(a) Established to evaluate the technical adequacy of a proposed behavior intervention for a participant; and

(b) Which meets in accordance with the BIC policies established in the Supports for Community Living Manual~~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.

(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.~~

~~(11)(12) "DDID" means the Division of Developmental and Intellectual Disabilities in the Department for Behavioral Health, Developmental and Intellectual Disabilities.~~

~~(12)(13)(14) "Department" means the Department for Medicaid Services or its designee.~~

~~(13)(14)(15) "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 either 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. Results in~~(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. Is~~(Are)~~ a direct result of, or is~~(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].]~~

~~(14)(15) "Electronic signature" is defined by KRS 369.102(8).~~

~~(15)(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; or

~~(c)(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.

~~(16)~~~~(17)~~ "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 [established to protect the rights and welfare of an SCL recipient].~~

~~(17)~~~~(18)~~ "ICF-IID" ["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].

~~(18)~~~~(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.~~

~~(19)~~~~(20)~~ "Level of care determination" means a determination by the department that an individual meets ~~[low-intensity or high-intensity]~~ patient status criteria **for an intermediate care facility for an individual with an intellectual disability as established in [in accordance with] 907 KAR 1:022.**

~~(20)~~~~(21)~~ "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

~~(21)~~~~(22)~~ "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

~~(22)~~~~(23)~~ ~~["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).

~~(23)~~~~(25)~~ "Occupational therapy assistant" is defined in KRS 319A.010(4).

~~(24)~~~~(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 **327.010(2)** ~~[27.010(2)].~~

~~(25)~~~~(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.

~~(26)~~~~(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.

~~(27)~~~~(30)~~ "Psychologist" is defined by KRS 319.010~~(9)~~~~(8)~~.

~~(28)~~~~(31)~~ ~~"Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.~~

~~(32)~~ "Registered nurse" or "RN" **is defined by KRS 314.011(5) [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].**

~~(29)~~~~(33)~~ "Representative" is defined in KRS 205.5605(6).

~~(30)~~~~(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.

~~(31)~~~~(35)~~ "SCL provider" means an entity that meets the criteria established in Section 3 of this administrative regulation.

~~(32)~~~~(36)~~ "SCL recipient" means an individual who meets the criteria established in Section 2 of this administrative regulation.

~~(33)~~~~(37)~~ "Social worker" means an individual licensed by the Kentucky Board of Social Work under KRS 335.080, 335.090, or 335.100.

~~(34)~~~~(38)~~ "Speech-language pathologist" is defined by KRS 334A.020(3).

~~(35)~~~~(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.

~~(36)~~~~(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.

~~(37)~~~~(41)~~ "Supports for community living **services**" or "SCL **services**" 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;

(b) ~~(c)~~ Meet ~~ICF-IID~~ ~~[ICF-MR-DD]~~ patient status requirements established in 907 KAR 1:022;

(c) ~~(d)~~ Meet Medicaid eligibility requirements established in 907 KAR 1:605;

(d) ~~(e)~~ Submit an application packet to the department which **is included in the Supports for Community Living Manual and 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 IDP [MRP] and be less than one (1) year old;

5. The results of a psychological examination completed by a licensed psychologist or certified [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

(e) [(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-IID [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-IID [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 receiving an extension based on demonstration of 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 receiving an extension based on demonstration of 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; or [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-IID [ICF-MR-DD] patient status criteria.

(5) [(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 DDID [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 DD- [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.

(6) [(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 DDID [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. The SCL waiver service provider policies and requirements established in 907 KAR 12:010 shall apply to all SCL waiver service providers. [(4)

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 respon-

sibilities 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 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;

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 [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 [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 func-

tioning, 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. a. Be provided as on-site services which shall:
    - (i)[a.] Include facility-based services provided on a regularly-scheduled basis;
    - (ii)[b.] Lead to the acquisition of skills and abilities to prepare the participant for work or community participation; or
    - (iii)[c.] Prepare the participant for transition from school to work or adult support services; or
    - b.[6.] Be provided as off-site services which:
      - (i)[a.] Shall include services provided in a variety of community settings;
      - (ii)[b.] Shall provide access to community-based activities that cannot be provided by natural or other unpaid supports;
      - (iii)[c.] Shall be designed to result in increased ability to access community resources without paid supports;
      - (iv)[d.] Shall provide the opportunity for the participant to be involved with other members of the general population;
      - (v)[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;
      - (vi)[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
      - (vii)[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;
  6. [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;
  7. [8.] Require that a provider conduct an orientation informing the recipient of supported employment and other competitive opportunities in the community at least annually;
  8. [9.] Be provided at a time mutually agreed to by the recipient and provider;
  9. [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;
  10. [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;
  11. [12.] Be limited to five (5) days per week, 255 days maximum per year;
  12. [13.] Not exceed eight (8) hours per day, five (5) days per week; and
  13. [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 as-

- essment 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-IID** **(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 licensed 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 **IDP** **[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 or ~~[-]~~ 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 **which [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.

Section 5. Consumer Directed Option. (1) Covered services 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; **and:]**
- (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, **which is included in the Supports for Community Living Manual.**

(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;

(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, which is included in the Supports for Community Living Manual, 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 determining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services; and

3. Protection of the consumer's health, safety, and welfare.

(f) A consumer's budget shall not exceed the average per capita cost of services provided to individuals in an ICF-IID ~~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. The incident report policies and requirements established in 907 KAR 12:010 shall apply to all SCL waiver service providers and participants. ~~(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, DBHDD[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 DBHDD[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, DBHDD[DMHMR], or designee on a monthly medication error report form by the 15th of the following month.]

Section 7. SCL Waiting List. The SCL waiting list policies and requirements established in 907 KAR 12:010 shall apply to all individuals on the SCL waiting list or attempting to be placed on the 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) DBHDD[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. The electronic signa-

ture policies and requirements established in 907 KAR 12:010 shall apply to all SCL waiver service providers.[(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 Sections 2, 4, and 5 [Section 4] of 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 the [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 907 KAR 12:010, 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.



## VOLUME 39, NUMBER 7 – JANUARY 1, 2013

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 14, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

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

### CABINET FOR HEALTH AND FAMILY SERVICES

#### Department for Medicaid Services

#### Division of Community Alternatives

(As Amended at ARRS, December 17, 2012)

**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 develop-~~mental~~~~[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. Results in an impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and

2. Is [Are] a direct result of, or is [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 individuals with intellectual disabilities (ICF-IID)~~[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.

(3) The reimbursement provisions established in this administrative regulation shall apply until the recipient transitions to the new SCL waiver program established in 907 KAR 12:010 during the month of the recipient's next birthday. After that transition, the reimbursement provisions established in 907 KAR 12:020 shall apply.

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            |
| Assessment <u>or</u> <del>[/]</del> reassessment | 1 assessment or reassessment | \$75.00             |
| Behavior support                                 | 15 minutes                   | \$33.25             |
| Case management                                  | 1 month                      | \$376.06            |

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|                                                                  |            |                                                                                                                      |
|------------------------------------------------------------------|------------|----------------------------------------------------------------------------------------------------------------------|
| 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 assistant                   | 15 minutes | \$22.17                                                                                                              |
| 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 with 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 or she resided to a community placement; and

(b)1. Prior to the transition, resided in an ICF-IID[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-IID[ICF-ID][ICF-MR-DD] and who was approved by the department for transitioning;

2. Resided in an ICF-IID[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-IID[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-IID[ICF-ID][ICF-MR-DD];

b. Had a primary diagnosis of intellectual disability or mental retardation][or] developmental disability;

c. Had resided in an ICF-IID[ICF-ID][ICF-MR-D] 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.

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(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;

(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 shall [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 11[40](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; and for

(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 40]~~ 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[44.] 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

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 14, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

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

### CABINET FOR HEALTH AND FAMILY SERVICES

#### Department for Medicaid Services

#### Division of Community Alternatives

(As Amended at ARRS, December 17, 2012)

**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 ser-

vices 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. **Funding for the SCL waiver program is associated with and generated through SCL waiver program participants rather than SCL waiver service providers.**

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 nonduplicative 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.

**(7)(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. **Has** 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; **or**

3. **(e)** Is a registered nurse who has at least one (1) year of experience as a professional nurse in the field of intellectual disability;

**(c)(d)** Shall be supervised by a case management supervisor; and

**(d)(e)** Meets all personnel and training requirements established in Section 3 of this administrative regulation.

**(8)(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. **Has** 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; **or**

3. **(e)** Is a registered nurse;

**(c)(d)** Has at least two (2) years of experience of case management responsibility in an organization which serves individuals with intellectual or developmental disabilities;

**(d)(e)** Completes a case management supervisory training curriculum approved by DBHDID within six (6) months of beginning supervisory responsibilities;

**(e)(f)** Meets all personnel and training requirements **established/specified** in Section 3 of this administrative regulation; and

**(f)(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.

**(9)(11)** "Certified nutritionist" is defined by KRS 310.005(12).

**(10)(12)** "Certified psychologist with autonomous functioning" means a person licensed pursuant to KRS 319.056.

**(11)(13)** "Certified school psychologist" means an individual certified by the Kentucky Education Professional Standards Board under 16 KAR 2:090.

**(12)(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.

**(13)(15)** **(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.

**(14)(16)** **(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; **and**

**(e) Provides services to a participant in accordance with Section 4 of this administrative regulation.**

**(15)(17)**.

**(18)** "Conflict free" means a **scenario in which an agency, also including any subsidiary, partnership, not-for-profit, or other business entity under control of the agency, providing case management to an individual does not also provide another waiver service to the individual.**

**(16)(18)** **[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).

**(17)(19)** **(20)** "Covered services and supports" is defined by KRS 205.5605(3).

~~(18)~~~~(20)~~ ~~[(21)]~~ "DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

~~(19)~~~~(21)~~ ~~[(22)]~~ "DCBS" means the Department for Community Based Services.

~~(20)~~~~(22)~~ ~~[(23)]~~ "Department" means the Department for Medicaid Services or its designee.

~~(21)~~~~(23)~~ ~~[(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. ~~Results in~~ an impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and

2. ~~Is~~ ~~[Are]~~ a direct result of, or ~~is~~ ~~[are]~~ influenced by, the person's cognitive deficits.

~~(22)~~~~(24)~~ ~~[(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 ~~established~~ ~~[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; ~~and~~

(f) Demonstrates competence and knowledge on topics required to safely support the participant as described in the participant's person centered plan of care.

~~(23)~~~~(25)~~ ~~[(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 ~~established~~ ~~[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.

~~(24)~~~~(26)~~ ~~[(28)]~~ "Drug paraphernalia" is defined by KRS 218A.500(1).

~~(25)~~~~(27)~~ ~~[(29)]~~ "Early and periodic screening, diagnostic, and treatment services" is defined by 42 U.S.C. 1396d(r).

~~(26)~~~~(28)~~ ~~[(30)]~~ "Electronic signature" is defined by KRS

369.102(8).

~~(27)~~~~(29)~~ ~~[(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].~~

~~(28)~~~~(30)~~ ~~[(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) 1. Have a bachelor's or higher degree from an accredited institution; or

2. [(d)] Be a registered nurse[;]

[(d)] [(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;

[(e)] Meet [(f)] Meets] all personnel and training requirements specified in Section 3 of this administrative regulation; and

[(f)] [(g)] If providing professional oversight or supervision of employees, [shall] meet the supervisory qualifications specified for each service [defined in Section 4 of this administrative regulation].

~~(29)~~~~(31)~~ ~~[(33)]~~ "Exploitation" is defined by KRS 209.020(9).

~~(30)~~~~(32)~~ ~~[(34)]~~ ~~"Extended family member" means a relative of an individual by blood or marriage beyond the individuals included in the definition of immediate family member.~~

~~(31)~~~~(33)~~ ~~[(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.

~~(32)~~~~(34)~~ ~~[(35)]~~ "Financial management ~~[services]~~ agency" means an agency contracted by the department that manages individual participant-directed service budgets.

~~(33)~~~~(35)~~ ~~[(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.

~~(34)~~~~(36)~~ ~~[(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; or

~~(c)] [(d)]~~ The individual or his or her guardian ~~[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].~~

~~(35)~~~~(37)~~ ~~[(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.

~~(36) [(38)] [(39)]~~ "Guardian" is defined by KRS 387.010(3) for a minor and in KRS 387.812(3) for an adult. ~~(we'll need to elaborate on how one is to know which definition applies to given circumstances).~~

~~(37) [(39)] [(40)]~~ "Homicidal ideation" means thoughts about homicide which may range from vague ideas to detailed or fully formulated plans without taking action.

~~(38) [(40)] [(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; and

(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.

~~(39) [(41)] [(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, social work, or family studies, ~~or other degree as approved by DBHDID~~.

~~(40) [(42)] [(43)]~~ "ICF- IID" means an intermediate care facility for an individual with an intellectual disability ~~for a developmental disability~~.

~~(41) [(43)] [(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.

~~(42) [(44)] [(45)]~~ "Immediate family member" is defined by KRS 205.8451(3).

~~(43) [(45)] [(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.

~~(44) [(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).

~~(45) [(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.

~~(46) [(51)] [(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.

~~(47) [(51)] [(52)]~~ "Intellectual disability" or "ID" means:

~~(a) 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) An intellectual disability that had an onset before [which occurred prior to the individual reaching] eighteen (18) years of age.~~

~~(48) [(52)] [(53)]~~ "Legally responsible individual" means an individual who has a duty under state law to care for another person and includes:

~~(a) A [An individual who has a duty under state law to care for another person; and~~

~~(b) Includes a:~~

~~4.-] Parent (biological, adoptive, or foster) of a minor child who provides care to the child;~~

~~(b) The [2.] guardian of a minor child who provides care to the child; or~~

~~(c) A [3.] spouse of a [waiver] participant.~~

~~(49) [(53)] [(54)]~~ "Level of care determination" means a determination by the department that an individual meets [low-intensity or high-intensity] patient status criteria for an intermediate care facility for an individual with an intellectual disability as established in [accordance with] 907 KAR 1:022.

~~(50) [(54)] [(55)]~~ "Licensed clinical social worker" means an individual who is currently licensed in accordance with KRS 335.100.

~~(51) [(55)] [(56)]~~ "Licensed dietitian" is defined by KRS 310.005(11).

~~(52) [(56)] [(57)]~~ "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

~~(53) [(57)] [(58)]~~ "Licensed practical nurse" means an individual who is currently licensed in accordance with KRS 314.051.

~~(58) [(59)]~~ "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

~~(54) [(59)] [(60)]~~ "Licensed psychological associate" means an individual [person] who is currently licensed in accordance with KRS 319.064.

~~(55) "Licensed psychological practitioner" means an individual who is currently licensed in accordance with KRS 319.053.~~

~~(56) [(60)] [(61)]~~ "Licensed psychologist" means an individual who is currently licensed in accordance with KRS 319.050.

~~(57) [(61)] [(62)]~~ "Licensed psychological practitioner" means an individual who is currently licensed in accordance with KRS 319.053.

~~(62) [(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.

~~(58) [(63)] [(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.~~

~~(64) [(66)]~~ "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

~~(59) [(65)] [(67)]~~ "National Core Indicators" means:

(a) **A collaboration between the National Association of State Directors of Developmental Disability Services and the Human Services Research Institute:**

(b) ~~An~~**[A voluntary]** effort by public developmental disabilities agencies to measure and track their own performance; and

(c) ~~(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.

~~(60)~~**[(66)] [(68)]** "Natural supports" means assistance, relationships, or interactions that:

(a) Allow a **participant [participate]** to be in the community;

(b) Include working in a job of the participant's choice in ways similar to people without disabilities; **and**

(c) Are based on ordinary social relationships at work and in the community.

~~(61)~~**[(67)] [(69)]** "Neglect" is defined by KRS 209.020(16).

~~(62)~~**[(68)] [(70)]** "Occupational therapist" is defined by KRS 319A.010(3).

~~(63)~~**[(69)] [(71)]** "Occupational therapy assistant" is defined by KRS 319A.010(4).

~~(64)~~**[(70)] [(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.

~~(65)~~**[(71)] [(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.***

~~(72)~~**[(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.

~~(66)~~**[(73)] [(75)]** "Participant directed service" means an option to receive a service which is based on the principles of self-determination and person **centered[-center]** thinking.

~~(67)~~**[(74)] [(76)]** "Person centered coach" means a person who:

(a) Assists a participant and the participant's person centered team in implementing and **monitoring[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, **guardian[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

2. **a.[b.]** Two (2) years of experience in the field of intellectual or developmental disabilities; or

**b.[2. Has]** Completed twelve (12) hours of college coursework in a human services field;

**e) [(d)]** Meets all personnel and training requirements **established [specified]** in Section 3 of this administrative regulation; and

**f) [(e)]** Performs required documentation.

~~(68)~~**[(75)] [(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.

~~(69)~~**[(76)] [(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 **guardian[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 **guardian[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 **guardian[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 satisfaction;

(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, **if [when]** deemed necessary by the participant and the participant's support team; **and**

(vii) Assists the participant in making informed choices by facilitating knowledge of and access to services and supports.

~~(70)~~**[(77)] [(79)]** "Person centered team" means a participant's **guardian or[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 **becoming as independent as possible in meeting the participant's needs[having a comfortable and fulfilled life]**; **and**

(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.

~~(71)~~**[(78)] [(80)]** "Physical therapist" is defined by KRS 327.010(2).

~~(72)~~**[(77)] [(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.

~~(73)~~**[(80)] [(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 **established [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.

~~(74)~~**[(81)] [(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.

~~(75)(82)~~ [(84)] "Registered agent" means an individual meeting the requirements of KRS 14A.4-010(1)(b).

~~(76)~~ **"Registered nurse" is defined by KRS 314.011(5).**

~~(77)(83)~~ [(85)] "Registered office" means an office meeting the requirements of KRS 14A.4-010(1)(a).

~~(78)(84)~~ [(86)] **~~"Registered nurse" is defined by KRS 314.011(5).~~**

~~(85)(87)~~ [(87)] "Representative" is defined in KRS 205.5605(6).

~~(79)(86)~~ [(88)] "Room" means ~~[for the purpose of providing shared living,]~~ the aggregate expense of housing costs ~~for the purpose of providing shared living,~~ including:

- (a) Rent, lease, or mortgage payments;
- (b) Real estate taxes;
- (c) Insurance;
- (d) Maintenance; and
- (e) Utilities.

~~(80)(87)~~ [(89)] "SCL ~~intellectual [developmental]~~ disability professional" or "SCL ~~IDP/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 **established [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.

~~(81)(88)~~ [(90)] "SCL provider" means an entity that meets the criteria established in Section 3 of this administrative regulation.

~~(82)(89)~~ [(91)] **~~"Segregated setting" means a congregate setting that is populated exclusively or primarily with individuals with disabilities.~~**

~~(90)(92)~~ [(92)] "Serious medication error" means a medication error that requires or has the potential to require a medical intervention or treatment.

~~(83)(91)~~ [(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 **established [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, **prior to being alone with the participant,** 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. **Have the** ability to participate as a member of the participant's person centered team if requested by the participant; **and**

**(g) Does not have any of the following relationships to the participant:**

**1. Immediate family member;**

**2. Extended family member;**

**3. Guardian; or**

**4. Legally responsible individual.**

~~(84)(92)~~ [

~~(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).

~~(85)(93)~~ [(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.

~~(86)(94)~~ [(97)] "Subcontractor" means an entity or an individual~~[who]:~~

(a) **Who** is a currently credentialed professional or other service provider; **[and]**

(b) **Who** has signed an agreement with a certified SCL agency to provide SCL services and supports; **and**

**(c) To whom the employee requirements in this administrative regulation apply.**

~~(87)(95)~~ [(98)] "Suicidal ideation" means thoughts about suicide which may range from being fleeting in nature to detailed planning.

~~(88)~~ **"Supported Employment Long-Term Support Plan" means a document that identifies the amount and kind of support necessary for a participant to maintain employment and achieve individualized employment goals.**

~~(89)(96)~~ [(99)] "Supported employment specialist" means an individual who:

(a) Provides ongoing support services to eligible participants in supported employment jobs **in accordance with Section 4 of this administrative regulation;**

(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 **established [specified]** in Section 3 of this administrative regulation; and

~~(d)(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.

~~(90)(97)~~ [(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.~~**

~~(98)(101)~~ "Supports for Community Living" or "SCL" means home and community-based waiver services for an individual with an intellectual or developmental disability.

~~(91)(99)~~ [(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.



tion. (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;

~~(b)(c)~~ Meet ICF-IID patient status requirements established in 907 KAR 1:022;

~~(c)(d)~~ Meet Medicaid eligibility requirements established in 907 KAR 1:605;

~~(d)(e)~~ Upon receiving notification of potential SCL funding, submit an application packet to the department which is included in the Supports for Community Living Policy Manual and 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; and

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 twenty-four (24)[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)(a) [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:

~~(a)(1.)~~ In accordance with 907 KAR 1:563; and

~~(b)(2.)~~ Initiated if:

~~1.(a.)~~ An applicant fails to access an SCL waiver service within sixty (60) days of receiving notice of potential funding without receiving an extension based on demonstration of good cause; or

~~2.(b.)~~ A participant:

~~a.(i)~~ Fails to access any services outlined in the participant's POC for a period greater than sixty (60) consecutive days without receiving and extension based on demonstration of [demonstrating] good cause;

~~b.(ii)~~ Moves to a residence outside of the Commonwealth of Kentucky;

~~c.(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 guardian[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 guardian[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 guardian[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.]~~

~~(5)(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 guardian[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 guardian[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 guardian[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 guardian[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 ~~[(a)]~~ 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.

~~(6)(7)(a)~~ DBHDID shall initiate an intent to discontinue a participant's participation in the SCL waiver program if the participant or participant's guardian[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 guardian[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, 42 U.S.C. 1320d-2, and 45 C.F.R. Parts 160, 162, and 164; 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;

**(b)(c)** Be recertified at least biennially by the department;

**(c)(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 **if[whenever]** the registered office or agent changes;

**(d)(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;

**(e)(f)** Abide by the laws which govern the chosen business or tax structure of the SCL provider;

**(f)(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;

**(g)(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

**(h)(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, legally responsible individual**, or immediate family member of the participant **unless allowed for a participant directed service in accordance with Section 4 of this administrative regulation;**

(b) Not enroll a participant whose needs the SCL provider is unable to meet;

(c) Have **and[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 Web site 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 **guardian[designated representative]** on a quarterly basis; and

3. The participant or the participant's **guardian[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;**[f:]**

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 **guardian[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; **and**

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; **and**

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; **and**

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

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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; or
2. Pertaining to a participant to:
  - a. The participant, the participant's ~~guardian[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 DBHD-ID] at least annually and updated as needed;
      - (ii) Assist in determining a participant's areas of vulnerability for a potential health risk; and
      - (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 signed or authorized current prescription or medical orders[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 guardian[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. Behaves [Behave] in a legal and ethical manner in providing a service;

2. Has [Have] a valid Social Security number or valid work permit if not a citizen of the United States of America; and

3. If responsible for driving a participant [participants] during a service delivery, has [have] a valid [Kentucky] driver's license with proof of current mandatory liability insurance for the vehicle used to transport the participant;

(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 aide [aid] abuse registry check as described in 906 KAR 1:100 or an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment or volunteerism; and[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 an equivalent out-of-state agency if the individu-

al 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 **aide [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. **Every case manager and any**~~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 medi-

cation 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 sub-contractor]** 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 ~~or,~~ 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;

**4.[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 or employees or sub-contractors, unless the case manager or employee is a licensed professional providing a service governed by the licensure of the individual's profession, complete the 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; **and**

(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 except an SCL provider, employee, or volunteer may use or possess a medically necessary and legally prescribed controlled substance;

3. An illicit drug;

4. A prohibited drug or prohibited substance;

5. Drug paraphernalia; or

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; **and**

2. Be provided to a participant pursuant to the participant's person centered POC by an individual who meets [meet] the requirements established in Section 3 of this administrative 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 shall 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 outcomes 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 guardian [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; **and**

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 the [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 agency; and [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:
    - 1.[a.] Clearly outlining the participant's insurance options and availability; and
    - 2.[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; and
  - 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 guardian[designated representative]; and
- (p) Include the case manager supervisor performing supervision duties:
  1. As outlined in the 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) miles[minutes] of the participant's residence; or[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) If participant directed, may be provided by an immediate family member, guardian, or legally responsible individual of the participant in accordance with Section 5 of this administrative regulation;
  - (f) 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;

**(q)(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;

**(h)(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;

**(i)(h)** Shall be provided outside the participant's home or ~~residential setting~~**[family home provider]** and **[may]** occur during the day, in the evening, **or [and]** on weekends;

**(i) Shall(i)** **[May]** not duplicate residential, day training services, or authorized therapies;

**(k)(j)a.** Shall be provided to a participant with a:

1. One (1) to one (1) staff to participant ratio; or

**2.[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, **if the participant invites a friend**;

**(l)(k)** Shall occur in an integrated community setting;

**(m)(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;

**(n)(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

**(o)(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 **shall**:

1. **[Shall]** Be provided by a community guide who meets the personnel and training requirements established in **Sections 3 and 5[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 **helps [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; **or**
  - 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 nonrecurring 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; **or**
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; and [.]
- (g) Shall not exceed \$2,000 per qualified transition.
- (8) A consultative clinical and therapeutic service shall:

(a) Be provided by a person who meets the personnel and training requirements established in Section 3 of this administrative regulation; and

(b) Is 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 and family 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 clinical 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-centered [center] team;

2. Providing treatment that [is]:

a. Is consistent with assessment results and diagnosis;

b. Is 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 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;

7. A functional assessment which shall:

a. Be conducted by a person who meets the personnel and training requirements established in Section 3 of this administrative regulation and is 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. [(b)] Include all functional assessment components specified in the Supports for Community Living Policy Manual; and

8. Documentation of a service by:

a. a note documenting each contact which shall include:

a. [(i)] A full description of each service rendered;

b. An analysis of the efficacy of the service provided including any recommendation or identification of additional support needs if needed;

c. [(iii)] The date of the service;

d. [(iii)] The location of the service;

e. [(iv)] The beginning and end times of the service;

f. [(v)] The signature and title of the professional providing the service;

g. [(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 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 [and]

2. Career planning or pre-vocational 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. Provide active training designed to prepare a participant to transition from school to adult responsibilities, community integration, and work;

c. Enable each individual to attain the highest level of work in the most integrated setting with the job matched to the participant's interests[interest], strengths, priorities, abilities, and capabilities; and

d. Include:

(i) Skill development to communicate effectively with supervisors, co-workers, and customers/customer;

(ii) Generally accepted community workplace conduct and dress;

(iii) Workplace problem solving skills and strategies;

(iv) General workplace safety;

(v) The ability to follow directions;

(vi) The ability to attend tasks; or

(vii) Mobility training;

3. [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~~

~~4.[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 include required informational sessions sponsored by the provider at least annually for the participant regarding community involvement or employment services and arrangement of opportunities for the participant to explore community integration, supported employment, and other employment opportunities in the community;~~

~~(d) 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;~~

~~(e) Shall include environments that:~~

~~1. Are not diversional in nature;~~

~~2. Occur in a variety of settings in the community and shall not be limited to fixed-site facilities; and~~

~~3. Coordinate with any needed therapies in the participant's POC;~~

~~(f)[(d)] May be participant directed and if participant directed, may be provided by an immediate family member, guardian, or legally responsible individual of the participant in accordance with Section 5 of this administrative regulation;~~

~~(g) Shall not be reimbursable if vocational in nature and for the primary purpose of producing goods or performing services;~~

~~(h)[];~~

~~(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

~~(i)[]]~~ 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 hours of paid community employment or on-site 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 necessary to:

(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 if[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 each adaptation purchased;

b. A receipts[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

6.[7.] Shall be limited to \$8,000 per lifetime.

(b) An immediate family member, guardian, or legally responsible individual of a participant shall not be eligible to be a vendor or provider of an environmental accessibility service for the participant.

(c) A home accessibility modification shall not be furnished to a participant who receives residential habilitation services except if[when] the services are furnished in the participant's own home.

(d)[]] A request shall be documented in a participant's POC and include cost of adaptations.

(11)(a) Goods and services shall:

1. **[Shall]** Be services, equipment, or supplies that are individualized to a participant who chooses to use 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 **shall[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; ~~and~~

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 immediate family member, guardian, or legally responsible individual 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, guardian, or legally responsible individual of a participant 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 reimbursement documentation to the financial management ~~[services]~~ agency ~~[to make a direct payment 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 shall:

1. Shall be provided by a qualified entity as identified in the POC; ~~[an SCL provider employee who meets the personnel and training requirements established in Section 3 of this administrative regulation]; and~~

2. **[Shall]** Be participant directed and include;

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;

7. ~~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; ~~or~~

d. Services not related to the needs of the participant;

8. ~~9.~~ **[Shall]** Be coordinated and documented by a case manager by:

a. The specific training provided; ~~and~~

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

9. ~~10.~~ **[Shall]** Not exceed \$1,000 per one (1) year authorized POC period.

(b) ~~An immediate family member, guardian, or legally responsible individual 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 participant 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 coworker who provides uncompensated care, training, guidance, companionship, or support to the participant who utilizes natural supports training.

(d) ~~(e)~~ A case manager shall submit reimbursement 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 person who meets the personnel and training requirements established in Section 3 of this administrative regulation; and

2. Is either an:

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; ~~and~~

(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 im-

prove 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.]** A note documenting each contact which shall include:

1. **[a.]** A full description of each service rendered;

2. **[b.]** Evidence of progress toward the participant's outcome or outcomes;

3. Identification of barriers to achievement of outcomes;

4. The projected/project plan to achieve the next step in achievement of outcomes;

5. ~~the training or service to support the outcomes designated in the POC~~;

6. **[c.]** The date of the service;

7. **[d.]** The location of the service;

8. **[e.]** The beginning and ending time of the service;

9. **[f.]** The signature and title of the person providing the service; **[and]**

10. **[g.]** The date the entry was made in the record; and

11. ~~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. **[g.]** The signature and title of the occupational therapist supervising the occupational therapy assistant and date of the documentation review, if/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. Work under the direction of/Be supervised by a positive behavior support specialist or other licensed professional 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:

1. **[a.]** A note documenting each contact which shall include:

1. **[i.]** A full description of each service rendered;

2. **[ii.]** The date of the service;

3. **[iii.]** The location of the service;

4. **[iv.]** The beginning and ending time of the service;

5. **[v.]** The signature and title of the individual providing the service;

6. **[vi.]** The date the entry was made in the record; and

7. **[b.]** A completed monthly summary note which shall include:

1. **[i.]** The month and year for the time period the note covers;

2. A summary(ii) An analysis of the efficacy of the service provided including recommendations and identification of additional support needs if any exist;

3. **[iii.]** The signature and title of the individual completing the note;

4. **[iv.]** The date the note was written; and

5. **[v.]** The signature, title, and date of review of documentation by the positive behavior specialist or other licensed professional directing the work of/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 himself/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 and if participant directed, may be provided by an immediate family member, guardian, or legally responsible individual of the participant in accordance with Section 5 of this administrative regulation[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, diagnostic [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 the documentation was 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 person who meets the personnel and training requirements established in Section 3 of this administrative regulation; and  
2. Is either:  
 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[;  
 4.] a note documenting each contact which shall include:  
1.[a.] A full description of each service rendered;  
2.[b.] Evidence of progress toward the participant's outcome or outcomes;  
3. Identification of barriers to achievement of outcomes;  
4. The projected plan to achieve the next step in achievement of outcomes;  
5.[the training or service to support the outcomes designated in the POC;  
c.] The date of the service;  
6.[d.] The location of the service;  
7.[e.] The beginning and ending time of the service;  
8.[f.] The signature and title of the person providing the service; [and]  
9.[g.] The date the entry was made in the record; and  
10.[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 if[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 if[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 sup-

ports 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; **and**

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 **the[a]** participant's life;

e. The signature and title of the individual writing the note;

f. The date the note was written; **and**

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; **and**

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:

**a. [(i)]** Adaptive skill development;

**b. [(ii)]** Assistance with activities of daily living including bathing, dressing, toileting, transferring, or maintaining continence;

**c. [(iii)]** Community inclusion;

**d. [(iv)]** Adult education supports;

**e. [(v)]** Social and leisure development;

**f. [(vi)]** Protective oversight or supervision;

**g. [(vii)]** Transportation;

**h. [(viii)]** Personal assistance; and

**i. [(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; **or**

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 **participant's[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 **reside [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) **hours[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 **speaker[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 the[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 and if participant directed, may be provided by an immediate family member or guardian of the participant in accordance with Section 5 of this administrative regulation.

(23)(a) Shared living shall be a participant directed service designed to:

1. Be an alternative to residential support services; and

2. Be provided by a shared living caregiver who[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

2.[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(24)[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 **guardian[designated representative]** indicating that the participant is satisfied with the services provided by the caregiver; and

**f.[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,**f.;** 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 **a person [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; **and who**

**a. Meets the personnel and training requirements established in Section 3 of this administrative regulation and is a:**

**(i)[a.]** An occupational therapist ~~[who meets the personnel and training requirements established in Section 3 of this administrative regulation];~~

**(ii)[b.]** A physical therapist ~~[who meets the personnel and training requirements established in Section 3 of this administrative regulation];~~

**(iii)[c.]** A speech therapist ~~[who meets the personnel and training requirements established in Section 3 of this administrative regulation];~~ or

**b. Is[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; **and**

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 **a** speech-device including:

a. Programming and modification; or

b. Participant and family education;

7. 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;

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 (20 U.S.C. 1401 et seq.); and

(g) Be documented by:

4. a note documenting each contact which shall include:

1. **[a.]** A full description of each service rendered;

2. **[b.]** Evidence of **progress toward the participant's outcome or outcomes;**

3. **Identification of barriers to achievement of outcomes;**

4. **The projected plan to achieve the next step in achievement of outcomes;**

5. ~~training or service to support an outcome or outcomes designated in the participant's POC;~~

6. **[c.]** The date of the service;

7. **[d.]** The location of the service;

8. **[e.]** The beginning and ending time of the service;

9. **[f.]** The signature and title of the speech language pathologist providing the service; and

10. **[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 Rehabili-

tation 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 if[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 Supported [Long-Term] Employment Long-Term 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; and

c. In accordance with the supported employment policies stated in the current Supports for Community Living Policy Manual; ~~f.]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; and

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 per week; or

2. 160 units per week.

(e) A supported employment service shall be provided and documented ~~[in accordance with the Supports for Community Living Policy Manual and]~~ as required by this paragraph. [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; f.]

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; f.]

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; and

(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 use participant directed[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 nonemergency 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 **an individual[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) A participant shall not contract with an individual to provide transportation if the individual has a driving under the influence conviction within the past twelve (12) months.

**(c) A transportation service may be provided by an immediate family member, guardian, or legally responsible individual of the participant in accordance with Section 5 of this administrative regulation.**

**(d) 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 **ramp[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; and

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) An immediate family member, guardian, or legally responsible individual of the participant shall not be eligible to be a vendor or provider of a vehicle adaptation service for the participant. 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 reimbursement 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 following 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, and the training requirements specified in paragraph (b) of this subsection.;

1. [(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; or ;[.]

7. Supported employment.

(b) An individual who provides a participant directed service shall complete the following training requirements in the timeframe established by paragraph (c) of this subsection [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 DBHDD 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 choices[choice];

c. Safety at home and in the community;

d. Supporting healthy lives; and

e. Person centered planning; and

5. Other training if required by the participant.

(c) The training required by paragraph (b) of this subsection shall be completed:

1. Within six (6) months of the date of hire for a new provider of a participant-directed service; or

2. Within one (1) year of the effective date of this administrative regulation for an employee providing a participant-directed service on the effective date of this administrative regulation.

(2) An individual providing a participant directed service 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.

(3)(a) The following services may be participant directed and shall be provided in accordance with the specifications and requirements established in the Supports for Community Living Manual and in Section 4 of this administrative regulation:

1. Environmental accessibility adaptation services;

2. Goods and services;

3. Natural supports training;

4. Transportation services; or

2. Vehicle adaptation services.

(b) A participant directed service shall not be available to a participant who resides in a living arrangement, regardless of funding source, that is furnished to four (4) or more individuals who are unrelated to the proprietor.

(4) An immediate[(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;

(e)] [(f)] The use of the family member or guardian is age and developmentally appropriate;

(f)] [(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;

(g)] [(h)] The participant learns skills to increase independence;

(h)] [(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

~~(i)1.[(4)1-]~~ There is no qualified provider within thirty (30) ~~minutes[minutes]~~ from the participant's residence; or

2. There is no qualified provider who can furnish the service at the necessary times and places.

**(5)[(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 ~~(4)[(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.

**(6) An individual serving as a representative for a participant shall not be eligible to provide a waiver service to the participant.**~~[(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 administrative 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 disenroll from a participant directed service at any time.

(b) If a participant elects to disenroll from a participant directed service, the participant's case manager shall assist the participant and the participant's guardian[designated representative] to locate a traditional waiver service provider of the participant's

choice to provide the service.

(c) **1. Except as provided in subparagraph 2. Of this paragraph,** a participant directed service shall not be terminated until a traditional service provider is ready to provide the service.

**2. If a participant does not wish to continue receiving the service, the service shall be terminated.**

(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; or

(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 that the provider determines may result in harm to the participant.

(4)(a) An incident shall:

1. Be documented on an Incident Report form; 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 guardian[designated representative] within twenty-four (24) hours of discovery of the incident;

5. The witness of the incident or the discovering agency's [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) If a critical incident occurs, 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 Protective Services Branch or Child Protective Services Branch, as applicable;

b. The participant's case manager;

c. The participant's guardian[designated representative]; and

d. DBHDID, via fax, if abuse, neglect, or exploitation is suspected; and

3. Document the incident on a Critical Incident Report form.[i]

(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 guardian[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.[i]

(c) The witness of the critical incident or the discovering agency's [discovery agency] employee or volunteer shall record details of the critical incident on a Critical[an] Incident Report form.[i]

(d)~~[1.]~~ The SCL provider shall:

1. Conduct an immediate investigation and involve the participant's case manager in the investigation; and

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;

b.[2.] Details of the critical incident; and

c.[3.] Relevant participant information including:

(i)[a.] Axis I diagnosis or diagnoses;

(ii)[b.] Axis II diagnosis or diagnoses;

(iii)[c.] Axis III diagnosis or diagnoses;

(iv)[d.] A listing of recent medical concerns;

(v)[e.] An analysis of causal factors; and

(vi)[f.] Recommendations for preventing future occurrences.[i]  
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 at the time of death;

(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) The most recent[A-current] psychological evaluation of the participant;

(i) A full life history of the participant[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)~~(a)~~[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 (b)1. [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 age[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 which 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 func-

tioning, 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 a alternative primary caregiver;

3. The lack of appropriate placement for the individual due to:

a. Loss of housing; ~~or~~

b. Loss of funding; 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; 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 ~~guardian[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 ~~if[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 established in this subsection.[follows:]

(a) The department shall, at a minimum, annually update the waiting list information about an individual during the birth month of ~~that[an]~~ individual.

(b) The individual or individual's ~~guardian[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 ~~guardian'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 ~~IDP[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 ~~guardian[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 ~~guardian[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 ~~guardian[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 ~~guardian[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 ~~guardian[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 ~~guardian[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 ~~guardian[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 ~~205.6317(3)[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 shall 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 ~~guardian[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:

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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 **guardian[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. **Employee Policies and Requirements Apply to Subcontractors. Any policy or requirement established in this administrative regulation regarding an employee shall apply to a subcontractor.**

**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) The department shall not grant an appeal regarding a category of need determination made pursuant to Section 7 of this administrative regulation.

Section 11. **Transition from 907 KAR 1:145. (1) There shall be a one (1) year transition period, based on each recipient's birth month, to enable an individual who is receiving SCL services in accordance with 907 KAR 1:145 on the effective date of this administrative regulation to transition to receiving services in accordance with this administrative regulation.**

**(2) During the one (1) year transition period, in the month of an SCL waiver recipient's birthday, an SCL waiver recipient who remains approved to receive SCL waiver services shall transition to receiving services in accordance with this administrative regulation rather than in accordance with 907 KAR 1:145.**

**(3) Funding for the SCL waiver program shall be associated with and generated through SCL waiver program participants rather than SCL waiver service providers.**

**Section 12.[10.]** Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) The "Supports for Community Living Policy Manual", **November[July] 2012** edition;
  - (b) The "Person Centered Plan of Care", **November[July] 2012** edition;
  - (c) The "Supported Employment Long-Term Support Plan", December 2011 edition;
  - (d) The "Critical Incident Report", **November 2012[August 13, 2012]** edition;
  - (e) The "Incident Report", **November 2012[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 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: November 14, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

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

### **CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Community Alternatives (As Amended at ARRS, December 17, 2012)**

#### **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. Funding for the SCL waiver program is associated with and generated through SCL waiver program participants rather than SCL waiver service providers.]**

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. **Results in** an impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and

2. **[Is/Are]** a direct result of, or **[is/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.

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(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; or**

(d) **Sets a standard related to an exceptional support request.**

(7) "Immediate family member" is defined by KRS 205.8451(3).

(7)(8) "Intellectual disability" or "ID" means:

(a) A demonstration:

1. ~~(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:

- Communication;
- Self-care;
- Home living;
- Social or interpersonal skills;
- Use of community resources;
- Self-direction;
- Functional academic skills;
- Work;
- Leisure; or
- Health and safety; and

(b) **An intellectual disability that had an onset before which occurred prior to the individual reaching eighteen (18) years of age.**

(b) **Which is demonstrated before an individual reaches] eighteen (18) years of age.**

(8)(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.

(9)(10) "Participant" means a Medicaid recipient who:

(a) Meets patient status criteria for an intermediate care facility for an individual with an intellectual ~~for 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.

(10)(11) "Participant directed service" means an option to receive a service which is based on the principles of self-determination and **person-centered/person-center** thinking.

(11)(12) "POC" means Plan of Care.

(12)(13) "State plan" is defined by 42 C.F.R. 430.10.

(13)(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.

**(3)(a) The reimbursement provisions established in this administrative regulation shall apply after a recipient transitions to the new SCL waiver program established in 907 KAR 12:010.**

**(b) Prior to that transition, the services provided pursuant to 907 KAR 1:145 shall be reimbursed pursuant to 907 KAR 1:155.**

**(c) Funding for the SCL waiver program shall be associated with and generated through SCL waiver program participants rather than SCL waiver service providers.**

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              |
| Community Access-Group                                           | 15 minutes                       | \$4.00              |
| Community Guide                                                  | 15 minutes                       | \$8.00              |
| Consultative, Clinical and Therapeutic                           | 15 minutes                       | \$22.50             |
| <b>Day Training through December 31, 2013</b>                    | <b>15 minutes</b>                | <b>\$2.50</b>       |
| <b>Day Training effective January 1, 2014</b>                    | 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 <del>[-]</del> (4 to 8 residents)            | 24 hours                         | \$130.35            |
| Residential Level I <del>[-]</del> (3 or less residents)         | 24 hours                         | \$172.46            |
| Residential <b>[Level-I]</b> - 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             |
| <b>On-Site Supported Employment</b>                              | 15 minutes                       | <b>\$10.25</b>      |

(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.

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(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 \$1,800 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 a physical therapy assistant shall in combination not exceed fifty-two (52) units per month.

(14) Occupational therapy and occupational therapy by an 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 shall be reimbursed:

a.1. If provided as a participant directed service ~~shall be reimbursed~~:

a.1.1. Based on the mileage; and

b.2. At two thirds of the rate established in 200 KAR 2:006, Section 8(2)(d), if/when provided by an individual. The rate shall be adjusted quarterly in accordance with 200[201] KAR 2:006, Section 8(2)(d); or

2. If(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; and

(b) A maximum off.

(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 the service meets the requirements for an exceptional support~~[if qualifying as an exceptional supported]~~ in accordance with the Kentucky 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) or fewer 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

4. Respite.

(4)[(a)] A service that qualifies as an exceptional support shall:

a)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 4(2)(a)[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 participant~~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 "Kentucky Exceptional Supports Protocol", November~~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

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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: November 14, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

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



ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
Office of Property Valuation  
(Amended After Comments)

**103 KAR 5:220. Installment payment plan guidelines for third party purchasers of certificates of delinquency.**

RELATES TO: KRS 134.490(5)(h)

STATUTORY AUTHORITY: KRS 134.490(5)(h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 134.490 authorizes the Department of Revenue to promulgate Administrative Regulations to establish a process for an installment method of payment for the redemption of certificates of delinquency by a delinquent taxpayer. In compliance with this subsection, this new administrative regulation establishes a process by which third party purchasers shall grant installment payments and establishes the fee associated with this service.

Section 1. Definitions. (1) "Base amount" means the amount paid by a third-party purchaser for a certificate of delinquency;

(2) "Certificate of delinquency" has the same meaning as in KRS 134.010;

(3) "Default" means:

(a) The failure to pay on or within fifteen (15) days of a payment due date under a payment plan document; or

(b) Commencement of any legal action by a person other than the third-party purchaser affecting the title or requiring the sale of the subject property.

(4) "Department" means the Department of Revenue;

(5) "Optional certificate" means a certificate of delinquency that is not a qualifying certificate;

(6) "Payment plan" means a monthly installment plan described in the payment plan document;

(7) "Payment plan document" means the agreement between the property owner and the third-party purchaser detailing the terms of a payment plan;

(8) "Person" means any individual, corporation, business trust, estate, trust, partnership, limited liability entity, association, organization, joint venture, government, or any subdivision, agency or instrumentality thereof, or any other legal or commercial entity;

(9) "Processing fee" means a fee that may be imposed by a third-party purchaser for administering a payment plan, as provided in KRS 134.490(5)(c). [The processing fee shall not exceed eight (8) dollars per month during the term of the payment plan];

(10) "Property owner" means the "taxpayer" as defined in KRS 134.010, or any other owners of real property on which an outstanding certificate of delinquency is held by a third-party purchaser;

(11) "Qualifying certificate" means a certificate of delinquency purchased after June 1, 2012 by a third-party purchaser required to register with the department under KRS 134.129;

(12) "Subject property" means the property against which the lien related to a certificate of delinquency is attached; and

(13) "Third-party purchaser" means a "third-party purchaser" as defined KRS 134.010. Third-party purchaser as used in this administrative regulation also includes any assignee of a certificate of delinquency.

Section 2. Notice of Payment Plan Availability. (1) Any third-party purchaser who owns a qualifying certificate shall provide notice of the availability of a payment plan to the property owner as required by KRS 134.490(3)(d)5, unless the conditions established by Section 7 of this administrative regulation apply. The notice shall include, at a minimum, the following information:

(a) A statement that a payment plan is available upon written request from the property owner;

(b) The mailing address and the physical address where a request may be delivered. An electronic address may also be pro-

vided at the option of the third-party purchaser to accept requests in an electronic format;

(c) The date the certificate of delinquency was purchased by the third-party purchaser as provided in KRS 134.128, or paid and assigned as provided in KRS 134.126(8); and

(d) A statement that the option to request a payment plan shall expire unless a written request for a payment plan is received by the third-party purchaser within twelve (12) months of the date the certificate of delinquency was purchased by the third-party purchaser.

Section 3. Submission and Review of Payment Plan Requests.

(1) Any property owner with property subject to a qualifying certificate may submit a written request for a payment plan to the third-party purchaser holding the qualifying certificate within twelve (12) months of the date the certificate of delinquency was purchased by the third-party purchaser as provided in KRS 134.128; or paid and assigned as provided in KRS 134.126(8). The request shall be made in accordance with the process established by the third-party purchaser.

(2) Upon receipt of a payment plan request, the third-party purchaser shall review the request, and if the request is timely and none of the conditions listed under Section 7 of this administrative regulation apply, the third-party purchaser shall prepare and deliver payment plan documents to the property owner in accordance with the provisions of this administrative regulation.

(3) Beginning with receipt of a request for a payment plan, and during the term of any payment plan, the third-party purchaser shall not ~~assign the certificate of delinquency or~~ undertake any enforcement remedies available under the law for the collection of the amount due on a certificate of delinquency. However, this provision shall not preclude a third-party purchaser from engaging in legal proceedings to protect its interest in property subject to its lien and to charge reasonable legal and administrative fees in accordance with KRS 134.452(3). If the request for a payment plan is rejected because it is not timely or one of the conditions listed in Section 7 of this administrative regulation applies, or if the property owner defaults, the third-party purchaser may pursue any legal remedies available to the third-party purchaser under the law for collection of the amount due.

(4) A third-party purchaser may accept a request for a payment plan that is not timely filed. A payment plan entered into under this subsection shall be governed by the provisions of this administrative regulation.

Section 4. Payment Plan Requirements and Terms. (1) The payment plan shall provide for equal monthly installments, except the amount due in the final month may be adjusted to reconcile the total amount paid with the total amount due. The payment plan shall be offered for a minimum of twelve (12) months, unless the property owner requests a shorter term.

(2) The terms and conditions of the payment plan shall be established by a payment plan document, which shall be signed by the property owner and the third-party purchaser. The third-party purchaser shall provide a copy of the executed document to the property owner. The payment plan document shall be effective upon receipt by the third-party purchaser.

(3) The payment plan document shall include the following:

(a) A description of the subject property and the tax bill covered by the certificate of delinquency;

(b) The base amount due at the time the payment plan document is executed;

(c) The total amount of pre-litigation attorney fees and administrative fees incurred and accrued as provided in KRS 134.452 and due at the time the payment plan document is executed;

(d) The amount of interest accrued at the time the payment plan document is executed, calculated as provided in KRS 134.452 and 134.125;

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(e) The term of the payment plan and number of monthly payments;

(f) The amount of interest that will accrue over the term of the payment plan, assuming payments are made according to the payment plan schedule;

(g) The amount of the monthly processing fee imposed;

(h) The monthly payment amount due, as determined as provided in Section 5 of this **administrative** regulation;

(i) The date the monthly payment amount is due;

(j) A statement that the **taxpayer shall be in default for the failure to pay within fifteen (15) days of a payment due date, as provided in Section 1(3)(a) of this administrative regulation, which would allow the third party purchaser, at his discretion, to discontinue accepting payments in accordance with the plan and pursue any other legal remedy available to collect the debt** [payment plan will be considered in default and may be terminated if payment is not received within fifteen (15) business days of the due date];

(k) Acceptable methods of payment;

(l) The mailing address and delivery address where payments are to be made, if the payments are to be mailed; **and**

(m) Any other terms and conditions mutually agreed upon by the property owner and third-party purchaser; **and**

**(n) A statement that the third party purchaser shall notify the taxpayer within seven (7) business days by certified mail if the certificate of delinquency related to the payment plan is assigned. The notification shall include the name, address, and telephone number of the assignee.**

**(4)(3)** The third-party purchaser may limit the method of payment accepted to those methods reasonably determined to ensure payment, provided that a third-party purchaser shall accept certified checks, cashier's checks and cash in payment. A third-party purchaser may at the discretion of the third-party purchaser, also accept ACH transfers, wire transfers, credit card, personal check, or other means of payment.

**(5)(4)** The third-party purchaser shall not require more than one (1) payment per month.

**(6) An assignee of a certificate of delinquency shall abide by the terms of a payment plan related to a certificate of delinquency.**

Section 5. Calculation of the Monthly Amount Due and Crediting of Payments. (1) Interest shall be calculated during the term of the payment plan on the outstanding balance of the base amount as required by KRS 134.125.

(2) To determine the monthly payment due, the third-party purchaser shall include the following to establish the total amount due, and shall then calculate a monthly payment, with any adjustment necessary for payments to equal the total amount due made in the last month of the payment plan:

(a) The base amount due;

(b) Interest:

1. Accrued prior to the effective date of the payment plan; and

2. Calculated on the declining balance of the base amount over the term of the payment plan as provided in subsection (1) of this section.

(c) Pre-litigation attorney fees and administrative fees imposed under KRS 134.452 accrued at the time the payment plan is agreed to; and

(d) The monthly processing fee amount multiplied by the number of months the payment plan will be in effect.

(3) Payments shall be credited by the third-party purchaser on the day the payment is received.

(4) Payment amounts received shall be credited as follows:

(a) First, to the monthly processing fee, which shall become due on the first day of each calendar month;

(b) Second, to the interest due;

(c) Third, to outstanding pre-litigation attorney fees and administrative fees imposed under KRS 134.452 and included as part of the payment plan document; and

(d) Fourth, to reduce the base amount due.

(5) If multiple certificates of delinquency are included under one payment plan document, the third-party purchaser shall apply payments based on the earliest date of attachment of the lien to

the subject property.

Section 6. Default. (1) ~~Upon default by a property owner under a payment plan document, the payment plan shall be terminated and the third-party purchaser shall provide written notice of the default and termination to the property owner within fifteen (15) business days.~~

~~(2)~~ The third-party purchaser may charge a processing fee for the month in which the default occurs, but shall not charge a processing fee for any subsequent month.

~~(2)(3)~~ In determining the outstanding amount due after a default, all payments received from the property owner and already credited as provided in Section 5 of this administrative regulation shall remain as credited under Section 5 of this administrative regulation. Any additional payments received after a default shall be applied as follows:

(a) First, to the payment of unpaid processing fees of the period prior to default, including the processing fee due in the month the default occurred;

(b) Second, to outstanding interest due;

(c) Third, to outstanding **fees charged as set forth in KRS 134.452** ~~[pre-litigation attorney fees and administrative fees imposed, as permitted under KRS 134.452 and included as part of the payment plan document]~~; and

(d) Fourth, to reduce the base amount due.

Section 7. Conditions Under Which A Payment Plan Is Not Required. A third-party purchaser shall not be required to offer a payment plan to a property owner under the following circumstances:

(1) The property owner has previously defaulted on a payment plan with that third-party purchaser; or

(2) An agreed judgment, agreed order, or other court order is in place that addresses the payment of the underlying tax claim or claims covered by a certificate of delinquency.

Section 8. Optional Payment Plans. (1) A third-party purchaser who is not required to register with the department under KRS 134.129, or who holds optional certificates of delinquency may offer payment plans to property owners under the same terms, conditions, and requirements established by this administrative regulation.

(2) Any payment plan agreement between a third-party purchaser and a property owner in existence on the effective date of this administrative regulation shall remain in effect according to the terms of the existing agreement. **A [The] third-party purchaser shall not impose the processing fee authorized by KRS 134.490(5)(c) as part of an installment payment plan agreement relating to a certificate or certificates of delinquency purchased on or before June 1, 2012 [this regulation].**

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: August 31, 2012

FILED WITH LRC: September 4, 2012 at 3 p.m.

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Devon Hankins, (502) 564-6660 (phone)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides details about how a third party purchaser of certificates of delinquency will notify a delinquent taxpayer about the availability of an installment payment plan. It provides guidance on the terms and conditions of the installment payment plan and it specifies how payments are to be applied by the third party purchasers.

(b) The necessity of this administrative regulation: This regulation is needed to help ensure all third party purchasers of certificates of delinquency are consistent and equitable in the terms offered as part of the installment payment plans offered to delinquent taxpayers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 134.490(5) requires third party purchasers to offer an installment payment plan upon written request of a delinquent taxpayer. This regulation provides more details to the general requirements authorized by the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will help ensure that all payment plans offered by third party purchasers are fair and equitable to each delinquent taxpayer.

(2) If 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.

(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: Third party purchasers of certificates of delinquency will be affected. For the 2012 calendar year, there are 115 third party purchasers registered with the Department of Revenue.

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

(a) List 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 third party purchasers will have to develop an installment payment plan agreement and they will likely need some reprogramming of existing collection software or a new software program that can accurately track the payments made by the taxpayer and calculate new balances as payments are made.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is not known what costs will have to be incurred by the third party purchasers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More certificates of delinquency will be paid without having to resort to costly foreclosure proceedings.

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

(a) Initially: Minimal costs will be incurred by the Department of Revenue.

(b) On a continuing basis: Minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The minimal costs incurred can be absorbed in current budget appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No new fees will be administered by the Department of Revenue to implement this regulation. Third party purchasers will be entitled to an administrative fee not to exceed \$8.00 per month for each installment payment plan as provided in KRS 134.490(5)(c).

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

(9) TIERING: Is tiering applied? Tiering is not applied. Only third party purchasers as defined in KRS 134.010 shall be allowed to offer a payment plan under the terms established herein, and this regulation treats all third party purchasers the same.

#### 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 Revenue within the Finance and Administration Cabinet.

(2) Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 134.490 (5).

(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? The costs associated with initially establishing this regulation will be minimal and will be absorbed into the department operating budget.

(d) How much will it cost to administer this program for subsequent years? Minimal to no costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET

#### Kentucky Board of Speech-Language Pathology and Audiology (Amended After Comments)

#### 201 KAR 17:110. Telehealth and telepractice.

RELATES TO: KRS 334A.200

STATUTORY AUTHORITY: KRS 334A.200

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.200 requires the Board of Speech Language Pathology and Audiology to adopt regulations to further the objectives stated therein.

Section 1. Definitions. (1) "Client" is defined as the person receiving the services of the speech-language pathologist or audiologist and the representative thereof if required by law;

(2) "Telehealth" is defined by KRS 334A.200(3);

(3) "Telepractice" means the practice of speech language pathology or audiology as defined by KRS 334A.020(4) and KRS 334.020(6) respectively provided by using communication technology that is two (2) way, interactive, simultaneous audio and video.;

~~(a) Provided using an electronic communication technology; or~~

~~(b) Two (2) way, interactive, simultaneous audio and video.]~~

Section 2. Client Requirements. A practitioner-patient relationship shall not commence via telehealth. An initial, in-person meeting for the practitioner and patient who prospectively utilize telehealth shall occur. A licensed health care practitioner may represent the licensee at the initial, in-person meeting. A licensee who uses telehealth to deliver speech language pathology or audiology services or who telepractices or the licensed health-care practitioner representing the licensee shall, at the initial, in-person meeting with the client:

(1) Make reasonable attempts to verify the identity of the client;

(2) Obtain alternative means of contacting the client other than electronically;

(3) Provide to the client alternative means of contacting the licensee other than electronically;

(4) Document if the client has the necessary knowledge and skills to benefit from the type of telepractice provided by the licensee;

(5) Inform the client in writing about:

(a) The limitations of using technology in the provision of telepractice;

- (b) Potential risks to confidentiality of information due to technology in the provision of telepractice;
- (c) Potential risks of disruption in the use of telepractice;
- (d) When and how the licensee will respond to routine electronic messages;
- (e) In what circumstances the licensee will use alternative communications for emergency purposes;
- (f) Who else may have access to client communications with the licensee;
- (g) How communications can be directed to a specific licensee;
- (h) How the licensee stores electronic communications from the client; and
- (i) That the licensee may elect to discontinue the provision of services through telehealth.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A licensee using telehealth to deliver services or who telepractices shall:

- (1) Limit the telepractice **to the licensee's scope of practice [to the area of competence in which proficiency has been gained through education, training, and experience];**
- (2) Maintain **continuing [current] competency or associate with a group who has experience in telehealth delivery of care [in telepractice through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge];**
- (3) **[Document the client's presenting problem, purpose, or diagnosis];**
- (4) **Use methods for protecting health information which shall include authentication and encryption technology;**
- (4) **Limit access to that information to only those necessary for the provision of services or those required by law [Use secure communications with clients, including encrypted text messages, via e-mail or secure Web sites, and not use personal identifying information in non-secure communications];** and
- (5) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the licensee disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. (1) A licensee using telehealth to deliver speech language pathology and audiology services and telepractice shall comply with:

- (a) State law by being licensed to practice speech language pathology or audiology, whichever is being telepracticed, in the jurisdiction where the practitioner-patient relationship commenced; and
- (b) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities;
- (2) If a person provides speech language pathology and audiology services via telepractice to a person physically located in Kentucky at the time the services are provided, that provider shall be licensed by the board.

(3) A person providing speech language pathology and audiology services via telepractice from a physical location in Kentucky shall be licensed by the board. This person may be subject to licensure requirements in other states where the services are received by the client.

Section 5. Representation of Services and Code of Conduct. A licensee using telehealth to deliver services or who telepractices:

- (1) Shall not engage in false, misleading, or deceptive advertising of telepractice; and
- (2) Shall not split fees.

ANNE OLSON, Board Chair

APPROVED BY AGENCY: December 12, 2012

FILED WITH LRC: December 13, 2012 at noon

CONTACT PERSON: Marcia Egbert, Board Administrator,  
Kentucky Board of Speech Language Pathology and Audiology,  
PO Box 1370, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

- (1) Provide a brief summary of
  - (a) What this administrative regulation does: This regulation establishes license fees and renewal requirements for speech language pathologists, audiologists, and speech-language pathology assistants.
  - (b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 334A.200(2).
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the telehealth requirements for speech-language pathologists, audiologist, and speech-language pathology assistants.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: NA
  - (b) The necessity of the amendment to this administrative regulation: NA
  - (c) How the amendment conforms to the content of the authorizing statutes: NA
  - (d) How the amendment will assist in the effective administration of the statutes: NA
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2300 individuals are licensed by the Board. The vast majority, 1985, are speech-language pathologists.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
  - (a) List 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 identified in question (3) will be impacted only to the extent that they practice via telehealth.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
  - (a) Initially: No new costs will be incurred by the changes.
  - (b) On a continuing basis: No new costs will be incurred by the changes.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees will be required to implement this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish any new fees. Nor does it increase any existing fees.
- (9) TIERING: Is tiering applied? Tiering is not applied to this 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? Kentucky Board of Speech Language Pathologists and Audiologists

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 334A.080(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. None

(a) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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

(b) How 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

(Amended After Comments)

704 KAR 19:002. Alternative education programs.

RELATES TO: KRS 156.070, 156.160, 160.380

STATUTORY AUTHORITY: KRS 156.160, 156.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 grants the Kentucky Board of Education the authority over the management and control of programs operated in the common schools. KRS 156.160 grants the Kentucky Board of Education the specific authority to promulgate administrative regulations establishing standards which school districts shall meet in program service to students. This administrative regulation establishes minimum requirements for the operation of alternative education programs in school districts.

Section 1. Definitions. (1) "Alternative education program" is defined by KRS 160.380.

(2) "Individual education program" or "IEP" is defined by 707 KAR 1:002.

(3) "Individual learning plan" or "ILP" means a comprehensive framework for advising students in grades six (6) through twelve (12) to engage in coursework and activities that will best prepare them to both realize college and career success and become contributing members of their communities.

(4) "Individual learning plan addendum" or "ILPA" means an action plan that addresses the changed educational needs of a student based upon entry into or exit from an alternative education program that includes, as appropriate, academic and behavioral needs of the student, criteria for the student's re-entry into the traditional program, and provisions for regular review of the student's progress throughout the school year while in an alternative education program.

(5) "Involuntary placement" means the placement of a student in an alternative education program by local district school personnel to ensure the safety of the individual student, the student body, or staff; to meet the educational needs of the student; to transition

the student to a placement as a state agency child pursuant to KRS 158.135 and 505 KAR 1:080; or for disciplinary purposes.

(6) "Off-site program" means an alternative education program located in a separate and dedicated program facility not located within the student's assigned school.

(7) "On-site program" means an alternative education program located within the student's assigned school.

(8) "Voluntary placement" means the placement of a student in an alternative education program at the request of the parent or emancipated student and with the agreement of school personnel to better meet the educational needs of the student.

Section 2. General Requirements. (1) Districts shall ensure that alternative education programs are aligned with college and career readiness outcomes for all students. Districts shall ~~strive to~~ ensure that alternative education programs are not limited in scope or design, to include best practices in training of staff and administrators for delivering services and programming to guide all students to college and career readiness [to one (1) type of program offering to students]. Students enrolled in alternative education programs may be eligible to participate in one (1) or more types of programs to address student learning needs that may include alternative digital learning environments, credit recovery, and innovative paths to graduation.

(2) Local boards of education shall adopt and annually review [review and adopt] policies and procedures [as necessary] for the operation of alternative education programs within the district. Locally-adopted policies and procedures shall include:

(a) Purpose of the program, including the ways the program supports the district's college and career readiness goals for students;

(b) Eligibility criteria, as appropriate;

(c) Process for entering students into the program;

(d) Process for transitioning students out of the program;

(e) Composition of the team to develop the ILPA, which shall include an invitation to the parents to participate and, as appropriate, an invitation to the student to participate; and

(f) Procedures for collaboration with outside agencies involved with involuntary placements, including courts or other social service agencies to address student transitions between programs.

(3) Alternative education programs may be either on-site programs at the student's assigned school or off-site programs located in a separate facility.

(4) Alternative education program curriculum shall be aligned with the Kentucky Core Academic Standards in 704 KAR 3:303, and the student learning goals in the ILP.

(5) Alternative education program students shall be subject to the minimum graduation requirements in 704 KAR 3:305 and any additional local district graduation requirements.

(6) Alternative education programs shall be subject to any applicable requirements of 703 KAR 5:225 and Kentucky's Elementary and Secondary Education Act Flexibility Waiver, or its successor.

(7) Students participating in alternative education programs shall be eligible to access extracurricular activities as allowed by local district and school council policies and by 702 KAR 7:065 or other applicable organization rules.

(8) Students participating in alternative education programs shall continue to be able to access resources and services already available in the district, such as instructional materials, tutoring, intervention, and counseling services, in furtherance of each [the] student's educational program as determined through the development of the ILPA.

Section 3. Placement of Students. (1) The placement of students by the district in alternative education programs may be either voluntary or involuntary. Students entering alternative education programs shall meet the eligibility requirements for the program established by the local board pursuant to Section 2 of this administrative regulation. The district shall ensure that an ILP, as required by 704 KAR 3:305, exists prior to placement of a student in an alternative education program.

(2) The placement decision for all students with an IEP shall be made through the admissions and release committee (ARC)

process pursuant to 707 KAR 1:320. For a child with a disability, as defined by 707 KAR 1:002, Section 1(9), the IEP shall address the changed educational delivery needs of the student based upon entry into or exit from an alternative education program. The placement decisions for students that have been identified under 29 U.S.C. §794, Section 504 of the Rehabilitation Act of 1973, as amended, shall be made through a team process consistent with the applicable requirements outlined in 34 C.F.R. Part 104.

Section 4. Costs and Expenditures. Districts shall use the statewide financial management system and chart of accounts to track costs and expenditures associated with each alternative education program operating in the district.

Section 5. Data. Districts shall utilize the student information system to enter data regarding students enrolled in alternative education programs. Data collected shall include demographic, programmatic or other data fields contained in the student information system or required by the department to track and report student participation, educational programming, achievement, and transition to and from alternative education programs.

Section 6. Personnel. Alternative education program teachers and administrators shall be subject to the teacher certification requirements in KRS 161.020, and shall comply with the classified and certified assignment restrictions outlined in KRS 160.380(3).

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 of Education  
DAVID KAREM, Chair

APPROVED BY AGENCY: December 14, 2012

FILED WITH LRC: December 14, 2012 at 10 a.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.

#### 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 minimum requirements for operating alternative education programs in local school districts.

(b) The necessity of this administrative regulation: KRS 156.160 grants the Kentucky Board of Education (KBE) the specific authority to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. This administrative regulation establishes minimum requirements for alternative school programs. Kentucky's approved waiver from the Elementary and Secondary Education Act (issued pursuant to 20 U.S.C. 7861) included the Individual Learning Plan Addendum (ILPA) process as a part of the state's recognition, accountability, and support systems. Approval of the waiver was conditioned upon the implementation of these elements.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation establishes minimum standards for alternative education programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific guidance to local school districts about general program requirements, student placement, staff certification, and data collection.

(2) If 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 schools and 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 proposed administrative regulation will require alternative programs to be aligned with college and career readiness outcomes, Kentucky's core academic standards, and graduation requirements. Districts that do not have policies and procedures to govern these programs will be required to develop them, and parents will be invited to participate in developing an ILPA to address program changes that will occur as a result of a change in placement. Data on types of programs, program costs, and student participation will be collected.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Districts that do not have policies and procedures governing alternative education will be required to develop them. For students not already required to have parent involvement in the planning process, including the development of a plan, a process will need to be developed. Additional program and student data collection will be required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is anticipated that most districts will have in place policies and procedures which may require some changes, but at low cost. The agency will work with the Kentucky School Boards Association (KSBA) to develop model policies. As many students identified under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act (Section 504) will already have processes in place that can be used to comply with parent involvement and planning elements, similar processes for other students should not require extensive development. Required data will be electronically collected through the existing statewide student information system (Infinite Campus) and financial management system and chart of accounts (MUNIS).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More students in alternative school settings will graduate college and career ready. Districts will have better information on the cost and effectiveness of programs to make better placement decisions.

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

(a) Initially: The administrative regulation will require agency staff time to develop the data collection requirements and make necessary modifications to the existing systems. Inclusion of the data requirements in this administrative regulation will reduce or eliminate vendor charges for system changes. The administrative regulation will also require staff time for technical assistance to school districts in implementation, and in the future, costs for professional development to provide training on best practices identified through this system.

(b) On a continuing basis: The administrative regulation will require agency staff time to assist districts with implementation, and in the future, costs for professional development to provide training on best practices identified through this system.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency general funds and local district general funds as may 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 new fees are required by this administrative regulation. The provisions of this administrative regulation may be implemented without additional funds at this time.

(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 indi-

rectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and 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 156.070, 156.160, 20 U.S.C. secs. 6301, et seq., U.S. Department of Education (USDE) Elementary and Secondary Education Act approved waiver issued pursuant to 20 U.S.C. 7861.

(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. For the agency, the administrative regulation will require staff time to develop the data collection requirements and make necessary modifications to the existing systems. Inclusion of the data requirements in this administrative regulation will reduce or eliminate vendor charges for system changes. The administrative regulation will also require staff time for technical assistance to school districts in implementation, and in the future, costs for professional development to provide training on best practices identified through this system. Additional financial expenditures that may be needed for implementation are not known at this time.

For local school districts, it is anticipated that most districts will have in place policies and procedures which may require some changes, but at low cost. The agency will work with the Kentucky School Boards Association to develop model policies. As many students identified under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act will already have processes in place that can be used to comply with parent involvement and planning elements, similar processes for other students should not require extensive development. Required data will be electronically collected through existing statewide systems.

(a) How much 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 is little, if any, anticipated additional cost to the agency, as responsibilities and costs will be apportioned to existing staff and fiscal resources. It is expected that local school district costs will be minimal, as the administrative regulation was designed to work with existing processes to meet the requirements, to do so at low cost, and with minimal burden to local school districts.

(d) How much will it cost to administer this program for subsequent years? It is anticipated that responsibilities and costs can continue to be apportioned among existing resources at both the state and local levels.

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's approved waiver from the Elementary and Secondary Education Act (issued pursuant to 20 U.S.C. 7861) included the Individual Learning Plan Addendum (ILPA) process as a part of the state's recognition, accountability, and support systems. Subsequent to a review of Kentucky's initial application, the United States Department of Education (USED) required the agency to include additional activities designed to support and engage English language learners, students with disabilities, and other disenfranchised students, which was accomplished by adding the ILPA process and other supports. Approval of the waiver was conditioned upon the inclusion of these elements. The administrative regulation was designed to work with existing processes to meet the requirements, to do so at low cost,

and with minimal burden to local school districts.

#### CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amended After Comments)

#### 900 KAR 6:075. Certificate of Need nonsubstantive review.

RELATES TO: KRS 216B.010, 216B.095, 216B.455, 216B.990  
STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015.

(2) "Cabinet" is defined by KRS 216B.015(5).

(3)[(2)] "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

(4)[(3)] "Days" means calendar days, unless otherwise specified.

(5)[(4)] "Formal review" means the review of applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6)[(5)] "Nonsubstantive review" is defined by KRS 216B.015(17).

(7)[(6)] "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(8)[(7)] "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

(9)[(8)] "Therapeutic cardiac catheterization outcomes" means in hospital mortality rates, door to balloon time, door to balloon time less than or equal to ninety (90) minutes, Percutaneous Coronary Intervention (PCI) related cardiac arrests and emergency open heart surgeries performed as a result of the PCI.

Section 2. Nonsubstantive Review. (1) The cabinet shall grant nonsubstantive review status to applications to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a) There is no substantial change in health services or bed capacity; and

(b)1. The change of location or relocation is within the same county; or

2. The change of location is for a psychiatric residential treatment facility.

(2) The cabinet shall grant nonsubstantive review status to applications that propose to establish an ambulatory surgical center pursuant to the conditions specified in KRS 216B.095(7).

(3) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS 216B.095(f), the Office of Health Policy shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) The proposal involves an application from a hospital to reestablish the number of acute care beds that it converted to nursing facility beds pursuant to KRS 216B.020(4), if the number of nursing facility beds so converted are delicensed;

(c) The proposal involves an application to relocate or transfer



licensed acute care beds, not including neonatal Level III beds, from one (1) existing licensed hospital to another existing licensed hospital within the same area development district and the requirements established in this paragraph are met.

1.a. There shall not be an increase in the total number of licensed acute care beds in that area development district; and

b. The hospital from which the beds are relocated delicensures those beds.

2. If neonatal Level II beds are relocated or transferred pursuant to this paragraph:

a. The receiving hospital shall have an existing licensed Level II or Level III neonatal unit;

b. A minimum of four (4) beds shall be relocated; and

c. The relocation shall not leave the transferring hospital with less than four (4) neonatal Level II beds unless the relocated beds represent all of its neonatal Level II beds;

(d) The proposal involves an application by an existing licensed hospital to:

1. Convert licensed psychiatric or chemical dependency beds to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;

2. Convert and implement the beds on-site at the hospital's existing licensed facility; and

3. Delicense the same number of psychiatric or chemical dependency beds that are converted;

(e) The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:

1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;

2. Convert and implement the beds on-site at the existing licensed hospital; and

3. Delicense the same number of converted beds;

(f) **The proposal involves an application by a psychiatric hospital to convert licensed geriatric, adult, adolescent, or child psychiatric beds to psychiatric beds and the requirements established in this paragraph are met.**

**1. The psychiatric hospital is located within twenty (20) miles of a United States military base;**

**2. The psychiatric hospital provides inpatient behavioral health services to active duty military personnel, families of active duty military personnel, and veterans;**

**3. The psychiatric hospital shall convert and implement the beds on-site at the existing licensed hospital; and**

**4. The psychiatric hospital shall delicense the same number of converted beds.**

(g) The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds between certificate of need approved nursing facilities or from a certificate of need approved nursing facility to a proposed nursing facility and the requirements established in this paragraph are met.

1. The selling or transferring facility has a certificate of need nursing facility bed inventory of at least 250 beds;

2. The transfer or relocation takes place within the same Area Development District;

3. The application includes:

a. A properly completed OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055; and

b. Evidence of the selling or transferring entity's binding commitment to sell or transfer upon approval of the application; and

4. A certificate of need approved nursing facility shall not sell or transfer more than fifty (50) percent of its certificate of need approved nursing facility beds;

(h)(g) The proposal involves an application to establish a therapeutic cardiac catheterization program and the requirements established in this paragraph are met.

1. The applicant is an acute care hospital which was previously granted a certificate of need to participate in a primary angioplasty pilot project and was evaluated after the first two (2) years of operation by an independent consultant who determined the hospital successfully demonstrated good therapeutic cardiac catheterization outcomes.

2. The applicant shall document that the nursing and technical

catheterization laboratory staff are experienced and participate in a continuous call schedule.

3. The applicant shall document that the catheterization laboratory shall be equipped with optimal imaging systems, resuscitative equipment, and intra-aortic balloon pump support.

4. The applicant shall document that the cardiac care unit nurses shall be proficient in hemodynamic monitoring and intra-aortic balloon pump management.

5. The applicant shall document formalized written protocols in place for immediate and efficient transfer of patients to an existing licensed cardiac surgical facility.

6. The applicant shall utilize a Digital Imaging and Communications in Medicine (DICOM) standard image transfer system between the hospital and the backup surgical facility.

7. The applicant shall employ an interventional program director who has performed more than 500 primary PCI procedures and who is board certified by the American Board of Internal Medicine in interventional cardiology.

8. The applicant shall document that each cardiologist performing the therapeutic catheterizations shall perform at least seventy-five (75) PCIs per year.

9. The applicant shall document the ability to perform at least 200 interventions per year, with ideal minimum of 400 interventions per year by the end of the second year of operation.

10. The applicant shall participate in the American College of Cardiology National Cardiovascular Data Registry quality measurement program.

11. The applicant shall report therapeutic cardiac catheterization data annually to the Cabinet for Health and Family Services.

12. The application shall document the applicant's ability to produce therapeutic cardiac catheterization outcomes which are within two (2) standard deviations of the national means for the first two (2) consecutive years;

(i)(f) The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds from one (1) long-term care facility to another long-term care facility and the requirements established in this paragraph are met.

1. The selling or transferring facility fails to meet regulations promulgated by the Centers for Medicare and Medicaid Services at 42 C.F.R. 483.70(a)(8) requiring nursing facilities to install sprinkler systems throughout their buildings;

2. The selling or transferring facility may sell or transfer portions of its total bed component to one (1) or more existing nursing facility;

3. The facility acquiring the beds shall be located in a county contiguous to that of the selling or transferring facility;

4. The selling or transferring facility shall be licensed only for nursing facility beds at the time of transfer or application to transfer and shall not sell or transfer more than thirty (30) of its licensed nursing facility beds to an individual facility; and

5. The application shall include a properly completed OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055;

(j)(i) The proposal involves an application to re-establish a licensed healthcare facility or service that was provided at a hospital with fifty (50) or fewer licensed beds [the healthcare facility] and which was voluntarily discontinued by the applicant under the following circumstances:

1. The termination or [of] voluntary closure of the hospital [former healthcare service or facility];

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for re-licensure; and

d. Was not an express condition of any subsequent Certificate of Need approval;

**2. The application to re-establish the healthcare facility or service that was voluntarily discontinued is filed no more than one (1) year from the date the hospital last provided the service which the applicant is seeking to re-establish. The proposed healthcare service shall be provided within the same geo-**



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graphic service area as the former healthcare service];

3. A [The] proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours; or

(k)(i)1. The proposal involves an application to establish an ambulatory surgical center which does not charge its patients and does not seek or accept commercial insurance, Medicare, Medicaid, or other financial support from the federal government; [and]

2. The proposed ambulatory surgical center shall utilize the surgical facilities of an existing licensed ambulatory surgical center during times the host ambulatory surgical center is not in operation; and

**3. A Certificate of Need approved under this subsection (k) shall state the limitations specified under this subsection (k)1. and 2.**

(3) If an application is denied nonsubstantive review status by the Office of Health Policy, the application shall automatically be placed in the formal review process.

(4) If an application is granted nonsubstantive review status by the Office of Health Policy, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(5)(a) If an application is granted nonsubstantive review status by the Office of Health Policy, any affected person who believes that the applicant is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

(c) Nonsubstantive review applications shall not be comparatively reviewed but may be consolidated for hearing purposes.

(6) If an application for certificate of need is granted nonsubstantive review status by the Office of Health Policy, there shall be a presumption that the facility or service is needed and applications granted nonsubstantive review status by the Office of Health Policy shall not be reviewed for consistency with the State Health Plan.

(7) Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Health Policy shall approve each application for a certificate of need that has been granted nonsubstantive review status if:

(a) The application does not propose a capital expenditure; or

(b) The application does propose a capital expenditure, and the Office of Health Policy finds the facility or service with respect to which the capital expenditure proposed is needed, unless the cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

(8) The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Applicant is not entitled to nonsubstantive review status; or

(b) Presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

(9) A decision to approve or disapprove an application which has been granted nonsubstantive review status shall be rendered within thirty-five (35) days of the date that nonsubstantive review status has been granted.

(10) If a certificate of need is disapproved following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

ERIC FRIEDLANDER, Acting Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 7, 2012

FILED WITH LRC: December 12, 2012 at 4 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Eric Friedlander or Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines and considerations for nonsubstantive review of applications for the certificate of need program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes; KRS 194A.030, 194A.050, 216B.040(2)(a)1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 194A.030, 194A.050, 216B.040(2)(a)1 by establishing the considerations for nonsubstantive review of certificate of need applications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 194A.030, 194A.050, 216B.040(2)(a)1 by establishing the considerations for nonsubstantive review of certificate of need applications.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds language to grant nonsubstantive review status to Certificate of Need applications for an ambulatory surgery center filed pursuant to KRS 216B.095(7) and for an ambulatory surgical center which does not charge for services and utilizes the surgical facility of a licensed ambulatory surgical center. Language was also added to grant nonsubstantive review status for an application proposing the re-establishment of a health care facility or service that was provided by a hospital with 50 or fewer licensed beds which is closing or has closed if the application is filed within one year from the date the hospital last provided the service proposed for reestablishment. The amendment also adds language to grant nonsubstantive review status for an application for a psychiatric hospital located within twenty (20) miles of a United States military base to convert licensed geriatric, adult, adolescent or child psychiatric beds to psychiatric beds.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add language related to physician owned ambulatory surgical centers as a result of the passage of HB 458 in the 2012 Regular Session of the General Assembly. This legislation was signed by the Governor on April 11, 2012. The amendment is also necessary to allow nonsubstantive review status for select Certificate of Need applications.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 194A.030, 194A.050, 216B.040(2)(a)1, and KRS 216B.095 by establishing the considerations for nonsubstantive review of certificate of need applications.

(d) How the amendment will assist in the effective administration of the statutes: The amendment adds language to grant nonsubstantive review status to Certificate of Need applications for an ambulatory surgery center filed pursuant to KRS 216B.095(7) and for an ambulatory surgical center which does not charge for services and utilizes the surgical facility of a licensed ambulatory surgical center. Language was also added to grant nonsubstantive review status for an application proposing the re-establishment of a health care facility or service that was provided by a hospital with 50 or fewer licensed beds which is closing or has closed if the application is filed within one year from the date the hospital last provided the service proposed for reestablishment. The amendment also adds language to grant nonsubstantive review status for an application for a psychiatric hospital located within twenty (20) miles of

a United States military base to convert licensed geriatric, adult, adolescent or child psychiatric beds to psychiatric beds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to file a certificate of need application. Approximately 100 entities file a certificate of need application each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As the considerations for nonsubstantive review of certificate of need applications set forth in the administrative regulation are currently established and operational, no new action will be required of regulated entities to comply with this regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide potential health care providers with a mechanism to establish health care facilities and services under nonsubstantive review.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services as well as the Office of Health Policy within 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 194A.030, 194A.050, 216B.040(2)(a)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. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No impact to revenues.

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

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

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Medicaid Services

##### Division of Healthcare Facilities Management

##### (Amended After Comments)

#### 907 KAR 9:005. Level I and II psychiatric residential treatment facility service and coverage policies[~~services~~].

RELATES TO: KRS 205.520, 216B.450, 216B.455, 216B.459  
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.160, 42 U.S.C. 1396a-d[-EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY:[EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services, has a 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]. This administrative regulation establishes Medicaid program coverage policies regarding Level I and Level II[provisions relating to coverage of] psychiatric residential treatment facility services.

Section 1. Definitions. (1) "Active treatment" means a covered Level I or II psychiatric residential treatment facility [(PRTF)]-service provided:

(a)[Including nursing care, mental health, case coordination, psychiatric therapies, task and skills training] In accordance with an individual plan of care as specified in 42 C.F.R. 441.154; and

(b)[Provided] By an individual employed or contracted by a Level I or II PRTF including a:

1. Psychiatrist;

2. Qualified mental health personnel;

3. Qualified mental health professional;

4. Mental health associate; or

5. Direct care staff person.

(2) "Acute care hospital" is defined by KRS 205.639(1).

(3) "Behavioral health professional" means:

(a) A psychiatrist;

(b) A physician licensed in Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner certified and practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A marriage and family therapist licensed and practicing in accordance with KRS 335.300;

(h) A professional clinical counselor licensed and practicing in accordance with KRS 335.500;

(i) A professional art therapist certified and practicing in accordance with KRS 309.130; or

(j) An alcohol and drug counselor certified and practicing in accordance with KRS 309.080 to 309.089.

(4) "Behavioral health professional under clinical supervision" means:

(a) A psychologist certified and practicing in accordance with KRS 319.056;

(b) A licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) A marriage and family therapist associate permitted and practicing in accordance with KRS 335.300;

(d) A social worker certified and practicing in accordance with KRS 335.080; or

(e) A professional counselor associate licensed and practicing in accordance with KRS 335.500.

(5) "Child with a severe emotional disability" is defined by KRS 200.503(2).

(6)(4) 2. Social worker; or

3. Direct care staff person; and

(c) Which shall not be subcontracted.

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

(7)(5) "Diagnostic and assessment services" means at least one (1) face-to-face specialty evaluation or specialty evaluation performed via telemedicine of a recipient's medical, social, and psychiatric status provided by a physician or qualified mental health professional that shall:

(a) Include:

1. Interviewing and evaluating; or

2. Testing and interviewing;

(b) Be documented and record all contact with the recipient and other interviewed individuals; and

(c) Result in a:

1. Diagnosis code in accordance with 45 C.F.R. 162.1000; and

2. Specific treatment recommendation.

(8)(6) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(9)(7) "Intensive treatment services" means a program:

(a) For a child:

1. With a severe emotional disability; and

a. An A severe and persistent aggressive behavior, intellectual disability, a severe and persistent aggressive behavior, or sexually acting out behavior; or

b. A developmental disability;

2. Who requires a treatment-oriented residential environment; and

3. Between the ages of four (4) to twenty-one (21) years; and

(b) That provides psychiatric and behavioral health services two (2) or more times per week to a child referenced in paragraph (a) of this subsection:

1. As indicated by the child's psychiatric and behavioral health needs; and

2. In accordance with the child's therapeutic plan of care.

(10)(8) "Interdisciplinary team" means:

(a) For a recipient who is under the age of eighteen (18) years:

1. A parent, legal guardian, or care giver of the recipient;

2. The recipient;

3. A qualified mental health professional; and

4. The staff person, if available, who worked with the recipient during the recipient's

most recent placement if the recipient has previously been in a Level I or II PRTF; or

(b) For a recipient who is eighteen (18) years of age or older:

1. The recipient;

2. A qualified mental health professional; and

3. The staff person, if available, who worked with the recipient during the recipient's

most recent placement if the recipient has previously been in a Level I or II PRTF.

(11)(9) "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).

(12)(10) "Level II PRTF" means a psychiatric residential

treatment facility that meets the criteria established in KRS 216B.450(5)(b).

(13)(11)(3) "Medicaid payment status" means a circumstance in which:

(a) The person:

1. Is eligible for and receiving Medicaid benefits; and

2. Meets patient status criteria for Level I or II psychiatric residential treatment facility [(PRTF)] services; and

(b) The facility is billing the Medicaid program for services provided to the person.

(14)(12)(4) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(15)(13) "Mental health associate" is defined by 902 KAR 20:320.

(16)(14) "Physician" is defined by KRS 311.550(12).

(17)(15) "Private psychiatric hospital" is defined by KRS 205.639(2).

(18)(16) "Psychiatric services" means:

(a) An initial psychiatric evaluation of a recipient which shall include:

1. A review of the recipient's:

a. Personal history;

b. Family history;

c. Physical health;

d. Prior treatment; and

e. Current treatment;

2. A mental status examination appropriate to the age of the recipient;

3. A meeting with the family or any designated significant person in the recipient's life; and

4. Ordering and reviewing:

a. (b) Laboratory data;

b. (iii) Psychological testing results; or

c. (iii) Any other ancillary health or mental health examinations;

(b) Development of an initial plan of treatment which shall include:

1. Prescribing and monitoring of psychotropic medications; or

2. Providing and directing therapy to the recipient;

(c) Implementing, assessing, monitoring, or revising the treatment as appropriate to the recipient's psychiatric status;

(d) Providing a subsequent psychiatric evaluation as appropriate to the recipient's psychiatric status; [and]

(e) Consulting, if determined to be necessary by the psychiatrist responsible for providing or overseeing the recipient's psychiatric services, with another physician, an attorney, police, [a] school staff, a treatment program staff, or other organization's staff [organization] regarding the recipient's care and treatment; and

(f) Ensuring that the psychiatrist responsible for providing or overseeing the recipient's psychiatric services has access to the information referenced in paragraph (e) of this subsection.

(19) [

(17)] shall be:

(a) Provided in accordance with 42 C.F.R. 440.230;

(b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate

palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;

(c) Clinically appropriate in terms of amount, scope, and duration based on generally-accepted standards of good medical practice;

(d) Provided for medical reasons rather than primarily for the convenience of the recipient, caregiver, or the provider;

(e) Provided in the most appropriate location, with regard to generally-accepted standards of good medical practice, where the service may, for practical purposes, be safely and effectively provided;

(f) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; and

(g) Provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 U.S.C. 1396d(f) and 42 C.F.R. Part 441 Subpart B for Medicaid-eligible persons under twenty-one (21) years of age.

(5)] "Psychiatric residential treatment facility" or "PRTF" is defined by KRS 216B.450(5).

(20)(18)] "Qualified mental health personnel" is defined by KRS 216B.450(6).

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

(22) "Review agency" means the:

(a) Department if the Medicaid recipient is not enrolled in a managed care organization; or

(b) Entity under contract with the department if the Medicaid recipient is not enrolled in a managed care organization.

(23)(20)] "State mental hospital" is defined by KRS 205.639(3).

(24) "Telemedicine" means the use of electronic information and telecommunications technologies to support long-distance clinical health care.

(25)(21)] "Treatment plan" means a plan created for the care and treatment of a recipient that:

(a) Is developed in a face-to-face meeting by the recipient's interdisciplinary team;

(b) Describes a comprehensive, coordinated plan of medically necessary behavioral health services that specifies a modality, frequency, intensity, and duration of services sufficient to maintain the recipient in a PRTF setting; and

(c) Identifies:

1. A program of therapies, activities, interventions, or experiences designed to accomplish the plan;

2. A qualified mental health professional, a mental health associate, or qualified mental health personnel who shall manage the continuity of care;

3. Interventions by care givers in the PRTF and school setting that support the recipient's ability to be maintained in a PRTF setting;

4. Behavioral, social, and physical problems with interventions and objective, measurable goals;

5. Discharge criteria ~~for each of the requested services~~ that specifies the:

a. Recipient-specific behavioral indicators for discharge from the service;

b. Expected service level that would be required upon discharge; and

c. Identification of the intended provider to deliver services upon discharge;

6. A crisis action plan that progresses through a continuum of care that is designed to reduce or eliminate the necessity of inpatient services;

7. A plan for:

a. Transition to a lower intensity of services; and

b. Discharge from PRTF services;

8. An individual behavior management plan;

9. A plan for the involvement and visitation of the recipient with the birth family, guardian, or other significant person, unless prohibited by a court, including therapeutic off-site visits pursuant to the treatment plan; and

10. Services and planning, beginning at admission, to facilitate the discharge of the recipient to an identified plan for home-based services or a lower level of care[KRS 216B.450(4)].

Section 2. Provider Participation. (1) In order to participate, or continue to participate, in the Kentucky Medicaid Program, a:

(a) Level I PRTF shall:

1. Have a utilization review plan for each recipient consisting of, at a minimum, a pre-admission certification review submitted via telephone or electronically to the review agency prior to admission of the recipient;

2. Perform and place in each recipient's record:

a. A medical evaluation;

b. A social evaluation; and

c. A psychiatric evaluation;

3. Establish a plan of care for each recipient which shall be placed in the recipient's record;

4. Appoint a utilization review committee which shall:

a. Oversee and implement the utilization review plan; and

b. Evaluate each Medicaid admission and continued stay prior to the expiration of the Medicaid certification period to determine if the admission or stay is or remains medically necessary;

5. [PRTF shall:

(a) Have a utilization review plan which complies with 907 KAR 1:046];

(b) Appoint a utilization review committee which complies with 907 KAR 1:046 to:

1. Oversee and implement the utilization review plan; and

2. Evaluate each Medicaid admission prior to the expiration of the Medicaid certification period to determine the admission's compliance with medical necessity criteria and other applicable Medicaid requirements;

(c) Comply with staffing requirements established in 902 KAR 20:320;

6. [(d)] Be located in the Commonwealth[~~state~~] of Kentucky;

7. [(e)] Maintain accreditation by the Joint Commission on Accreditation of Health Care Organizations [JCAHO]-or the Council on Accreditation of Services for Families and Children or any other accrediting body with comparable standards that is recognized by the state; and

8. [(f)] Comply with all conditions of Medicaid provider participation established in 907 KAR 1:671 and 907 KAR 1:672.

(b) A Level II PRTF shall:

1. Have a utilization review plan for each recipient;

2. Establish a utilization review process which shall evaluate each Medicaid admission and continued stay prior to the expiration of the Medicaid certification period to determine if the admission or stay is or remains medically necessary;

3. Comply with staffing requirements established in 902 KAR 20:320;

4. Be located in the Commonwealth of Kentucky;

5. Maintain accreditation by the Joint Commission on Accreditation of Health Care Organizations or the Council on Accreditation of Services for Families and Children or any other accrediting body with comparable standards that is recognized by the state;

6. Comply with all conditions of Medicaid provider participation established in 907 KAR 1:671 and 907 KAR 1:672;

7. Perform and place in each recipient's record a:

a. Medical evaluation;

b. Social evaluation; and

c. Psychiatric evaluation; and

8. Establish a plan of care for each recipient which shall:

a. Address in detail the intensive treatment services to be provided to the recipient; and

b. Be placed in the recipient's record.

(2) A pre-admission certification review:

(a) For a Level I PRTF shall:

1. Contain:

a. The recipient's valid Medicaid identification number;

b. A valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 C.F.R. 44.152 and 42 C.F.R. 441.153 for patients age twenty-one (21) and under;

c. A DMS-IV R diagnosis on all five (5) axes, except that failure to record an axis IV and V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level I PRTF treatment;

d. A description of the initial treatment plan relating to the admitting symptoms;

e. Current symptoms requiring inpatient treatment;

f. Information to support the medical necessity and clinical appropriateness of the services or benefits of the admission to a Level I PRTF in accordance with 907 KAR 3:130;

g. Medication history;

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h. Prior hospitalization;  
i. Prior alternative treatment;  
j. Appropriate medical, social, and family histories; and  
k. Proposed aftercare placement;  
2. Remain in effect for the days certified by the review agency;  
and  
3. Be completed within thirty (30) days; or  
(b) For a Level II PRTF for a non-emergent admission shall:  
1. Contain:  
a. The recipient's valid Medicaid identification number;  
b. A valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 C.F.R. 44.152 and 42 C.F.R. 441.153 for patients age twenty-one (21) and under;  
c. A DSM-IV-R diagnosis on all five (5) axes, except that failure to record an axis IV and V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level II PRTF treatment;  
d. A description of the initial treatment plan relating to the admitting symptoms;  
e. Current symptoms requiring inpatient treatment;  
f. Information to support the medical necessity and clinical appropriateness of the services or benefits of the admission to a Level II PRTF in accordance with 907 KAR 3:130;  
g. Medication history;  
h. Prior hospitalization;  
i. Prior alternative treatment;  
j. Appropriate medical, social, and family histories; and  
k. Proposed aftercare placement;  
2. Remain in effect for the days certified by the review agency;  
and  
3. Be completed within thirty (30) days.  
(3) Failure to admit a recipient within the recipient's certification period shall  
require a new pre-admission review certification request.  
(4) A utilization review plan for an emergency admission to a Level II PRTF shall contain:  
(a) A completed MAP-570, Medicaid Certification of Need for Inpatient Psychiatric Services for Individuals Under Age Twenty-One (21):  
1. Completed by the facility's interdisciplinary team; and  
2. Placed in the recipient's medical record;  
(b) Documentation, provided by telephone or electronically to the review agency within two (2) days of the recipient's emergency admission, justifying:  
1. The recipient's emergency admission;  
2. That ambulatory care resources in the recipient's community and placement in a Level I PRTF do not meet the recipient's needs;  
3. That proper treatment of the recipient's psychiatric condition requires services provided by a Level II PRTF under the direction of a physician; and  
4. That the services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services are no longer needed;  
(c) The recipient's valid Medicaid identification number;  
(d) A valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 C.F.R. 441.152 and 42 C.F.R. 441.153 for recipients age twenty-one (21) and under;  
(e) A DMS-IV-R diagnosis on all five (5) axes, except that failure to record an axis IV and V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level II PRTF treatment;  
(f) 1. A description of the initial treatment plan relating to the admitting symptom; and  
2. The initial treatment plan shall provide a full description of the intensive treatment services to be provided to the recipient;  
(g) Current symptoms requiring residential treatment;  
(h) Medication history;  
(i) Prior hospitalization;  
(j) Prior alternative treatment;

(k) Appropriate medical, social, and family histories; and  
(l) Proposed aftercare placement.  
(5) [(2) A PRTF shall establish procedures and processes for review, evaluation and individual plan of care development in accordance with 907 KAR 1:016.  
(3) For an elective admission of a recipient, an independent team shall, within a  
period not more than thirty (30) days prior to the admission, complete and sign a MAP 569, Certification of Need form in accordance with 42 C.F.R. 441.152 and 42 C.F.R. 441.153, and the form shall be placed in the recipient's medical record to verify compliance with this requirement.  
(4) For an emergency admission of a recipient, a PRTF's interdisciplinary team shall complete a MAP-570, Medicaid Certification of Need for Inpatient Psychiatric Services for individuals under age twenty-one (21), and the form shall be placed in the  
recipient's medical record.  
(5) For an individual who becomes Medicaid eligible after admission, a Level I or II PRTF's interdisciplinary team shall complete a MAP-570, Medicaid Certification of Need for Inpatient Psychiatric Services for Individuals Under Age Twenty-One (21), and the form shall be placed in the recipient's medical record.  
(6) For a recipient, a Level I or II PRTF shall maintain medical records that shall:  
(a) Be;  
1. Current;  
2. Readily retrievable;  
3. Organized;  
4. Complete; and  
5. Legible;  
(b) Reflect sound medical recordkeeping practice in accordance with:  
1. 902 KAR 20:320;  
2. KRS 194A.060;  
3. KRS 434.840 through 860;  
4. KRS 422.317; and  
5. 42 C.F.R. 431 Subpart F;  
(c) Document the need for admission and appropriate utilization of services; [current, readily retrievable, organized, complete, legible and shall reflect  
sound medical recordkeeping practice, in accordance with 902 KAR 20:320, KRS  
194A.060, 434.840-860, 422.317 and 42 C.F.R. 431 Subpart F;  
(b) Document the need for admission and appropriate utilization of services;  
(c) Show that the recipient was receiving intensive treatment services in accordance with 907 KAR 1:016;]  
(d) Be maintained [in an organized central file], including information regarding payments claimed, for a minimum of six (6) [five (5)-] years or until an audit dispute or issue is resolved, whichever is longer; and  
(e) Be made available for inspection or [;] copying or provided to the following upon request:  
1. A representative of the United States Department for Health and Human Services or its designee;  
2. The United States Office of the Attorney General or its designee;  
3. The Commonwealth of Kentucky, Office of the Attorney General or its designee;  
4. The Commonwealth of Kentucky, Office of the Auditor of Public Accounts or its designee;  
5. The Commonwealth of Kentucky, Cabinet for Health and Family Services, Office of the Inspector General or its designee; [or]  
6. The department; or  
7. A managed care organization with whom the department has contracted if the recipient is enrolled with the managed care organization.

Section 3. Covered Admissions. A covered admission for a:

(1) Level I PRTF;

(a) Shall be;

1-1 prior authorized by:

1. A review agency if the admission is for a recipient who

is not enrolled with a managed care organization; or

2. A managed care organization or an entity under contract with a managed care organization to perform prior authorization reviews if the admission is for a recipient who is enrolled with a managed care organization; and

2. Reimbursed pursuant to 907 KAR 9:010; and

(b)1. Shall be limited to those for a child age six (6) through twenty (20) years of age who meets Medicaid payment status criteria; or

2. May continue based on medical necessity, for a recipient who is receiving active treatment in a Level I PRTF on the recipient's twenty-first (21st) birthday if the recipient has not reached his or her twenty-second (22nd) birthday.

(2) Level II PRTF shall be:

(a) Prior authorized;

(b) Limited to those for a child:

1.a. Age four (4) through twenty-one (21) years who meets Medicaid payment status criteria; and

b. Whose coverage may continue, based on medical necessity, if the recipient is receiving active treatment in a Level II PRTF on the recipient's twenty-first (21st) birthday and the recipient has not reached his or her twenty-second (22nd) birthday;

2. With a severe emotional disability in addition to severe and persistent aggressive behaviors, an intellectual disability, sexually acting out behaviors, or a developmental disability; and

3.a. Who does not meet the medical necessity criteria for an acute care hospital, private psychiatric hospital, or state mental hospital; and

b. Whose treatment needs cannot be met in an ambulatory care setting, Level I PRTF, or in any other less restrictive environment; and

(c) Reimbursed pursuant to 907 KAR 9:010.

Section 4. PRTF Covered Services. (1)(a) There shall be a treatment plan developed for each recipient.

(b) A treatment plan shall specify:

1. The amount and frequency of services needed; and

2. The number of therapeutic pass days for a recipient, if the treatment plan includes any therapeutic pass days.

(2) [and Coverage Criteria.

(4)] To be covered by the department:

(a) The following services shall be available to a recipient covered under Section 3 of this administrative regulation [prior authorized] and meet the requirements established in paragraph (b) of this subsection:

1. Diagnostic and assessment services;

2. Treatment plan development, review, or revision;

3. Psychiatric services;

4. Nursing services which shall be provided in compliance with 902 KAR 20:320;

5. Medication which shall be provided in compliance with 907 KAR 1:019;

6. Evidence-based treatment interventions;

7. Individual therapy which shall comply with 902 KAR 20:320;

8. Family therapy or attempted contact with family which shall comply with 902 KAR 20:320;

9. Group therapy which shall comply with 902 KAR 20:320;

10. Individual and group interventions that shall focus on additional and harmful use or abuse issues and relapse prevention if indicated;

11. Substance abuse education [which shall comply with 902 KAR 20:320];

12. Activities that:

a. Support the development of an age-appropriate daily living skill including positive behavior management or support; or

b. Support and encourage the parent's ability to re-integrate the child into the home;

13. Crisis intervention which shall comply with:

a. 42 C.F.R. 483.350 through 376; and

b. 902 KAR 20:320;

14. Consultation with other professionals including case managers, primary care professionals, community support workers, school staff, or others;

15. Educational activities; or

16. Non-medical transportation services as needed to accomplish objectives;

(b) A Level I PRTF service listed in paragraph (a) of this subsection shall be:

1. Provided under the direction of a physician;

2. If included in the recipient's treatment plan, described in the recipient's current treatment plan;

3. [Provided at least once per week, except for diagnostic and assessment services which shall have no weekly minimum requirement;

4.] Medically necessary; and

4.[5.] Clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

(c) A Level I PRTF service listed in subparagraph (a)7, 8, 9, 11, or 13 shall be provided by a qualified mental health professional, behavioral health professional, or behavioral health professional under clinical supervision; or

(d) A Level II PRTF service listed in paragraph (a) of this subsection shall be:

1. Provided under the direction of a physician;

2. If included in the recipient's treatment plan, described in the recipient's current treatment plan;

3. Provided at least once a week;

a. Unless the service is necessary twice a week, in which case the service shall be provided at least twice a week; or

b. Except for diagnostic and assessment services which shall have no weekly minimum requirement;

4. Medically necessary; and

5. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

(2) A Level II PRTF service listed in subparagraph (a)7, 8, 9, 11, or 13 shall be provided by a qualified mental health professional, behavioral health professional, or behavioral health professional under clinical supervision.

Section 5. Determining Patient Status. (1) The department shall review and evaluate the health status and care needs of a recipient in need of Level I or II PRTF care using the criteria identified in 907 KAR 3:130 to determine if a service or benefit is clinically appropriate.

(2) The care needs of a recipient shall meet the patient status criteria for:

(a) Level I PRTF care if the recipient requires:

1. Long term inpatient psychiatric care or crisis stabilization more suitably provided in a PRTF than in a psychiatric hospital; and

2. Level I PRTF services on a continuous basis as a result of a severe mental or psychiatric illness, including a severe emotional disturbance; or

(b) Level II PRTF care if the recipient:

1. Is a child with a severe emotional disability;

2. Requires long term inpatient psychiatric care or crisis stabilization more suitably provided in a PRTF than a psychiatric hospital;

3. Requires Level II PRTF services on a continuous basis as a result of a severe emotional disability in addition to a severe and persistent aggressive behavior, an intellectual disability, a sexually acting out behavior, or a developmental disability; and

4. Does not meet the medical necessity criteria for an acute care hospital or a psychiatric hospital and has treatment needs which cannot be met in an ambulatory care setting, Level I PRTF, or other less restrictive environment.

Section 6. Durational Limit, Re-evaluation, and Continued Stay. (1) A recipient's stay, including the duration of the stay, in a Level I or II PRTF shall be subject to the department's approval.

(2)(a) A recipient in a Level I PRTF shall be re-evaluated at least once every thirty (30) days to determine if the recipient continues to meet Level I PRTF patient status criteria established in Section 5(2) of this administrative regulation.

(b) A Level I PRTF shall complete a review of each recipient's treatment plan [of care shall] at least once every thirty (30) days.

(c) The review referenced in paragraph (b) of this subsection shall include:

1. Dated signatures of:
  - a. Appropriate staff; and
  - b. **If present for the treatment plan meeting, a dated signature of a:] parent, guardian, legal custodian, or conservator;**
2. An assessment of progress toward each treatment plan goal and objective with revisions indicated; and
3. A statement of justification for the level of services needed including:
  - a. Suitability for treatment in a less-restrictive environment; and
  - b. Continued services.
- (d) If a recipient no longer meets Level I PRTF patient status criteria, the department shall only reimburse through the last day of the individual's current approved stay.
- (e) The re-evaluation referenced in paragraph (a) of this subsection shall be performed by:**
  1. **A review agency if the recipient is not enrolled with a managed care organization; or**
  2. **A managed care organization or entity under contract with a managed care organization in which the recipient is enrolled if the recipient is enrolled in a managed care organization.**
- (3) A Level II PRTF shall complete by no later than the third (3rd) business day following an admission, an initial review of services and treatment provided to a recipient which shall include:
  - (a) Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;
  - (b) An assessment of progress toward each treatment plan goal and objective with revisions indicated; and
  - (c) A statement of justification for the level of services needed including:
    1. Suitability for treatment in a less-restrictive environment; and
    2. Continued services.
- (4)(3)(a)** For a recipient aged four (4) to five (5) years, a Level II PRTF shall complete a review of the recipient's treatment plan of care at least once every fourteen (14) days after the initial review referenced in subsection (3) of this section.
- (b) The review referenced in paragraph (a) of this subsection shall include:
  1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;
  2. An assessment of progress toward each treatment plan goal and objective with revisions indicated; and
  3. A statement of justification for the level of services needed including:
    - a. Suitability for treatment in a less-restrictive environment; and
    - b. Continued services.
- (5)(4)(a)** For a recipient aged six (6) to twenty-two (22) years, a Level II PRTF shall complete a review of the recipient's treatment plan of care at least once every thirty (30) days after the initial review referenced in subsection (3) of this section.
- (b) The review referenced in paragraph (a) of this subsection shall include:
  1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;
  2. An assessment of progress toward each treatment plan goal and objective with revisions indicated; and
  3. A statement of justification for the level of services needed including:
    - a. Suitability for treatment in a less-restrictive environment; and
    - b. Continued services.

Section 7. [shall be:

- (1) Preauthorized;
- (2) Limited to those for children age six (6) through twenty (20) years of age who meet Medicaid payment status criteria. Coverage may continue, based on medical necessity, for a recipient who is receiving active treatment in a PRTF on his 21<sup>st</sup> birthday so long as he has not reached his 22<sup>nd</sup> birthday; and
- (3) Reimbursed in accordance with 907 KAR 9:040.

Section 4. Durational Limitations. Recipient stays shall be subject to utilization review by the cabinet.

Section 5. Determining Patient Status. (1) The department shall review and evaluate the health status and care needs of a

recipient in need of inpatient psychiatric care using the same standards as established for inpatient psychiatric hospital care in 907 KAR 1:016.

(2) The care needs of a recipient shall meet PRTF patient status criteria only if:

- (a) The individual meeting the patient status criteria in 907 KAR 1:016 requires long-term inpatient psychiatric care or crisis stabilization more suitably provided in a PRTF rather than a psychiatric hospital; and
- (b) The recipient requires PRTF services on a continuous basis as a result of a severe mental or psychiatric illness, including severe emotional disturbances.

Section 6. Reevaluation of Need for Services. Patient status shall be reevaluated for a PRTF recipient at thirty (30) day intervals. If a reevaluation reveals the recipient no longer requires PRTF care, payment shall continue only through the last day for which the stay is certified.

Section 7. Exclusions and Limitations in Coverage. (1) The following shall not be covered as Level I or II PRTF services:

- (a) 1. Chemical dependency treatment services if the need for the services is the primary diagnosis of the recipient, ~~except~~. However, chemical dependency treatment services shall be covered as incidental treatment if minimal chemical dependency treatment is necessary for successful treatment of the primary diagnosis;
- (b) Outpatient services;
- (c) Pharmacy services, which shall be covered [as pharmacy services] in accordance with 907 KAR 1:019; ~~or~~
- (d) Durable medical equipment, which shall be covered [as a durable medical equipment benefit] in accordance with 907 KAR 1:479;
- (e) Hospital emergency room services, which shall be covered in accordance with 907 KAR 10:014;
- (f) Acute care hospital inpatient services, which shall be covered in accordance with 907 KAR 10:012;
- (g) Laboratory and radiology services, which shall be covered in accordance with 907 KAR 10:014 or 907 KAR 1:028;
- (h) Dental services, which shall be covered in accordance with 907 KAR 1:026;
- (i) Hearing and vision services, which shall be covered in accordance with 907 KAR 1:038; or
- (j) Ambulance services, which shall be covered in accordance with 907 KAR 1:060.

(2) A Level I or II PRTF shall not charge a recipient or responsible party representing a recipient any difference between private and semiprivate room charges.

(3) The department shall not reimburse for Level I or II PRTF services for a recipient [Services shall not be covered] if appropriate alternative services are available for the recipient in the community.

(4) The following shall not qualify as reimbursable in a PRTF setting [for a PRT service]:

- (a) An admission that is not medically necessary;
- (b) Services for an individual:
  1. With a major medical problem or minor symptoms;
  2. ~~(c) An individual~~ Who might only require a psychiatric consultation rather than an admission to a PRTF [psychiatric facility]; or
  3. ~~(d) An individual~~ Who might need only adequate living accommodations, economic aid, or social support services.

Section 8. Reserved Bed **and Therapeutic Pass** Days. (1)(a) The department may cover a bed reserve day for an acute hospital admission, a state mental hospital admission, a private psychiatric hospital admission, or an admission to a psychiatric bed in an acute care hospital for a recipient's absence from a Level I or II PRTF if:

1. ~~(a)~~ The recipient:
  - a. ~~1.~~ Is in Medicaid payment status in a Level I or II PRTF;
  - b. ~~2.~~ Has been in the Level I or II PRTF overnight for at least one (1) night;
  - c. ~~3.~~ Is reasonably expected to return requiring Level I or II PRTF care; and
  - d. ~~4.~~ Has not exceeded the bed reserve day limit established in paragraph (b) of this subsection ~~[(2) of this section]~~; and



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2.[(b)] The Level I or II PRTF's[PRTF"s] occupancy percent is at least fifty (50) percent.

(b)[(2)(a)] The annual bed reserve day limit per recipient [per Level I or II PRTF] shall be five (5) days per calendar year in aggregate for any combination of bed reserve days associated with an acute care hospital admission, a state mental hospital admission, a private psychiatric hospital admission, or an admission to a psychiatric bed in an acute care hospital.

(c)[- (b)] The department may allow a recipient to exceed the limit established in paragraph (b)[(a)] of this subsection, if the department determines that an additional bed reserve day is in the best interest of the recipient.

(2)(a) The department may cover a therapeutic pass day for a recipient's absence from a Level I or II PRTF if:

1. The recipient:

a. Is in Medicaid payment status in a Level I or II PRTF;

b. Has been in the Level I or II PRTF overnight for at least one (1) night;

c. Is reasonably expected to return requiring Level I or II PRTF care; and

d. Has not exceeded the therapeutic pass day limit established in paragraph (b) of this subsection; and

2. The Level I or II PRTF's occupancy percent is at least fifty (50) percent.

(b) The annual therapeutic pass day limit per recipient shall be fourteen (14) days per calendar year.

(c) The department may allow a recipient to exceed the limit established in paragraph (b) of this subsection, if the department determines that an additional therapeutic pass day is in the best interest of the recipient.

(3)(a) The bed reserve day and therapeutic pass day count for each recipient shall be zero (0) upon adoption of this administrative regulation.

(b) For subsequent calendar years, the bed reserve day and therapeutic pass day count for each recipient shall begin at zero (0) on January 1 of the calendar year.

(4) An authorization decision regarding a bed reserve day or therapeutic pass day in excess of the limits established in this section shall be performed by:

(a) A review agency if the decision is regarding a recipient who is not enrolled with a managed care organization; or

(b) A managed care organization or an entity under contract with a managed care organization to perform authorization reviews if the decision is regarding a recipient who is enrolled with a managed care organization.

(5)(a) An acute care hospital bed reserve day shall be a day when a recipient is temporarily absent from a Level I or II PRTF due to an admission to an acute care hospital.

(b) A state mental hospital bed reserve day, private psychiatric hospital bed reserve day, or psychiatric bed in an acute care hospital bed reserve day, respectively, shall be a day when a recipient is temporarily absent from a Level I or II PRTF due to receiving psychiatric treatment in a state mental hospital, private psychiatric hospital, or psychiatric bed in an acute care hospital respectively.

(c) A therapeutic pass day shall be a day when a recipient is temporarily absent from a Level I or II PRTF for a therapeutic purpose that is:

1. Stated in the recipient's treatment plan; and

2. Approved by the recipient's treatment team.

(6) A Level I or II PRTF's occupancy percent shall be based on a midnight census.

Section 9. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies or does not provide federal financial participation for the policy; or

(2) Disapproves the policy.[The department shall cover reserved bed days in accordance with the following specified upper limits and criteria:

(1) Upper limits for reserved beds shall be applied as follows:

(a) A maximum of fourteen (14) days per admission for an acute care hospital stay;

(b) A maximum of fourteen (14) days per calendar year for an admission to a mental hospital or a psychiatric bed of an acute care hospital;

(c) A maximum of twenty-one (21) days per six (6) months during a calendar year for other leaves of absence; and

(d) A maximum of thirty (30) consecutive days for hospital and other leaves of absence combined.

(2) The following criteria shall be met for reserved bed days to be covered:

(a) The recipient shall be in Medicaid payment status in the PRTF and shall have been in the facility at least overnight;

(b) The recipient shall be reasonably expected to return to PRTF level of care;

(c) Due to the demand at the facility for PRTF care, there is likelihood the bed would be occupied by some other patient, if it had not been reserved;

(d) Hospitalization shall be in a Medicaid-participating hospital with the admission appropriately approved by the department; and

(e) For a leave of absence other than for hospitalization, the recipient's physician orders, and the recipient's plan of care shall provide for, a leave, which may include a leave of absence to visit with relatives and friends.]

Section 10.[9.] Appeal Rights. (1) An appeal of a negative action regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 11.[40.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21)", revised 5/90; and

(b) "MAP-570, Medicaid Certification of Need for Inpatient Psychiatric Services for Individuals Under Age Twenty-one (21)", revised 5/90.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, [Third Floor East,]Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 13, 2012

FILED WITH LRC: December 13, 2012 at noon

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Jill Hunter or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid coverage policies regarding Level I and II psychiatric residential treatment facility (PRTF) services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid coverage policies regarding Level I and II PRTF services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid coverage policies regarding Level I and II PRTF services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid coverage policies



regarding Level I and II PRTF services. If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Previously, Kentucky law established one category of psychiatric residential treatment facility services. In 2010, the Kentucky legislature enacted legislation which created two levels of PRTF services – Level I and II. This amendment replaces the coverage policies for the prior lone designation of psychiatric residential treatment facility services with coverage policies for Level I and II PRTF services respectively. The amendments after comments include: inserting a definition of behavioral health professional and of behavioral health professional under clinical supervision as recommended by the Children's Alliance; authorizing behavioral health professionals and behavioral health professionals under clinical supervision to provide individual therapy, family therapy, group therapy, substance abuse education, and crisis intervention as recommended by the Children's Alliance; establishing that diagnostic and assessment services include specialty evaluations performed via telemedicine as recommended by the Children's Alliance; inserting a definition of telemedicine; revising the definition of diagnostic and assessment services (as recommended by the Children's Alliance) to clarify that testing is not always a component of diagnostic and assessment services; rephrasing the intensive treatment services definition to clarify that "severe and persistent aggressive behavior" does not also apply to an intellectual disability (as recommended by the Children's Alliance); clarifying the psychiatric services definition (as recommended by the Children's Alliance) to establish that consulting with various parties is a component of psychiatric services if determined to be necessary by the psychiatrist responsible for providing or overseeing the recipient's psychiatric services; clarifying that a psychiatrist overseeing a recipient's psychiatric services has access to the information resulting from any consultation with various parties; inserted a definition of "review agency" (as recommended by the Children's Alliance and established that the agency performs prior authorizations regarding covered admissions; removed the requirement (as recommended by the Children's Alliance) that discharge criteria must be identified for each requested service; deleted the statement that covered admissions shall be reimbursed per 907 KAR 9:010 as 907 KAR 9:010 establishes reimbursement policies; eliminated the requirement that all services have to be provided at least once per week and inserted language establishing that a treatment plan shall specify the amount and frequency of services needed as well as shall establish the number of therapeutic pass days (if any) in a recipient's treatment plan; rewrote the introductory statement regarding covered services (in response to a recommendation by the Children's Alliance); clarified (as recommended by the Children's Alliance) that a particular covered service is not solely treatment plan development but treatment plan development, review or revision; clarified (as recommended by the Children's Alliance) that family therapy or attempted contact with family meets that particular service requirement (as recommended by the Children's Alliance as family members do not always participate in family therapy); deleted the requirement (as recommended by the Children's Alliance) that substance abuse education has to comply with 902 KAR 20:320 as 902 KAR 20:320 does not establish substance abuse education requirements; clarified (as requested by the Children's Alliance) that a Level I or II PRTF service must be described in a recipient's treatment plan if it is included in the recipient's treatment plan; clarified (as requested by the Children's Alliance) that a review of a recipient's treatment plan must include a dated signature of a parent, guardian, legal custodian, or conservator if such an individual is present for the treatment plan review; clarified (as recommended by the Children's Alliance) the party that performs a re-evaluation; added [in response to comments from the Children's Alliance and the Kentucky State Interagency Council for Services to Children with an Emotional Disability (SIAC) added therapeutic pass days fourteen (14) per recipient per calendar year with additional days available if DMS determines that additional days would be in the best interest of the recipient] as an option for a recipient's treatment; established that bed reserve days are for an inpatient hospital admission, a psychiatric hospital admission, or an admission to a psychiatric bed in an acute care hospital and that the annual bed reserve limit is five (5) days per recipient rather

than five (5) days per recipient per Level I or II PRTF as was previously stated in the administrative regulation; clarified that a recipient's bed reserve or therapeutic pass day count begins at zero (0) upon adoption of this administrative regulation; clarified that a facility's occupancy percent will be based on a midnight census; and corrected typographical errors.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comport with KRS 216B.450. The amendments after comments are necessary to adopt various recommendations or address various concerns expressed by the Children's Alliance; to address a concern expressed by the Kentucky State Interagency Council for Services to Children with an Emotional Disability (SIAC); and to clarify or more accurately state policies. Altering the bed reserve limit from five (5) days per recipient per calendar year rather than five (5) days per recipient per facility per calendar year is necessary as DMS thinks the cap per recipient is more appropriate than allotting bed reserve days for every facility for every recipient.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 216B.450 by establishing Medicaid coverage policies regarding Level I and II PRTF services. The amendments after comments conform to the content of the authorizing statutes by adopting various recommendations or addressing various concerns expressed by the Children's Alliance; by addressing a concern expressed by the Kentucky State Interagency Council for Services to Children with an Emotional Disability (SIAC); and by clarifying or more accurately stating policies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 216B.450 by establishing Medicaid coverage policies regarding Level I and II PRTF services. The amendments after comments will assist in the effective administration of the authorizing statutes by adopting various recommendations or addressing various concerns expressed by the Children's Alliance; by addressing a concern expressed by the Kentucky State Interagency Council for Services to Children with an Emotional Disability (SIAC); and by clarifying or more accurately stating policies.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and Level II psychiatric residential treatment facilities will be affected by the amendment. Level I and II PRTF beds are awarded through a certificate of need process. The Office of Certificate of Need has limited the number of Level I PRTF beds statewide to 315 and the number of Level II PRTF beds to 145 statewide. Not all Level I PRTF certificates of need have been used and currently there are no licensed or operational Level II PRTFs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Kathy Adams on behalf of the Children's Alliance stated that additional actions each of the regulated entities will have to take to comply with this administrative regulation or amendment includes the following:

"... firing current staff and hiring QMHPs if that new requirement is implemented. Potentially, the PRTF would be required to provide all financial reports/documents to all of the MCOs, which could be a huge administrative burden. A PRTF will only have three (3) days to complete an initial review. A PRTF will not be paid for holding a recipient's bed if they are below a fifty (50) per cent occupancy rate, which means they will have to absorb the costs of necessary hospitalizations or pass days when working to successfully transition the recipient home. In some instances, PRTFs will get paid a partial per diem for five (5) reserve days, but this is a significant decrease from the fourteen (14) hospital and 21 pass days currently allowed at the full per diem rate. The outcome for children will ultimately result in more hospitalizations and readmits, as well as increased costs for PRTFs. Cutting a recipient's pass days so significantly will interfere with the continuity of a recipient's treatment, negatively affecting both the PRTF and the reci-

patient."

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment imposes no cost on the regulated entities. Kathy Adams on behalf of the Children's Alliance stated the following:

"Additional costs will be incurred for terminating current staff and having to hire QMHPs. Potentially, the PRTF would be required to provide all financial reports/documents to all of the MCOs, which could be a huge administrative and financial burden. A PRTF will not be paid for holding a recipient's bed if they are below a fifty (50) per cent occupancy rate, which means they will have to absorb the costs of necessary hospitalizations or pass days when working to successfully transition the recipient home. In some instances, PRTFs will get paid a partial per diem for five (5) reserve days, but this is a significant decrease from the fourteen (14) hospital and twenty-one (21) pass days currently allowed and paid at the full per diem rate. Cutting pass days is the same as a rate cut. The outcome for children will ultimately result in more hospitalizations and re-admits, as well as increased costs for PRTFs."

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Participating Level I and II PRTFs will be recognized by the Medicaid program as authorized service providers.

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

(a) Initially: The cost depends on several variables and is indeterminable at this time. The Office of Certificate of Need limited the number of Level II PRTF beds 145 statewide and currently there are no licensed or operational Level II PRTFs. Thus, one variable is how quickly Level II PRTFs will become licensed and operational and another is how quickly Level II PRTF beds will be filled. Additionally, not all Level I PRTF beds issued a certificate of need have been used. Additionally, Level I and II PRTF services are in the scope of managed care. Some individuals are excluded from managed care; however, DMS expects that few who are excluded will need Level I or II PRTF services. DMS pays managed care organizations (MCOs) a capitated rate per enrollee which is aggregated into a monthly capitated payment to the MCO for all enrollees in its care for the month. The capitated rates vary over time and depend on the amount of utilization and cost among the categories. DMS's cost; thus, includes the capitated rates it pays to MCOs for enrollees in the MCOs care whether or not the given enrollee utilizes services (such as Level I or II PRTF services) or not. The current capitated rates that DMS pays for the population that would be eligible for Level I or II PRTF services range from \$120 per month to \$1200 per month. Again though, DMS pays the capitated rate regardless of whether a given individual received services or not.

(b) On a continuing basis: For the reasons stated in the prior response - (5)(a) – the continuing basis cost is indeterminable at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied as individuals receiving care in a Level II PRTF have more intensive needs than children in a Level I PRTF; thus, some service requirements vary accordingly.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396d(a)(16), 42 U.S.C. 1396d(h), 42 C.F.R. 441.151 and 42 C.F.R. 440.160.

2. State compliance standards. To qualify as a Level I or II PRTF, a facility must meet the criteria established in KRS 216B.450 through 457.

3. Minimum or uniform standards contained in the federal mandate. Per federal Medicaid law, inpatient psychiatric facility services for individuals under twenty-one (21) is not a mandatory Medicaid benefit, but if a state's state plan includes intermediate care facility services for individuals with mental retardation, it must also cover inpatient psychiatric facility services for individuals under twenty-one (21). Additionally, states may be required to provide inpatient psychiatric care under the early and periodic screening, diagnosis and treatment program (EPSDT). Pursuant to 42 C.F.R. 440.160, "Inpatient psychiatric services for individuals under age 21" means services that:

(a) Are provided under the direction of a physician;

(b) Are provided by:

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations, or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or by any other accrediting organization, with comparable standards, that is recognized by the State.

(c) Meet the requirements in §441.151 of this subchapter."

Additionally, 42 C.F.R. 441.151 states, "(a) Inpatient psychiatric services for individuals under age twenty-one (21) must be:

(1) Provided under the direction of a physician;

(2) Provided by:

(i) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(ii) A psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the State.

(3) Provided before the individual reaches age twenty-one (21), or, if the individual was receiving the services immediately before he or she reached age twenty-one (21), before the earlier of the following:

(i) The date the individual no longer requires the services; or

(ii) The date the individual reaches age twenty-two (22); and

(4) Certified in writing to be necessary in the setting in which the services will be provided (or are being provided in emergency circumstances) in accordance with §441.152.

(b) Inpatient psychiatric services furnished in a psychiatric residential treatment facility as defined in §483.352 of this chapter, must satisfy all requirements in subpart G of part 483 of this chapter governing the use of restraint and seclusion."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal 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 Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or au-

thorizes the action taken by the administrative regulation. 42 C.F.R. 441.151 and 42 C.F.R. 440.160.

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 depends on several variables and is indeterminable at this time. The Office of Certificate of Need limited the number of Level II PRTF beds 145 statewide and currently there are no licensed or operational Level II PRTFs. Thus, one variable is how quickly Level II PRTFs will become licensed and operational and another is how quickly Level II PRTF beds will be filled. Additionally, not all Level I PRTF beds issued a certificate of need have been used. Additionally, Level I and II PRTF services are in the scope of managed care. Some individuals are excluded from managed care; however, DMS expects that few who are excluded will need Level I or II PRTF services. DMS pays managed care organizations (MCOs) a capitated rate per enrollee which is aggregated into a monthly capitated payment to the MCO for all enrollees in its care for the month. The capitated rates vary over time and depend on the amount of utilization and cost among the categories. DMS's cost; thus, includes the capitated rates it pays to MCOs for enrollees in the MCOs care whether or not the given enrollee utilizes services (such as Level I or II PRTF services) or not. The current capitated rates that DMS pays for the population that would be eligible for Level I or II PRTF services range from \$120 per month to \$1200 per month. Again though, DMS pays the capitated rate regardless of whether a given individual received services or not.

(d) How much will it cost to administer this program for subsequent years? For the reasons stated in the prior response - 3.(c) – the subsequent years' cost is indeterminable at this time.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Healthcare Facilities Management**  
**(Amended After Comments)**

**907 KAR 9:010. Reimbursement for Level I and II [Payments for] psychiatric residential treatment facility services.**

RELATES TO: KRS 205.520, 216B.450, 216B.455, 216B.459  
 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.160, 42 U.S.C. 1396a-d, EO-2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes Medicaid reimbursement policies for Level I and Level II psychiatric residen-

tial treatment facility services provided to a Medicaid recipient who is not enrolled in a managed care organization. **A managed care organization may elect to reimburse for Level I and II psychiatric residential treatment facility services in accordance with this administrative regulation if the managed care organization so chooses. The reimbursement policies established in this administrative regulation shall not apply to a managed care organization, except the requirement that a Level I or II PRTF service shall be in accordance with 907 KAR 9:005 in order to be reimbursable under the Medicaid program[sets forth provisions relating to payments for psychiatric residential treatment facility services].**

Section 1. Definition. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(3) "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).

(4) "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).

(5) "Managed care organization" means an entity for which the department has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(6) "Per diem rate" means a Level I or II PRTF's total, all-inclusive, daily reimbursement as calculated by the department.

(7) "Recipient" is defined by KRS 205.8451(9).

Section 2. Reimbursement for Level I PRTF Services and Costs. (1) To be reimbursable under the Medicaid Program, Level I PRTF services and associated costs, respectively, shall be provided to or associated, respectively, with a recipient receiving Level I PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse for Level I PRTF services and costs referenced in subsection (4) of this section for a recipient not enrolled in a managed care organization:

(a) At the lesser of:

1. A per diem rate of \$274.01; or

2. The usual and customary charge; and

(b) An amount not to exceed the prevailing charges, in the locality where the Level I PRTF is located, for comparable services provided under comparable circumstances.

(3) The per diem rate referenced in subsection (2) of this section shall be increased each biennium by 2.22 percent.

(4) The per diem rate referenced in subsection (2) of this section, or usual and customary charge if less than the per diem rate, shall represent total Medicaid reimbursement for Level I PRTF services and costs:

(a) Including all care and treatment costs;

(b) Including costs for all ancillary services;

(c) Including capital costs;

(d) Including room and board costs; and

(e) Excluding the costs of drugs as drugs shall be:

1. Covered in accordance with 907 KAR 1:019; and

2. Reimbursed via the department's pharmacy program in accordance with 907 KAR 1:018.

Section 3. Reimbursement for Level II PRTF Services and Costs. (1) To be reimbursable under the Medicaid program, Level II PRTF services and associated costs, respectively, shall be provided to or associated, respectively, with a recipient receiving Level II PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse a per diem rate as follows for Level II PRTF services and costs for a recipient not enrolled in a managed care organization:

(a) \$345 for Level II PRTF services to a recipient who meets the rate group one (1) criteria established in subsection (3)(a) of this section[a rate group one (1) Level II PRTF];

(b) \$365 for Level II PRTF services to a recipient who meets the rate group two (2) criteria established in subsection (3)(b) of this section[a rate group two (2) Level II PRTF];

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(c) \$385 for Level II PRTF services to a recipient who meets the rate group three (3) criteria established in subsection (3)(c) of this section[a rate group three (3) Level II PRTF]; or

(d) \$405 for Level II PRTF services to a recipient who meets the rate group four (4) criteria established in subsection (3)(d) or (e) of this section[a rate group four (4) Level II PRTF].

(3)(a) Rate group one (1) criteria shall be[A rate group one (1) Level II PRTF shall be a Level II PRTF that serves recipients who are not enrolled in a managed care organization and are]:

1. Aged twelve (12) years or younger;

2. Male or female; and

3.a. Sexually reactive; or

b. Who:

(i) Have a severe and persistent aggressive behavior;

(ii) Do not have mental retardation or a developmental disability; and

(iii) Have an intelligence quotient higher than seventy (70).

(b) Rate group two (2) criteria shall be[A rate group two (2) Level II PRTF shall be a Level II PRTF which serves recipients who are not enrolled in a managed care organization and are]:

1. Aged twelve (12) years or younger;

2. Male or female; and

3.a. Sexually reactive; and

b. Who:

(i) Have a severe and persistent aggressive behavior;

(ii) Do not have mental retardation or a developmental disability; and

(iii) Have an intelligence quotient higher than seventy (70).

(c) Rate group three (3) criteria shall be[A rate group three (3) Level II PRTF shall be a Level II PRTF which serves recipients who are not enrolled in a managed care organization and are]:

1. Aged thirteen (13) years or older;

2. Male or female; and

3.a. Sexually reactive; or

b. Who:

(i) Have a severe and persistent aggressive behavior;

(ii) Do not have mental retardation or a developmental disability; and

(iii) Have an intelligence quotient higher than seventy (70).

(d) Rate group four (4) criteria shall be[A rate group three (3) Level II PRTF shall be a Level II PRTF which serves recipients who are not enrolled in a managed care organization and are]:

1. Aged thirteen (13) years or older;

2. Male or female; and

3.a. Sexually reactive; and

b. Who:

(i) Have a severe and persistent aggressive behavior;

(ii) Do not have mental retardation or a developmental disability; and

(iii) Have an intelligence quotient higher than seventy (70).

(e) Rate group four (4) criteria shall be[A rate group four (4) Level II PRTF shall be a Level II PRTF which serves recipients who are not enrolled in a managed care organization and are]:

1. Under twenty-two (22) years of age;

2. Male or female; and

3.a. Sexually reactive; or

b. Who:

(i) Have a severe and persistent aggressive behavior;

(ii) Have mental retardation or a developmental disability; and

(iii) Have an intelligence quotient lower than seventy (70).

(4) The per diem rates referenced in subsection (2) of this section, or usual and customary charge if less than the per diem rate, shall represent total Medicaid reimbursement for Level II PRTF services and costs:

(a) Including all care and treatment costs;

(b) Including costs for all ancillary services;

(c) Including capital costs;

(d) Including room and board costs; and

(e) Excluding the costs of drugs as drugs shall be:

1. Covered in accordance with 907 KAR 1:019; and

2. Reimbursed via the department's pharmacy program in accordance with 907 KAR 1:018;

(5)(a) The department shall annually evaluate a per diem rate for Level II PRTF services and costs by reviewing the most recent, reliable claims' data and cost report data to analyze treatment patterns, technology, and other factors that may alter the cost of efficiently providing Level II PRTF services.

(b) The department shall use the evaluation, review, and analysis referenced in paragraph (a) of this subsection, to determine if an adjustment to Level II PRTF reimbursement would be appropriate.

Section 4. Cost Reports and Audits. (1)(a) A Level I or II PRTF shall annually submit to the department, within ninety (90) days of the closing date of the facility's fiscal year end, a legible and completed Form CMS 2552-96.

(b) The department shall grant a thirty (30) day extension for submitting a legible and completed Form CMS 2552-96 to the department if an extension is requested by a Level I or II PRTF.

(2)(a) A Form CMS 2552-96 shall be subject to review and audit by the department.

(b) The review and audit referenced in paragraph (a) of this subsection shall be to determine if the information provided is accurate.

Section 5. Access to Level I and II PRTF Fiscal and Services Records. A Level I or II PRTF shall provide, upon request, all fiscal and service records relating to services provided to a Kentucky recipient, to the:

(1) Department;

(2) Cabinet for Health and Family Services, Office of Inspector General;

(3) Commonwealth of Kentucky, Office of the Attorney General;

(4) Commonwealth of Kentucky, Auditor of Public Accounts;

(5) Secretary of the United States Department of Health and Human Services; or

(6) United States Office of the Attorney General.

Section 6. Bed Reserve and Therapeutic Pass Reimbursement. (1) The department's reimbursement for a bed reserve day which qualifies as a bed reserve day pursuant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization or a therapeutic pass day which qualifies as a therapeutic pass day pursuant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization shall be:

(a) Fifty (50) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is at least ninety-five (95) percent; or

(b) Twenty-five (25) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is at least fifty (50) percent but less than ninety-five (95) percent.

(2) The department shall not reimburse for a bed reserve day or therapeutic pass day in a Level I or II PRTF if the Level I or II PRTF's occupancy percent is less than fifty (50) percent.

(3) A Level I or II PRTF's occupancy percent shall be based on a midnight census.

Section 7. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies or does not provide federal financial participation for the policy; or

(2) Disapproves the policy.

Section 8. Appeals. A provider may appeal a decision by the department regarding the application of this administration in accordance with 907 KAR 1:671.

Section 9. Not Applicable to Managed Care Organizations. (1) A managed care organization may elect to reimburse for Level I and II psychiatric residential treatment facility services in accor-

dance with this administrative regulation if the managed care organization so chooses.

(2) The reimbursement policies established in this administrative regulation shall not apply to a managed care organization, except the requirement that a Level I or II PRTF service shall be in accordance with 907 KAR 9:005 in order to be reimbursable under the Medicaid Program.

Section 10. Incorporation by Reference. (1) "Form CMS 2552-96", August 2010 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m. ["Psychiatric residential treatment facility" (PRTF) means an appropriately licensed PRTF participating in the Medicaid Program.

Section 2. Payment Rates. Covered inpatient psychiatric facility services for individuals under twenty-two (22) years of age provided in PRTFs of sixteen (16) beds or less shall be paid for in accordance with the following:

(1) The PRTFs shall be paid a fixed rate of \$230 per diem which shall be adjusted upward each biennium by 2.22 percent, or usual and customary charge if less; however, the payment shall not exceed prevailing charges in the locality for comparable services provided under comparable circumstances.

(2) The fixed rate, or usual and customary charge if less, covers total facility costs for covered PRTF services, excluding the cost of drugs, as follows:

- (a) All care and treatment costs;
- (b) Costs for all ancillary services, excluding the cost of drugs which shall be reimbursed through the pharmacy program;
- (c) Capital costs; and
- (d) Room and board costs.

Section 3. Cost Reports and Audits. PRTFs shall file a cost report annually using a uniform cost report form prescribed by the Department for Medicaid Services. The cabinet may audit the cost reports as it deems necessary.

Section 4. Access to PRTF Fiscal and Services Records. Access shall be granted to PRTF fiscal and services records to the extent determined necessary by the cabinet, as follows:

(1) To assure accuracy of the cost report, that services are provided in accordance with the standards shown in this administrative regulation and in 907 KAR 1:505; and

(2) The PRTF is complying with all terms and conditions of the provider agreement between the cabinet and PRTF.

(3) Representatives of the United States Department of Health and Human Services, Inspector General's Office, and Attorney General's Office shall have access to PRTF records to the extent necessary to perform their functions which relate to the Medicaid Program.

Section 5. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after November 1, 1995.]

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 13, 2012

FILED WITH LRC: December 13, 2012 at noon

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jill Hunter (502)564-5707 or Stuart Owen (502)564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid reimbursement policies for Level I and Level II psychiatric residential treatment facility services

provided to a Medicaid recipient who is not enrolled in a managed care organization; however, a managed care organization shall be authorized to reimburse for Level I and II psychiatric residential treatment facility services in accordance with this administrative regulation if the managed care organization elects to do so.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid reimbursement policies for Level I and II PRTF services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid reimbursement policies for Level I and II PRTF services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid reimbursement policies for Level I and II PRTF services.

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

(a) How the amendment will change this existing administrative regulation: The amendment replaces the prior single reimbursement model for PRTF services with a per diem reimbursement methodology tailored to Level I and II PRTF services respectively. The Level I PRTF per diem is the lesser of \$274.01/day or the facility's usual and customary charge/day and is to be increased, for inflation, each biennium by 2.22 percent. Level II PRTF reimbursement is tiered with reimbursement increasing as the level of patient care increases. The Level II PRTF per diem rates range from \$345/day to \$405/day and are not adjusted for inflation. The amendment also establishes bed reserve day reimbursement policies. The amendments after comments eliminate the words "all-inclusive" from the per diem rate definition as it is not an all-inclusive rate; revising the language regarding the four (4) Level II PRTF rate groups to be descriptive of the respective criteria of recipients in each rate group rather than to be descriptive of the PRTF (as it is recipient criteria); inserted an option for a Level II PRTF to request a thirty (30)-day extension on the deadline to submit an annual Form CMS 2552-96; clarified that Level I and II PRTFs have to provide, upon request, all fiscal and service records relating to Kentucky Medicaid recipients (rather than all fiscal and service records); clarified that the Department for Medicaid Services (DMS) will use the evaluation, review, and analysis of data related to Level II PRTF reimbursement to determine if an adjustment to Level II PRTF reimbursement would be appropriate; clarified that DMS will review and audit a Form CMS 2552-96 submitted by a Level II PRTF to determine if the information is accurate; clarified that a facility's occupancy percent shall be based on a midnight census; and inserted reimbursement for a therapeutic pass day as it has been added as a covered service in 907 KAR 9:005.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with legislation (KRS 216B.450 through 457) which created Level I and II psychiatric residential treatment facilities. The amendment after comments regarding the per diem rate definition, the rewriting of the rate groups' language, the provision of fiscal and service records, the review and analysis of data related to Level II PRTF reimbursement, and the review and audit of a Form CMS 2552-96 submitted by a Level II PRTF, the policy that a facility's occupancy percent will be based on a midnight census are necessary to clarify or more accurately state policy; the addition of a thirty (30)-day extension on submitting a Form CMS 2552-96 is necessary to allow more time for providers to submit the form; and inserting reimbursement for a therapeutic pass day is necessary as DMS has added a therapeutic pass day as a covered service in 907 KAR 9:005.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 216B.450 through 457 by replacing reimbursement for PRTF services with reimbursement for, respectively, Level I and II PRTF services. The amendments after comments conform to the content of the authorizing statutes by clarifying or more accurately stating policy; by allowing providers more time to submit a required form; and by inserting reimbursement for a covered service.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 216B.450 through 457 by replacing reimbursement for PRTF services with reimbursement for, respectively, Level I and II PRTF services. The amendments after comments will assist in the effective administration of the authorizing statutes by clarifying or more accurately stating policy; by allowing providers more time to submit a required form; and by inserting reimbursement for a covered service.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and Level II psychiatric residential treatment facilities will be affected by the amendment. Level I and II PRTF beds are awarded through a certificate of need process. The Office of Certificate of Need has limited the number of Level I PRTF beds statewide to 315 and the number of Level II PRTF beds to 145 statewide. Not all Level I PRTF certificates of need have been used and currently there are no licensed or operational Level II PRTFs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Level I and II PRTFs will have to continue to submit cost reports annually to the Department for Medicaid Services (DMS).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The Children's Alliance stated the following as a response to this question:

"Additional costs will be incurred due to requirements to complete the CMS 2552-96 and providing all fiscal and service records when requested, which would be a huge administrative and financial burden. A PRTF will not be paid for holding a recipient's bed if they are below a 50% occupancy rate, which means they will have to absorb the costs of necessary hospitalizations or pass days when working to successfully transition the recipient home. In some instances, PRTFs will get paid for 5 reserve days, but they will no longer be paid the per diem rate for bed reserve days and the reduction to 5 partially paid days is a significant decrease from the full per diem reimbursement for 14 hospital and 21 pass days currently allowed. Cutting pass days and the reimbursement amount is the same as a rate cut. The outcome for children will ultimately result in more hospitalizations and re-admits, as well as increased costs for PRTFs."

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Participating Level I and II PRTFs will receive reimbursement tailored to care provided to the individuals they serve.

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

(a) Initially: The cost depends on several variables and is indeterminable at this time. The Office of Certificate of Need limited the number of Level II PRTF beds 145 statewide and currently there are no licensed or operational Level II PRTFs. Thus, one variable is how quickly Level II PRTFs will become licensed and operational and another is how quickly Level II PRTF beds will be filled. Additionally, not all Level I PRTF beds issued a certificate of need have been used. Additionally, Level I and II PRTF services are in the scope of managed care. Some individuals are excluded from managed care; however, DMS expects that few who are excluded will need Level I or II PRTF services. DMS pays managed care organizations (MCOs) a capitated rate per enrollee which is aggregated into a monthly capitated payment to the MCO for all enrollees in its care for the month. The capitated rates vary over time and depend on the amount of utilization and cost among the categories. DMS's cost; thus, includes the capitated rates it pays to MCOs for enrollees in the MCOs care whether or not the given enrollee utilizes services (such as Level I or II PRTF services) or not. The current capitated rates that DMS pays for the population that would be eligible for Level I or II PRTF services range from \$120 per month

to \$1200 per month. Again though, DMS pays the capitated rate regardless of whether a given individual received services or not.

(b) On a continuing basis: For the reasons stated in the prior response - (5)(a) – the continuing basis cost is indeterminable at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is required to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied as reimbursement for Level I PRTFs is less than reimbursement for Level II PRTFs as individuals served by Level II PRTFs require more intensive care than is required for Level I PRTF service recipients.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396d(a)(16), 42 U.S.C. 1396d(h), 42 C.F.R. 441.151 and 42 C.F.R. 440.160.

2. State compliance standards. To qualify as a Level I or II PRTF, a facility must meet the criteria established in KRS 216B.450 through 457.

3. Minimum or uniform standards contained in the federal mandate.

Per federal Medicaid law, inpatient psychiatric facility services for individuals under twenty-one (21) is not a mandatory Medicaid benefit, but if a state's state plan includes intermediate care facility services for individuals with mental retardation, it must also cover inpatient psychiatric facility services for individuals under twenty – one (21.) Additionally, states may be required to provide inpatient psychiatric care under the early and periodic screening, diagnosis and treatment program (EPSDT).

Pursuant to 42 C.F.R. 440.160, "Inpatient psychiatric services for individuals under age 21" means services that—

(a) Are provided under the direction of a physician;

(b) Are provided by—

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations, or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or by any other accrediting organization, with comparable standards, that is recognized by the State.

(c) Meet the requirements in §441.151 of this subchapter."

Additionally, 42 C.F.R. 441.151 states, "(a) Inpatient psychiatric services for individuals under age 21 must be:

(1) Provided under the direction of a physician;

(2) Provided by—

(i) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(ii) A psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the State.

(3) Provided before the individual reaches age 21, or, if the individual was receiving the services immediately before he or she reached age 21, before the earlier of the following—

(i) The date the individual no longer requires the services; or

(ii) The date the individual reaches 22; and

(4) Certified in writing to be necessary in the setting in which the services will be provided (or are being provided in emergency circumstances) in accordance with §441.152.

(b) Inpatient psychiatric services furnished in a psychiatric residential treatment facility as defined in §483.352 of this chapter, must satisfy all requirements in subpart G of part 483 of this chapter governing the use of restraint and seclusion."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal 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 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. 42 C.F.R. 441.151, 42 C.F.R. 440.160, and 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 depends on several variables and is indeterminable at this time. The Office of Certificate of Need limited the number of Level II PRTF beds 145 statewide and currently there are no licensed or operational Level II PRTFs. Thus, one variable is how quickly Level II PRTFs will become licensed and operational and another is how quickly Level II PRTF beds will be filled. Additionally, not all Level I PRTF beds issued a certificate of need have been used. Additionally, Level I and II PRTF services are in the scope of managed care. Some individuals are excluded from managed care; however, DMS expects that few who are excluded will need Level I or II PRTF services. DMS pays managed care organizations (MCOs) a capitated rate per enrollee which is aggregated into a monthly capitated payment to the MCO for all enrollees in its care for the month. The capitated rates vary over time and depend on the amount of utilization and cost among the categories. DMS's cost; thus, includes the capitated rates it pays to MCOs for enrollees in the MCOs care whether or not the given enrollee utilizes services (such as Level I or II PRTF services) or not. The current capitated rates that DMS pays for the population that would be eligible for Level I or II PRTF services range from \$120 per month to \$1200 per month. Again though, DMS pays the capitated rate regardless of whether a given individual received services or not.

(d) How much will it cost to administer this program for subsequent years? For the reasons stated in the prior response - 3.(c) – the subsequent years' cost is indeterminable at this time.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(Amendment)**

**105 KAR 1:140. Employer's administrative duties.**

RELATES TO: KRS 16.645(18), 18A.105, 61.546, 61.552(23), 61.565, 61.569, 61.637(17), 61.675, 61.685, 61.702, 78.545(33), (37), 78.616, 78.625, 78.652, 26 U.S.C. 3121(b)(10), 26 C.F.R. 31.3121(b)(1)-2, 29 C.F.R. 519.2(a), 42 C.F.R. 423.504(b)(4)(vi), 45 C.F.R. 160, 162, 164, 26 U.S.C. 401(a)(17), 401(a)(31), 403(b), 408(a), (b) 414(g)(6), 457(b), Pub. L. 104-191, Pub. L. 111-5, Div., A Title XIII, Div. B, Title IV

STATUTORY AUTHORITY: KRS 16.645(18), 61.565, 61.645(9)(g), 61.675, 78.545(33), 78.625

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System are required by KRS 16.645(18), 61.565, 61.675, 78.545(33), and 78.625 to make contributions to the retirement systems, to report creditable compensation to the retirement systems and other information that the Board of Trustees may require, and perform other duties and responsibilities as participating employers. 26 U.S.C. 401(a)(17) places a limit on the amount of creditable compensation on which contributions may be made. This administrative regulation sets out the reporting requirements for all participating agencies.

Section 1. (1) Each employer shall submit the reports required under KRS 61.675 and KRS 78.625 electronically using the secure Kentucky Retirement Systems' Employer Self Service Web site by:

(a) The Enter Report Details Module; or

(b) Uploading an electronic file that meets the requirements of the Employer Contribution Record Layout. The employer shall submit a test file to the retirement systems, which shall be reviewed for compliance with the requirements of the Employer Contribution Record Layout. If the test file is in compliance with the requirements of the Employer Contribution Record Layout, the retirement systems shall certify the electronic file and inform the employer of the month when the employer may begin using the electronic file for submitting reports. If the test file is not in compliance with the requirements of the Employer Contribution Record Layout, the retirement systems shall inform the employer of the needed corrections to the test file. The employer shall not submit a report by electronic file pursuant to subsection until the test file is certified by the retirement systems.

(2) The retirement systems shall notify each employer of the Web address of the secure Kentucky Retirement Systems' Employer Self Service Web site and shall notify each employer if the Web address of the secure Kentucky Retirement Systems' Employer Self Service Web site changes.

(3) Each employer shall submit the contributions required by KRS 61.675 and KRS 78.625:

1. Electronically using the secure Kentucky Retirement Systems' Employer Self Service Web site;
2. By mailing or hand delivering a check;
3. By the eMARS system maintained by the Finance and Administration Cabinet; or
4. By wire transfer.

(4) The employer shall report all creditable compensation paid during a month by the tenth day of the following month.

(a) The employer shall designate the month to which the creditable compensation should be applied if it is not the month for which the employer is reporting if the month the creditable compensation was earned is the month in which the employee:

1. Became employed;
2. Became eligible to participate in one of the systems adminis-

tered by Kentucky Retirement Systems;

3. Was transferred to hazardous coverage from nonhazardous participation;

4. Was transferred from hazardous coverage to nonhazardous participation;

5. Terminated from employment; or

6. Became ineligible to participate in one (1) of the systems administered by Kentucky Retirement Systems.

(b) If the employee is paid creditable compensation in a lump sum or nonrecurring payment, the employer shall designate the reason for the lump sum or nonrecurring payment.

1. If the lump sum or nonrecurring payment was earned during a specific time period, the employer shall designate the time period during which the lump sum or nonrecurring payment was earned.

2. If the employer fails to designate a specific time period during which the lump sum or nonrecurring payment was earned, the payment shall be considered a lump sum bonus pursuant to KRS 16.505(8), 61.510(13), or 78.510(13).

(5) The provisions of subsection (1) of this section shall not apply to the Kentucky Personnel Cabinet or agencies that are reported by the Kentucky Personnel Cabinet.

(6) Each employer shall report employees who are regular full-time employees as defined by KRS 61.510(21) and 78.510(21) and shall remit employer and employee contributions for those employees.

(7) Each employer shall report employees who are not regular full-time employees as defined by KRS 61.510(21) and 78.510(21), but shall not remit employer or employee contributions for those employees unless required to do so pursuant to KRS 61.680(6), except:

(a) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and who are exempt from FICA withholding pursuant to 26 U.S.C. 3121(b)(10) and 26 C.F.R. 31.3121(b)(1)-2; and

(b) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and are classified as full-time students throughout the fiscal year pursuant to 29 C.F.R. 519.2(a).

Section 2. (1) Each employer shall submit electronic mail to the retirement systems by logging on to the Kentucky Retirement Systems' secure electronic mail server.

(2)(a) If an employer submits personal information about its employees to the retirement systems in an unsecure electronic format or submits personal information regarding its employees intended to be submitted to the retirement systems to another person or entity by hand delivery, mail, fax, or in an electronic format; the employer shall notify affected employees in writing of the disclosure of personal information and provide information regarding obtaining credit reports.

(b) Personal information includes the member's first name or first initial and last name in combination with the member's:

1. Social Security number;
2. Driver's license number;
3. Personal Identification Number permitting access to the member's account; or
4. Medical Information.

(c) The retirement systems shall notify the employer of a disclosure upon discovery.

(d) The employer shall notify the retirement systems of a disclosure upon discovery.

(e) The employer shall submit a draft of the written notification to be made to affected employees to the retirement systems for approval or denial.

(f) The employer shall submit copies of the written notifications made to affected employees to the retirement systems after the notifications have been made.

(g) If the retirement system is required by federal or state law to provide notification to affected members about the employer's



disclosure of personal information or if the retirement system determines that it should provide the notification to its affected members because of the nature or magnitude of the employer's disclosure, the employer shall reimburse the retirement system for its costs in notifying members affected by the employer's disclosure.

(h) In transmitting any medically related personal information, the employer shall comply by all statutes and regulations comprising the Health Insurance Portability and Accountability Act of 1996 "HIPAA", Pub.L. 104-191 and the Health Information Technology for Economic and Clinical Health Act "HITECH", Pub.L. 111-5.

(i) Each employer shall execute a data use agreement with retirement systems.

Section 3. (1)(a) The retirement system shall submit an invoice to employers for any payments owed to the retirement system, which were not paid through the normal monthly reports.

(b) The employer shall remit payment to the retirement system by the due date provided on the invoice.

(2) The retirement system may offset funds owed by the employer to the retirement system with funds owed to the employer by the retirement system.

Section 4. (1) An employer shall pay interest at the rate adopted by the board for any creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission or for any creditable compensation paid in anticipation or settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes.

(2) The interest shall be assessed from the time period for which the creditable compensation has been reinstated.

Section 5. If an employer refuses to provide the retirement system access to records or information requested in accordance with KRS 61.685 or does not respond to a request for information or records by the retirement system, the retirement system may, if appropriate:

(a) Hold all payments of any funds due to the employer; or

(b) Hold payments of refunds or initial retirement allowances to any employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the retirement system.

Section 6. (1)(a) Effective July 1, 1996, and before July 1, 2002, the creditable compensation on which contributions are reported shall not exceed the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17), \$150,000, as adjusted for cost-of-living increases under 26 U.S.C. 401(a)(17)(B). The retirement system shall notify employers of the maximum annual compensation limit. Each employer shall report contributions on all creditable compensation up to the maximum annual limit. Once an employee's creditable compensation has reached the maximum annual limit, the employer shall continue to report the employee's creditable compensation but shall not report any further employer or employee contributions on the employee's creditable compensation. If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.

(b) Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.

(c) Effective with respect to plan years beginning on and after July 1, 2002, a plan member's annual compensation that exceeds \$200,000 (as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B)) shall not be taken into account in determining benefits or contributions due for any plan year. Annual compensation shall include compensation during the plan year or

such other consecutive twelve (12) month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year shall apply to annual compensation for the determination period that begins with or within the calendar year. If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

(d) A participating member may pay contributions for the creditable compensation over the maximum annual compensation limit for the years used to determine the member's final compensation for purposes of retirement if:

1. The member's creditable compensation has exceeded the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002;

2. The member has filed a notification of retirement; and

3. The excess creditable compensation is within the maximum annual compensation limit applicable in 2002-2003. Upon receipt of employee contributions, the retirement system shall bill the employer for the employer contributions on the excess creditable compensation, and the employer shall remit the employer contributions to the retirement system. The excess shall only be included in retirement calculations if both the employee and employer have paid their respective contributions.

THOMAS ELLIOTT, Chair

APPROVED BY AGENCY: December 11, 2012

FILED WITH LRC: December 11, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2013 at 9:00 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for employers to provide reports and contributions to Kentucky Retirement Systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and requirements for employers to provide reports and contributions to Kentucky Retirement Systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provide that employers must file contributions and reports at the retirement systems. This administrative regulation provides the procedures and requirements for employers to file reports and contributions at the retirement systems.

(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 providing the procedures and requirements for employers to file reports and contributions with the retirement systems. If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by providing the procedures for certifying a test file for reporting in Electronic Contribution Record Layout and providing an exception for reporting nonparticipating employees for public universities with student employees as specified.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide the procedures for certifying a test file for reporting in Electronic Contribution Record Layout and to provide an exception for reporting nonparticipating employees for public universities with student employees as specified.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by providing the procedures for certifying a test file for reporting in Electronic Contribution Record Layout and providing an exception for reporting nonparticipating employees for public universities with student employees as specified.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by establishing the procedures for certifying a test file for reporting in Electronic Contribution Record Layout and providing an exception for reporting nonparticipating employees for public universities with student employees as specified.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1800 participating employers of Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement 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: An employer wishing to report by electronic file will have to submit a test file for certification. Public Universities will have to remove student employees as specified in this amendment from reporting.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The staff time to implement the necessary steps to set up the test file or removal of student employees from the electronic reporting, an unknown amount that will vary by employer and any necessary IT assistance if there is no IT staff person.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public universities will no longer have to report the student employees as specified in this amendment and certification of test files will eliminate employer reports that are rejected because the employer is not utilizing a file that is in compliance with the Electronic Contribution Record Layout

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

(a) Initially: \$0.00

(b) On a continuing basis: \$0.00

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and 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: There is no increase in fees or funding required.

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

regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Procedures are the same for all participating employers.

#### 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 state and local government employers participating in Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.645(18), 61.565, 61.645(9)(g), 61.675, 78.545(33), and 78.625.

(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? The exact cost is unknown, but will involve staff time to create the test file set and any necessary IT assistance if there is no IT staff person.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost as employers have always been required by statute to report.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (Amendment)

**201 KAR 30:030. 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

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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 certified by the board for a period of three (3) years;

2. Be in good standing with the board and shall not have received a suspension, a revocation or other sanction that limited prohibited that person's practice of real property appraising within the three (3) year period immediately prior to applying to become a supervision appraiser;

3. Be responsible for the training and supervision of the associate; and]

4. Only a Certified General Real Property Appraiser who has been a Certified General Real Property Appraiser for three (3) years shall provide supervision for a person acquiring experience toward a Certified General Real Property Appraiser certificate; and

5. A certificate holder who has been a Certified General or a Certified Residential Real Property Appraiser for three (3) years shall provide supervision for a person acquiring experience toward a Certified Residential 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 prior to [within six (6) months of] beginning supervision or training.

(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: December 12, 2012

FILED WITH LRC: December 12, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2013 at 1:00 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending this hearing shall notify this agency in writing five work-days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 close of business on January 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658; fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

What this administrative regulation does: This administrative regulation establishes the types of appraisers required in federally related transactions, the scope of practice, and general requirements for certification or licensure.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the scope of practice and criteria for certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by setting the scope of practice and the general requirements that applicants must meet for 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: The amendment establishes the requirements for a person to qualify as a supervisor.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to require supervisors have sufficient experience prior to supervising.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations for qualifying experience.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will enable the board to ensure appraisers that are familiar the board's requirements for experience are providing supervision.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1800 certified and licensed appraisers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A supervisor will be required to have three years of licensure before supervision.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The supervisees will be better supervised by a experienced person.

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

(a) Initially: No new costs will be incurred by the changes.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

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

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

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

regulation is applicable to all supervisors providing supervision.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65.

2. State compliance standards. This administrative regulation establishes the types of appraisers required in federally related transactions, the scope of practice, and general requirements for certification or licensure.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the minimum criteria for certification and licensure of real estate appraisers as promulgated by the Appraisal Qualification Board of the appraisal Foundation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351.

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 Real Estate Appraisers Board  
(Amendment)**

**201 KAR 30:050. Examination and experience requirement.**

RELATES TO: KRS 324A.010, 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3)(d), (e), and (f) require the board to establish by administrative regulations requirements for experience and examination of applicants. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes require-

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ments for certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the examination and experience requirements for appraisers of real property in federally-related transactions.

Section 1. Examination. (1) An applicant for certification as a certified general real property appraiser, certified residential real property appraiser, or licensed real property appraiser shall pass an examination specific for the certification or license applied for and approved by:

(a) The board; and

(b) The Appraiser Qualifications Board of the Appraisal Foundation.

(2) A score from an examination shall no longer be acceptable for licensure after two (2) years from the date on which the applicant takes and passes the examination.

(3) An applicant shall complete all the education and experience requirements for the credential which the individual is seeking prior to being approved to sit for the national appraisal examination.

(4)(a) An individual shall submit a complete Appraiser Licensure/Certification Application, incorporated by reference in 201 KAR 30:030, which documents the completed education and experience to the board prior to being approved to sit for the national appraisal examination.

(b) The applicant shall submit the following information with the application:

1. Proof of completion of the education required by 201 KAR 30:190;

2. Proof of completion of the required experience as specified in Section 2 of this administrative regulation including any reports identified by the board; and

3. The fee required by 201 KAR 30:060.

(5)(a) An applicant shall verify experience credit on the Appraiser Assignment Log.

(b) An applicant shall submit satisfactory reports, file memoranda, and other reasonable documentation requested by the board to confirm the applicant's appraisal experience.

Section 2. Required Experience. (1)(a) Prior to certification as a general real property appraiser, an applicant shall have acquired 3,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than thirty (30) calendar months.

(b) Prior to certification as a residential real property appraiser, an applicant shall have acquired 2,500 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

1. No more than fifty (50) percent of the residential experience shall be claimed for appraisal review or appraisal consulting assignments.

2. No more than fifty (50) percent of the residential experience shall be claimed for appraisal of vacant land.

3. At least fifty (50) percent of the residential experience claimed shall include development of the cost approach, sales comparison approach, and income approach.

4. No more than fifty (50) percent of the residential experience shall be claimed for restricted use appraisal reports.

(c) Prior to licensure as a licensed real property appraiser, an applicant shall have acquired 2,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

1. No more than fifty (50) percent of the residential experience shall be claimed for appraisal review or appraisal consulting assignments.

2. No more than fifty (50) percent of the residential experience shall be claimed for appraisal of vacant land.

3. At least fifty (50) percent of the residential experience claimed shall include development of the cost approach, sales comparison approach, and income approach.

4. No more than fifty (50) percent of the residential experience shall be claimed for restricted use appraisal reports.

(d) For certification as a general real property appraiser, at least 1,500 hours of appraisal experience shall consist of nonresidential appraisal experience.

1. No more than fifty (50) percent of the general experience shall be claimed for appraisal review or appraisal consulting assignments.

2. No more than fifty (50) percent of the general experience shall be claimed for appraisal of vacant land.

3. At least fifty (50) percent of the general experience claimed shall include development of the cost approach, sales comparison approach, and income approach.

4. No more than fifty (50) percent of the general experience shall be claimed for restricted use appraisal reports.

(e) No more than fifty (50) percent of the required experience credit shall be obtained for appraisal assignments without a traditional client being identified.

(f) No more than fifty (50) percent of the required experience credit shall be obtained in a board-approved practicum course that requires students to:

1. Produce credible appraisals that utilize an actual subject property;

2. Perform market research containing sales analysis;

3. Perform assignments that require problem solving skills for a variety of property types; and

4. Apply and report the appraisal approaches in compliance with USPAP.

(g) The appraisal experience required by this section may have been acquired in any calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(h)[(g)] Real property appraisal assignments submitted[completed] for experience credit shall be completed:

1. In compliance with the requirements of USPAP as incorporated in 201 KAR 30:040 and defined in KRS 324A.010(7);

2. Under the supervision of a certified residential real property appraiser for experience of one (1) to four (4) unit residential properties; and

3. Under the supervision of a certified general real property appraiser for experience of all property uses other than (1) to four (4) unit residential properties.

(i)[(h)] To count towards the requirements of this section, the experience shall be acquired while the applicant is licensed or certified by the board as one (1) of the types of appraisers identified in 201 KAR 30:030 Section 1(2), (3), or (4).

(2) The requirements of USPAP shall not apply to the board, its agents, and employees when conducting an appraisal review for purposes of confirming an applicant's experience under this administrative regulation.

Section 3. Incorporation by Reference. (1) "Appraiser Assignment Log", 8/09, 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: December 12, 2012

FILED WITH LRC: December 12, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2013 at 1:00 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending 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 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 close of business on January 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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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.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the examination and experience requirements for certification.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the examination and experience requirements for certified and licensed appraisers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the examination and experience requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the examination and experience requirements for applicants.

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

(a) How the amendment will change this existing administrative regulation: The amendment corrects a reference from residential requirements to general.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to correct a reference from residential requirements to general.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary for certification.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist by clearly identifying the experience and educational requirements for person to be eligible to obtain a general certificate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately three hundred persons currently training for certification by the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicants will be required to meet the experience requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying with the amendment.

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

(a) Initially: No new costs will be incurred by the changes.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the amended regulation is applicable to applicants in the class.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65.

2. State compliance standards. This administrative regulation institutes the education, experience and continuing education requirements that meet the standards promulgated by the Appraisal Qualification Board of the Appraisal Foundation.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the minimum criteria for certification and licensure of real estate appraisers as promulgated by the Appraisal Qualification Board of the Appraisal Foundation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351.

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 Real Estate Appraisers Board (Amendment)

#### 201 KAR 30:070. Grievances.

RELATES TO: KRS 324A.020, 324A.050, 324A.052  
STATUTORY AUTHORITY: KRS 324A.020, 334A.035, 324A.052

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 authorizes the board to investigate allegations of wrongdoing. KRS 324A.050 authorizes the board to take disciplinary action against the certificate or license of an appraiser for violations of KRS Chapter 324A. This administrative regulation establishes the procedures for filing grievances with the board.

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Section 1. Definitions. (1) "Formal complaint" means a formal administrative pleading authorized by the board that sets forth a charge against a credential holder or applicant and commences a formal disciplinary proceeding under KRS Chapter 13B.

(2) "Grievance" means any information that a person has allegedly violated the requirements of KRS Chapter 324A or the administrative regulations of the board.

Section 2. Grievance and Answers. (1)(a) A grievance against a licensee or a certificant shall be submitted in writing [on "Sworn Statement of Grievance", incorporated by reference or in a form containing the information required by that document].

(b) A grievance shall contain a concise statement of the facts, transaction or occurrence upon which it is based.

(c) Exhibits or other documents shall be attached to the grievance.

(d) A copy of the grievance and attachments shall be served on the licensee or certificant by the board:

1. At the last known address of the licensee or certificant; and
2. By certified mail, return receipt requested.

(2)(a) The licensee or certificant shall file with the board an answer to the grievance [on "Sworn Answer to Grievance", incorporated by reference].

(b) The answer shall be filed with the board within twenty (20) days after service of the grievance.

(c) A copy of the answer shall be served on the grievant by the licensee or certificant, by certified mail, return receipt requested, to the address shown on the grievance.

Section 3. [Section 2.] Investigations. (1) The board shall [may] conduct an investigation of the facts alleged in a grievance:

(a) Upon receipt of a grievance and answer; or

(b) If an answer is not filed with the board, upon expiration of the period specified in Section 1(2)(c) of this administrative regulation.

(2) A party shall be granted access to information resulting from an investigation that:

- (a) Was conducted by the board or board personnel;
- (b) Was authorized by the board or board personnel; and
- (c) Is related to the subject matter of the grievance.

(3) A party shall be permitted to rebut or comment upon the information or investigation specified in subsection (1) of this section.

(4) An investigation, or information resulting from an investigation, shall be disclosed to a party if it:

(a) Was the basis for action appealed by an applicant or appraiser; or

(b) Relates to the subject matter of a complaint.

(5) The requirements of USPAP shall not apply to the board, its agents, and employees when preparing an investigation for enforcement and disciplinary cases under this administrative regulation.

Section 4. [Section 3.] Dismissal of Grievance. The board may dismiss a grievance if it determines that the facts stated in the grievance, or facts known to the board upon investigation, fail to establish a violation of KRS 324A.050. The board shall notify the grievant and the licensee or certificant in writing if it dismisses the grievance.

Section 5. Formal Complaints. (1) If it is determined that the facts alleged constitute a prima facie violation of the board's laws, regulations, or USPAP, the board shall issue a formal complaint, in accordance with KRS Chapter 13B, against the credential holder or applicant and proceed under KRS 324A.052.

(2) The board may enter into informal settlement with the credential holder at any time. [Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Statement of Grievance", January 2011, Kentucky Real Estate Appraisers Board; and

(b) "Answer to Grievance", January 2011, Kentucky Real Estate Appraisers Board.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Ap-

praisers 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: December 12, 2012

FILED WITH LRC: December 12, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2013 at 1:00 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending this hearing shall notify this agency in writing five work-days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 close of business on January 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658; fax (859) 623-2598.

### 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 for filing grievances with the board.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to set out the process for filing and investigating licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding grievances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying grievance process.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates the requirement that grievances and answers be notarized.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the grievance process.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will make it easier to file and answer grievances.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1500 persons are licensed or certified by the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A licensee against whom a grievance is

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filed will be required to respond to the allegations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees will not be required to have their signatures notarized.

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

(a) Initially: No new costs will be incurred by the changes.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

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

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

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

### 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 Real Estate Appraisers Board.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 324A.020, 324A.035(3)(b) and 12 U.S.C. 3345.

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 Real Estate Appraisers Board (Amendment)

**201 KAR 30:110. Appraiser roster, transmission, fees, deletions, notification, and hearing.**

RELATES TO: KRS 324A.020, 324A.065(1)(d), (2)(d), 12 U.S.C. 3338(a)(1)

STATUTORY AUTHORITY: KRS 324A.020, 324A.065(1)(d), (2)(d), 12 U.S.C. 3338(a)(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 authorizes the board to provide a list of certified appraisers to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. Title 12 U.S.C. 3338(a)(1) requires the

board to maintain and transmit a roster of all licensed or certified appraisers. This administrative regulation establishes requirements relating to the roster of appraisers.

Section 1. The board shall maintain a roster of licensed real property appraisers, certified residential real property appraisers and certified general real property appraisers.

Section 2. The board shall transmit the roster to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council at least annually.

Section 3. The board shall collect an annual roster fee of forty (40)~~twenty-five (25)~~ dollars from each licensed real property appraiser, certified residential real property appraiser and certified general real property appraiser.

Section 4. The board shall transmit to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council the appropriate roster fees at least annually.

Section 5. (1) The board shall delete from its roster the name of any licensed real property appraiser, certified residential real property appraiser, or certified general real property appraiser, who has been deleted from the roster maintained by the Federal Financial Institutions Examination Council's Appraisal Subcommittee.

(2) The board shall notify each licensed real property appraiser, certified residential real property appraiser, or certified general real property appraiser whose name it intends to delete from its roster of its intent, in writing, to the address on record with the board, at least fifteen (15) days before the board takes that action.

HAROLD BRANTLEY, Chair

APPROVED BY AGENCY: December 12, 2012

FILED WITH LRC: December 12, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2013 at 1:00 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending this hearing shall notify this agency in writing five work-days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 close of business on January 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

### 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 for filing grievances with the board.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to set out the process for filing and investigating licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding grievances.

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



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will assist the board in administering this program by identifying grievance process.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the roster fee to the amount currently required by the federal Appraisal Subcommittee under FIRREA.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the roster fee required by the Appraisal Subcommittee under FIRREA. This roster fee is not retained by the board.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations relating to roster fees required by the Appraisal Subcommittee under FIRREA.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will comply with the requirements established by the federal Appraisal Subcommittee for the roster fee under FIRREA.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1500 persons are licensed or certified by the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A licensee is required to pay the roster fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The previous roster fee was twenty-five (25) dollars. It has been raised by the Appraisal Subcommittee to forty dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees will not be required to have their signatures notarized.

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

(a) Initially: No new costs will be incurred by the changes.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish fees. The roster fee, paid by every licensee throughout the nation, is passed directly to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

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

### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65.

(2) State compliance standards. This administrative regulation establishes the roster fee, paid by every licensee throughout the nation, is passed directly to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. KRS 324A.065(1)(d) authorizes the board to collect the roster fee in an amount not to exceed fifty dollars. The ASC has increased the fee to forty dollars, and this regulations implements that mandated change.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the minimum criteria for certification and licensure of real estate appraisers as promulgated by the Appraisal Qualification Board of the appraisal Foundation.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 324A.020, 324A.035(3)(b) and 12 U.S.C. 3345.

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 Real Estate Appraisers Board (Amendment)

#### 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.

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(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 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 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 of this administrative regulation, which shall include at least fifteen (15) hours related to market analysis and highest and best use.

(2) [(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 established in Section 7 of this administrative regulation.

(2) [(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.

(3) [(4)] Beginning January 1, 2015, an applicant for the licensed real property certificate shall hold a bachelors[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.

(4) [(5)] (a) In lieu of the bachelors[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.

(2) [(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.

(3) [(4)] Beginning January 1, 2015, an applicant for the certified residential real property certificate shall hold a bachelors[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.

(4) [(5)] (a) In lieu of the bachelors[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.

~~(2)[(3)]~~The applicant shall complete the 15-Hour National USPAP Course and examination.

~~(3)[(4)]~~An applicant shall demonstrate that his or her education includes the core courses listed in these criteria, with particular emphasis on nonresidential properties.

~~(4)[(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.

~~(5)[(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;

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 and procedures-sales comparison approach.
    2. Valuation principles and 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.
      - 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.
  - (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: December 12, 2012

FILED WITH LRC: December 12, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2013 at 1:00 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending this hearing shall notify this agency in writing five work-days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 close of business on January 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

#### 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 education requirements for certification for persons seeking certification.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the education requirements of certified and licensed appraisers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the educational requirements for certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the educational requirements for applicants.

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

(a) How the amendment will change this existing administrative regulation: The amendment sets out the educational requirements that have been instituted for 2015 by the Appraisers Qualification

Board.

(b) The necessity of the amendment to this administrative regulation: The amendment sets out the educational requirements that have been instituted for 2015 by the Appraisers Qualification Board.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.

(d) How the amendment will assist in the effective administration of the statutes: The educational standards will assist by identifying the qualifications to acquire a certificate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons currently involved in obtaining education for licensure or certification by the board, but estimates the number to be under 100.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicants will have to obtain the specified education for certification after January 1, 2015.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Persons seeking licensure will know the required 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 changes.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3345

(2) State compliance standards. This administrative regulation requires compliance with the Real Property Appraiser Qualification Criteria and Interpretations which will be effective January 1, 2008 as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires that persons who are certified by the state must meet the criteria for certification as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 324A.020, 324A.035(3)(b) and 12 U.S.C. 3345.

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:

#### TRANSPORTATION CABINET Office of Audits Division of Road Fund Audits (Amendment)

#### 601 KAR 1:146. Fair market rental or lease value of vehicles operated pursuant to a U-drive-it permit.

RELATES TO: KRS 138.462(2), (3), 138.463, 138.4631, 281.615-281.670

STATUTORY AUTHORITY: KRS 138.463(9)

NECESSITY, FUNCTION, and CONFORMITY: KRS 138.463(9) requires the fair market rental or lease value of a motor vehicle to be based on standards established by an administrative regulation promulgated by the Transportation Cabinet. This administrative regulation establishes the standards for use in determining the minimum amount of usage tax to be reported and paid on a rental or lease vehicle.

Section 1. Definitions. (1) "Lease" is defined by[in] KRS 138.462(3).

~~(2) [(3)]~~ "Rental" is defined by[in] KRS 138.462(2).

~~(3) "Renting" or "leasing" [(2) Regularly engaged in the business of renting or leasing to retail customers"]~~ means a U-drive-it permit holder who:

(a) Rents or leases a vehicle[vehicles] as part of an established business to a retail customer wishing[customers who wish] to rent or lease a vehicle; and

(b) [Executes, at a minimum, ninety (90) percent of its rental and lease transactions at fair market value; and

~~(c)]~~ Maintains the records required by[the records required pursuant to] 601 KAR 1:147, Section 2.

(4) "Vehicle[type] classification" means the motor vehicle classification system established by the National Automobile Dealers Association[and set forth] in its monthly [their-]NADA Official Used Car Guide["].

Section 2. Fair Market Value[(FMV)] Rental Amount of a Permit Holder. (1) If a U-drive-it permit holder is regularly engaged in the business of renting motor vehicles to retail customers, the Transportation Cabinet Division of Road Fund Audits[Audit Review] shall audit the records of the permit holder to determine an average

rental amount ~~that establishes~~ [per-day-and-per-agreement-to-establish] the fair market value[FMV] rental amount[per-day-and-per-agreement] for ~~the~~[this] permit holder.

(2) The fair market value[FMV] rental amount shall be used to assess the usage tax ~~assessed~~[imposed] pursuant to KRS 138.463 on an individual transaction of a U-drive-it permit holder[who-is] regularly engaged in the business of renting[or-leasing] vehicles to retail customers if:

(a) The transaction is for less than the fair market value of the rental of the motor vehicle; or

(b) The records[information] required[to-be-maintained] by 601 KAR 1:147, Section 2, for the transaction ~~are~~[is] missing or incomplete.

Section 3. Fair Market Value Established by Cabinet as Rental Amount. [Fair Market Value (FMV) Transportation Cabinet Established Rental Amount. (1) The Transportation Cabinet Division of Audit Review shall establish based on the monthly remittance of usage tax pursuant to KRS 138.463 to the Transportation Cabinet which of the U-drive-it permit holders are the ten (10) largest volume permit holders who are regularly engaged in the business of renting motor vehicles to retail customers.]

(1)(a)(2)(a) The Transportation Cabinet Division of Road Fund Audits[Audit Review] shall randomly select U-Drive-It[survey the ten (10)] permit holders regularly engaged in the business of renting vehicles to retail customers to determine the industry average fair market value[FMV] rental amount for a[each] specific vehicle[~~type~~] classification.

(b) The value for a[each] specific vehicle classification[established by paragraph (a) of this subsection] shall be the fair market value established by the cabinet as the [FMV Transportation Cabinet established] rental amount for a[the] specific vehicle classification.

(2)(3) The industry average fair market value established by the cabinet as the rental amount[FMV Transportation Cabinet established rental amount] for a specific vehicle[~~type~~] classification shall be used to assess the tax ~~assessed by~~[imposed under] KRS 138.463 for the following:

(a) A[Every] transaction ~~by~~[of] a permit holder who is not regularly engaged in the business of renting vehicles to retail customers; or

(b) A vehicle[being] used by a[for which the] permit holder regularly engaged in the business of renting[or-leasing] vehicles to retail customers who are not correctly[is not] reporting the U-drive-it usage tax on a[his] monthly tax return;

(3)(4) The current industry average fair market value established by the cabinet is listed in Fair Market Value Transportation Cabinet Established Rental and Lease Amounts[FMV Transportation Cabinet established rental amount for each specific vehicle classification is listed in Fair Market Value, Transportation Cabinet Established Rental and Lease Amounts the August 1997 edition of the Kentucky Transportation Cabinet's "Fair Market Value Transportation Cabinet Established Rental and Lease Amount Calculations"].

Section 4. Fair Market Value[(FMV)] Lease Amount. (1) If a U-drive-it permit holder is regularly engaged in the business of leasing vehicles to retail customers, the Transportation Cabinet Division of Road Fund Audits[Audit Review] shall audit the records of the permit holder to determine an average lease amount per \$1,000 value of the manufacturer's suggested retail price[MSRP] of the permit holder's lease vehicles.

(2) The fair market value[FMV] lease amount shall be used to assess the [KRS 138.463] U-drive-it usage tax required by KRS 138.463 on an individual transaction of a U-drive-it permit holder[who-is] regularly engaged in the business of leasing vehicles to retail customers if[under the following conditions]:

(a) The transaction is for less than the fair market value of the lease of the motor vehicle; or

(b) The records[information] required to be maintained by 601 KAR 1:147, Section 2(2) ~~are~~[for the transaction-is] missing or incomplete.

Section 5. Fair Market Value[(FMV)] Transportation Cabinet

Established Lease Amount. (1)(a) The Transportation Cabinet Division of Road Fund Audits[Audit Review] shall survey the executed lease agreements of eight (8) randomly selected U-drive-it permit holders who are regularly engaged in the business of leasing vehicles to retail customers to determine the industry average dollar lease amount per \$1,000 value of the manufacturer's suggested retail price[MSRP] of a vehicle.

(b) The value established as the industry average dollar lease amount per \$1,000 of the manufacturer's suggested retail price[MSRP by paragraph (a) of this subsection] shall be the fair market value[FMV] Transportation Cabinet established lease amount per \$1,000 of the manufacturer's suggested retail price[MSRP].

(2) The usage tax assessed pursuant to[under] KRS 138.463 for a lease vehicle of a permit holder[who-is] not regularly engaged in the business of leasing vehicles to retail customers shall be the greater of the following:

(a) The established fair market value[FMV] lease amount per \$1,000 value of the manufacturer's suggested retail price[MSRP] of the vehicle[established in subsection (1) of this section]; or

(b) The monthly lease amount assessed by the permit holder.

(3) The established[average dollar] lease amount per \$1,000 value of the manufacturer's suggested retail price shall be [MSRP is] listed in Fair Market Value Transportation Cabinet Established Rental And Lease Amounts[the August 1997 edition of the Kentucky Transportation Cabinet's "Fair Market Value Transportation Cabinet Established Rental and Lease Amount Calculations"].

Section 6. Incorporation by Reference. (1) "Fair Market Value Transportation Cabinet Established Rental And Lease Amounts", August 2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Division of Road Fund Audits, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, office hours are Monday through Friday, 8 a.m. to 4:30 p.m. [Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) The August 1997 edition of the Transportation Cabinet's "Fair Market Value Transportation Cabinet Established Rental and Lease Amount Calculations"; and

(b) The March 1998 edition of "Vehicle Type Classification" as extracted from the National Automobile Dealers Association "Official Used Car Guide" by the Transportation Cabinet.

(2) This material may be viewed, copied, or obtained from the Transportation Cabinet, Division of Audit Review, 641 Teton Trail, Frankfort, Kentucky 40622. The office hours are 8 a.m. through 4:30 p.m. eastern time on week days. The telephone number is (502) 564-6760.]

MIKE HANCOCK, Secretary

ALICE WILSON, Executive Director

D. ANN DANGELO, Asst. General Counsel

APPROVED BY AGENCY: November 30, 2012

FILED WITH LRC: December 7, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2013 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 31, 2013. Send writ-

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ten notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: D. Ann D'Angelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann D'Angelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for determining the minimum amount of usage tax for a rental or lease vehicle.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform retail customers with a U-drive-it permit of how the industry average fair market value will be determined by the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 138.463(9) requires that the fair market rental or lease value of motor vehicles be based on standards established in an administrative regulation promulgated by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will clarify and update the process used in determining fair market value of motor vehicles.

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

(a) How the amendment will change this existing administrative regulation: Updates the office and division responsible for the regulation to the Office of Audits and the Division of Road Fund Audits, changes the process of determining industry average fair market value for a specific vehicle classification from a survey of ten (10) U-drive-it permit holders to a random selection of permit holders, updates the name of the cabinet's publication that lists the cabinet established rental and lease amounts, and changes the process of establishing industry average dollar lease amounts from a selection of eight selected permit holders to a random selection of permit holders.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update forms, language, and procedures in the Division of Road Fund Audits.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies and updates the standards required by KRS 138.463(9).

(d) How the amendment will assist in the effective administration of the statutes: By updating the fair market value and address, a U-drive-it permit holder will have the most current information and procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 350 Kentucky U-drive-it permit holders and the Division of Road Fund Audits at the cabinet.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new requirements and no additional actions will be needed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees involved with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will be easier for U-drive-it permit holders to understand the regulatory requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no

known costs associated with implementing this new administrative regulation.

(a) Initially:

(b) On a continuing basis:

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established by this regulation either directly or indirectly.

(9) TIERING: Is tiering applied? Yes. Tiering is applied because motor vehicle classifications are assessed differently in accordance with the size of the vehicle.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Ann D'Angelo

(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 the Division of Road Fund Audits within the cabinet's Office of Audits.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 138.463(9)

(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 not be any effect on the expenditures of a state or local agency.

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

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

(6) How much will it cost to administer this program for the first year? No administrative costs are required or expected.

(7) How much will it cost to administer this program for subsequent years? No subsequent administrative costs are anticipated.

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

### PUBLIC PROTECTION CABINET

#### Department of Housing, Buildings and Construction Division of Building Codes Enforcement (Amendment)

#### 815 KAR 7:070. The Kentucky Certified Building Inspector Program.

RELATES TO: KRS 198B.040(3), 198B.050(3)(c), (6), 198B.060, 198B.090, 198B.095[EO-2009-535]

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.090(1)(a), 198B.095(1)[EO-2009-535]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.090(1)(a) requires the office to create and administer a building inspector's certification program which is designed to ensure uniform statewide enforcement of applicable state building codes. KRS 198B.050(5) requires the board to promulgate administrative regulations necessary to implement the Uniform State Building Code. KRS 198B.095(1) authorizes the board to promulgate an



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administrative regulation to establish a building inspector training program. [EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department.] This administrative regulation establishes the testing, training, and continuing education requirements for qualifying persons to become inspectors for the enforcement of the Kentucky Building Code, the Kentucky Residential Code, and to identify the level of their responsibilities for this enforcement.

Section 1. Definitions. (1) "Certified building inspector" is defined by KRS 198B.010(6).

(2) "Enrolled" means an applicant has complied with the requirements established in Section 4(1) of this administrative regulation.

(3) "ICC test module" means a test module, from the International Code Council, that is used to meet the module testing requirements established in Section 5 of this administrative regulation.

(4) "Limited certificate" means a document establishing that a person:

(a) Has passed the test for competency in one (1) or more NCPCCI or ICC test modules; and

(b) Is qualified to engage in the type of limited inspections listed on the certificate which represents the level of competency for which the person was tested.

(5) "NCPCCI test module" means a test module, from the National Certification Program for Construction Code Inspectors, developed by the national code enforcement organizations for the purpose of providing nationally-recognized evidence of competency and professionalism in construction code enforcement and used to meet the module testing requirements established in Section 5 of this administrative regulation.

(6) "Trainee" means a person who is enrolled in the building inspector program of the department, but has not completed the NCPCCI or ICC test modules necessary to be a Kentucky certified building inspector.

Section 2. Inspection Operations. (1) Each governmental entity engaged in a building inspection program shall have, in responsible charge of all construction document approvals, inspections and issuance of certificates of occupancy, at least one (1) Kentucky certified building inspector with the level of credentials required for the buildings covered by the program.

(2) A trainee may be utilized in a building inspection program if the trainee operates under the general supervision of a Kentucky certified building inspector.

(a) Trainees shall not issue permits, construction document approval letters, inspection compliance letters, or certificates of occupancy.

(b) A trainee holding a current limited certificate shall exercise only the duties authorized by that certificate.

(c) A limited certificate shall not be available to persons who apply after March 22, 2001.

Section 3. Training and Testing Requirements to Become Certified. A candidate seeking certification shall comply with the provisions of this section.

(1) A candidate seeking to become certified pursuant to this administrative regulation and all trainees shall be required to attend orientation training, provided or approved by the department. The training sessions shall be given quarterly.

(2) Continuing education.

(a) Continuing education programs shall be conducted by:

1. The department;

2. The Code Administrators Association of Kentucky ("CAAK");

or

3. A provider that is approved by the department pursuant to paragraph (d) of this subsection.

(b) The board may fund a continuing education program through the Building Inspectors' Financial Incentive Training Program Fund.

(c) A candidate seeking certification or a trainee seeking to

continue as a trainee shall:

1. Complete a minimum of twelve (12) hours of continuing education training annually; and

2. Submit verification of completion on either:

a. Form DHBC BC/CE-1; or

b. A certificate of completion provided by a pre-approved training provider.

(d)1. A provider shall submit a completed "Continuing Education Approval Request Form", DHBC-BC/CE 2 [written request for approval of the educational program] to the department no less than thirty (30) days prior to the date the educational program will be offered.

2. The program shall be recognized as approved training for the Kentucky Certified Building Inspector Program if the program:

a. Relates to the general business skills or the technical skills required of a certified inspector;

b. Contains sufficient educational content to improve the quality of a certified inspector's performance; and

c. Includes a course evaluation.

3. The written request shall include the following:

a. The total number of continuing education hours;

b. Course syllabus;

c. A detailed outline of the contents of the course;

d. Name and address of the vendor;

e. Name, address, and qualifications of each[the] instructor;

f. Program agenda with written description of class material which clearly identifies that the educational content relates to the general business skills or the technical skills required of a certified inspector which would improve the quality of the certified inspector's performance; and

g. Location and keeper of class attendance verification list, which shall be available for at least twelve (12) months after completion of the educational program. The department shall be electronically advised of attendees and course completions.

(3) The commissioner may waive the time requirements established in this administrative regulation for hardships shown or if circumstances warrant a waiver due to changes in testing procedures, standards or dates.

Section 4. Application for Training and Certification. (1) To become a trainee or a candidate for certification, a person shall submit:

(a) A completed form DHBC BC/CP-1, Initial Application Form;

(b) A fifty (50) dollar application fee; and

(c) Written proof that the applicant has met the requirements established in subsection (2) of this section.

(2) An applicant shall have:

(a)1. Graduated from high school or earned a general education diploma; and

2.a. Three (3) years experience in a responsible, directly-related construction position, such as a foreman, which required the ability to effectively read and interpret building plans and specifications; or

b. Three (3) years experience in an architect's or engineer's office performing building design or drafting duties;

(b) Graduated from a college or university with an associate degree in a design, building technology or construction-related subject; or

(c) Graduated from a college or university with a bachelor's degree in architecture, engineering, fire science, or building technology.

(3) ~~[A certified inspector or trainee, including an inspector holding a limited certificate, shall pay an annual renewal fee of fifty (50) dollars not later than the last day of the certified inspector or trainee's birth month in order to maintain certification and to continue to be registered. A late fee of fifty (50) dollars shall be assessed if renewal is not received by the last day of the certified inspector or trainee's birth month. If a certified inspector or trainee fails to renew ninety (90) days after the last day of that person's birth month, certification shall terminate.]~~

~~(4) A reinstatement fee for any terminated certification shall be equal to the renewal fee and shall be paid in addition to the renewal fee. A terminated certification may be reinstated if application is made within three (3) years from the date of termination and shall~~



not require examination for reinstatement.

(5) A person shall not engage in any inspection activities for the enforcement of the Kentucky Building Code or the Kentucky Residential Code (815 KAR 7:125) [One- and Two-Family Dwelling Code as adopted within the Kentucky Building Code for application to one (1) and two (2) family dwellings and townhouses], unless that person is currently enrolled with the department and has otherwise complied with the requirements of this administrative regulation.

Section 5. Renewal and Reinstatement. (1) A certified inspector or trainee, including an inspector holding a limited certificate, shall pay an annual renewal fee of fifty (50) dollars not later than the last day of the certified inspector or trainee's birth month annually. A late fee of fifty (50) dollars shall be assessed if renewal is not postmarked by the last day of the certified inspector or trainee's birth month. If a certified inspector or trainee fails to renew ninety (90) days after the last day of that person's birth month, certification shall terminate.

(2) A reinstatement fee for any terminated certification shall be equal to the renewal fee and shall be paid in addition to the renewal fee. A terminated certification may be reinstated if application is made within three (3) years from the date of termination and shall not require examination for reinstatement.

Section 6. Inactive License Certification. (1) A certified inspector or an inspector holding a limited certificate may request that the certification be placed in an inactive status and shall:

(a) Not perform any inspections while the certification is inactive;

(b) Pay an inactive fee of one-half (1/2) of the renewal fee annually on or before the last day of the certified inspector's birth month; and

(c) Not be required to obtain yearly continuing education during the inactive status. Within twelve (12) months prior to a request for re-activation, twelve (12) hours of continuing education shall be obtained.

(2) Upon a request to reactivate an inactive certification, an inspector shall pay one-half (1/2) the fee for an active certification.

Section 7 [6]. Certification Requirements, Responsibilities and Jurisdiction for Inspectors.

(1) One (1) and two (2) family dwelling inspector.

(a) A person shall be classified as a one (1) and two (2) family dwelling inspector if the person has:

1. Been tested for competency under the Kentucky Residential Code [One- and Two-Family Dwelling Code], by passing the following:

a. NCPCCI test modules:

- (i) Test 1A Building One- and Two-Family Dwelling; and
- (ii) Test 4A Mechanical One- and Two-Family Dwelling; or

b. ICC test modules:

- (i) Test B1 Residential Building Inspector; and
- (ii) Test M1 Residential Mechanical Inspector; and

2. Complied with the requirements of this administrative regulation.

(b) A one (1) and two (2) family dwelling inspector shall be qualified to perform all functions related to the enforcement of the Kentucky Residential Code [One- and Two-Family Dwelling Code], including issuing permits, reviewing and approving construction documents, conducting on-site inspections, and issuing compliance letters and certificates of occupancy for the construction of one (1) and two (2) family dwellings and townhouses.

(2) Building inspector, level I.

(a) A person shall be classified as a building inspector, level I, if the person has:

1. Been tested for competency under the Kentucky Residential Code [One- and Two-Family Dwelling Code] and the Kentucky Building Code, by passing the following:

a. NCPCCI test modules:

- (i) Test 1A Building One- and Two-Family Dwelling;
- (ii) Test 4A Mechanical One- and Two-Family Dwelling;
- (iii) Test 1B Building General;
- (iv) Test 3B Fire Protection General; or [and]

b. ICC test modules:

- (i) Test B1 Residential Building Inspector;
- (ii) Test B2 Commercial Building Inspector;
- (iii) Test M1 Residential Mechanical Inspector; and

2. Complied with the requirements of this administrative regulation.

(b) A building inspector, level I, shall be qualified to perform all functions related to the enforcement of the Kentucky Building Code and the Kentucky Residential Code, including issuing permits, reviewing and approving construction documents, conducting on-site inspections, and issuing compliance letters and certificates of occupancy for all buildings of the occupancy type and size assigned to local governments by KRS 198B.060(2).

(3) Building inspector, level II.

(a) A person shall be classified as a building inspector, level II, if the person has:

1. Been tested for competency under the Kentucky Residential Code [One- and Two-Family Dwelling Code] and the Kentucky Building Code, by passing the following:

a. NCPCCI test modules:

- (i) Test 1A Building One- and Two-Family Dwelling;
- (ii) Test 4A Mechanical One- and Two-Family Dwelling;
- (iii) Test 1B Building General;
- (iv) Test 3B Fire Protection General; and
- (v) Test 4B Mechanical General; or

b. ICC test modules:

- (i) Test B1 Residential Building Inspector;
- (ii) Test B2 Commercial Building Inspector;
- (iii) Test M1 Residential Mechanical Inspector;
- (iv) Test M2 Commercial Mechanical Inspector; and

2. Complied with the requirements of this administrative regulation.

(b) A building inspector, level II, shall be qualified to perform functions related to the enforcement of the Kentucky Building Code and Kentucky Residential Code for all buildings of the occupancy type and size assigned to local government under KRS 198B.060(2) including issuing permits, reviewing and approving construction documents, conducting on-site inspections, and issuing compliance letters and certificates of occupancy.

(c) A building inspector, level II, shall be qualified to conduct on-site inspections of all buildings which were assigned to the department pursuant to KRS 198B.060(4).

(4) Building inspector, level III.

(a) A person shall be classified as a building inspector, level III, if the person has:

1. Been tested for competency under the Kentucky Residential Code [One- and Two-Family Dwelling Code], Mechanical Code and the Kentucky Building Code, by passing the following:

a. NCPCCI test modules:

- (i) Test 1A Building One- and Two-Family Dwelling;
- (ii) Test 4A Mechanical One- and Two-Family Dwelling;
- (iii) Test 1B Building General;
- (iv) Test 3B Fire Protection General;
- (v) Test 4B Mechanical General;
- (vi) Test 1C Building Plan Review;
- (vii) Test 3C Fire Protection Plan Review; and
- (viii) Test 4C Mechanical Plan Review; or

b. ICC test modules:

- (i) Test B1 Residential Building Inspector;
- (ii) Test B3 Building Plans Examiner;
- (iii) Test M1 Residential Mechanical Inspector; and
- (iv) Test M3 Mechanical Plans Examiner; and

2. Complied with the requirements of this administrative regulation.

(b) A building inspector, level III, shall be qualified to perform all functions relating to the enforcement of the Kentucky Building Code and Kentucky Residential Code, including issuing permits, reviewing and approving construction documents conducting, on-site inspections and issuing compliance letters and certificates of occupancy for all buildings, regardless of size or occupancy type. A local inspector shall not be authorized to perform these functions on buildings assigned to the department by KRS 198B.060(4), except by petition to and approval of more inspection responsibility by the department pursuant to 815 KAR 7:110.

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(5) Mechanical inspector, one (1) and two (2) family dwellings.

(a) A person shall be classified as a mechanical inspector of one (1) and two (2) family dwellings if the person has:

1. Been tested for competency under the Kentucky Residential Code [One- and Two-Family Dwelling Code] by passing the:
  - a. NCPCCI Test 4A Mechanical One- and Two-Family Dwelling test module; or
  - b. ICC Test M1 Residential Mechanical Inspector test module; and
2. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector of one (1) and two (2) family dwellings shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Kentucky Residential Code [One- and Two-Family Dwelling Code] including conducting inspections of one (1) and two (2) family dwelling mechanical installations for compliance.

(6) Mechanical inspector general (other than one (1) and two (2) family dwellings).

(a) A person shall be classified as a mechanical inspector general if the person has:

1. Been tested for competency under the Mechanical Code, by passing:
  - a. NCPCCI Test 4B Mechanical General test module; or
  - b. ICC Test M2 Commercial Mechanical Inspector test module; and
2. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector general shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Mechanical Code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance and conducting inspections of structures for compliance.

(7) Mechanical inspector and plan reviewer.

(a) A person shall be classified as a mechanical inspector and plan reviewer if the person has:

1. Been tested for competency under the Kentucky Residential Code [One- and Two-Family Dwelling Code] and the Mechanical Code, by passing the following:
  - a. NCPCCI test modules:
    - (i) Test 4A Mechanical One- and Two-Family Dwelling;
    - (ii) Test 4B Mechanical General; and
    - (iii) Test 4C Mechanical Plan Review; or
  - b. ICC test modules:
    - (i) Test M1 Residential Mechanical Inspector; and
    - (ii) Test M3 Mechanical Plans Examiner; and
2. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector and plan reviewer shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Kentucky Residential Code [One- and Two-Family Dwelling Code] and the Mechanical Code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance and conducting inspections of structures for compliance.

(8) Trainees and limited certificates.

(a) A person making inspections pursuant to a limited certificate shall be supervised by a Kentucky certified building inspector with a level I certification or higher.

(b) A person making inspections as a trainee without a certificate shall be supervised by a person with a level of certification equal to or higher than that which the trainee is pursuing.

(c) A trainee or a person with a limited certificate shall not issue permits, construction document approval letters, compliance letters or certificates of occupancy, or make any official or final determinations relating to the Kentucky Building Code.

(9) A person making inspections as authorized by this administrative regulation shall not overrule, supplant or order any corrections or alterations which conflict with the approved construction documents. If an inspector believes that the construction documents are wrong or that the construction is in violation of the code,

the inspector shall immediately refer the matter to the certified building inspector responsible for approval of the construction documents for resolution.

(10) Upon application by a testing agency, a national code group, or by an applicant for certification, the department may recognize other examinations as equivalent to the listed NCPCCI or ICC examinations. The person or group submitting the examination shall demonstrate that the examinations cover the same codes and require the same level of knowledge as the NCPCCI or ICC examinations.

Section 8 [7]. Suspension and Revocation of Certification. (1) Formal written complaints concerning an inspector shall be submitted to the Department of Housing, Buildings, and Construction for review and authorized disciplinary [appropriate] action.

(2) Action shall not be taken against a building inspector governed under this administrative regulation until a hearing has been held upon request or waived in accordance with KRS Chapter 13B, and the commissioner determines that the inspector is:

- (a) Not enforcing the Kentucky Building Code;
- (b) Not enforcing the Kentucky Residential Code;
- (c) Improperly enforcing the code; or
- (d) [(e)] Violating his or her responsibilities as an inspector.

Section 9. [8]. Grandfather Clause. (1) A person who was certified as a building inspector, level I, II or III, or who held a limited certificate on or before December 15, 1997 shall:

(a) Not be required to take additional test modules to renew the certification, if the person has maintained continuous certification since December 15, 1997; and

(b) Complete the continuing education requirements as established in Section 3 of this administrative regulation prior to renewal of the certificate.

(2) A person who was certified as of [on] March 22, 2001, but who seeks to achieve a higher level of certification, shall comply with the testing modules required by this administrative regulation.

Section 10 [9]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form DHBC-BC/CE 1, Continuing Education Verification Form, October 2009; [and]

(b) Form DHBC-BC/CP 1, Initial Application Form, October 2009; and

(c) Form DHBC-BC/CE 2, Certified Building Inspector Continuing Education Approval Request, December 2012.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department of Housing, Buildings, and Construction, 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: December 12, 2012

FILED WITH LRC: December 13, 2012, at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2013 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 January 14, 2013 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2013. 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

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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 provides the standards and procedures for the Kentucky Certified Building Inspector Program.

(b) The necessity of this administrative regulation: 198B.090(1)(a) requires the Department to create and administer a building inspector certification program designed to ensure uniform statewide enforcement of the state building codes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides detailed procedures for the building inspector certification program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth standards authorized by the statute for becoming a certified building inspector in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies vague language rather than specifying the Kentucky Residential Code, as well as the provision that a 13B hearing must be either requested or waived prior to the Department taking disciplinary action against a certified building inspector.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary for clarification as to the codes to be enforced and the procedures for disciplinary actions.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.090(1)(a) requires the Department of Housing, Buildings and Construction to establish procedures for the certification of building inspectors. The Board of Housing, Buildings and Construction reviewed these amendments during the November 15, 2012 regular meeting and approved for promulgation.

(d) How the amendment will assist in the effective administration of the statutes: These amendments are intended to clarify procedures and responsibilities of certified building inspectors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulatory amendment will apply to individuals who are applying for, or certified as, a building inspector by the Department of Housing, Buildings and Construction.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: Certified building inspectors will be required to follow established procedures relating to certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Annual renewal fees for certified building inspectors is fifty dollars (\$50). Should an inspector wish to place his certification in inactive status, the cost is twenty-five dollars (\$25) annually. Additionally, to remain in active status as a certified building inspector, continuing education requirements must be met; the cost of continuing education credits varies from free upward, depending upon the approved program(s) attended by the inspector.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By being in compliance with this administrative regulation, a certified building inspector may be employed to carry out duties required by statute for plan review and inspections.

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

(a) Initially: There are no additional or new costs associated with the implementation of this amended administrative regulation.

(b) On a continuing basis: There are no additional or new costs

associated with implementation of this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments are anticipated to result in no additional costs to the agency beyond historical administrative costs. The certified building inspector program is funded by certification and 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: Implementation of this amended administrative regulation will not necessitate an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation amendment does not establish any new fees nor increase existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation. The requirements for certification of building inspectors are to apply equally to all applicants.

### 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 and local jurisdiction inspection and plan review programs.

(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

(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 no new fees or creates new expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The regulatory amendment is anticipated to generate no additional 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? N/A

(c) How much will it cost to administer this program for the first year? There are no additional costs anticipated to administer the requirements for certification of building inspectors within the Commonwealth.

(d) How much will it cost to administer this program for subsequent years? The costs of administering the certification program for building inspectors is anticipated to remain constant.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: There is no anticipated fiscal impact from this amended administrative regulation to state or local government.

### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (Amendment)

#### 815 KAR 7:110. Criteria for expanded local jurisdiction.

RELATES TO: KRS 67A, 67C, 82.105(1), 83, 83A, 198B.040(7), 198B.050, 198B.060, 198B.070, 212.626(5), 236.318  
STATUTORY AUTHORITY: KRS 198B.050(5), 198B.060(5), (6), (18)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.060(5) and (6) authorizes a local government to petition the

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commissioner to request additional plan review and inspection functions to be allocated to that local government. This administrative regulation establishes the requirements for local building departments to request and be granted expanded building code plan review and inspection jurisdiction by the Department ~~[and to collect fees for those activities]~~.

Section 1. Definitions. (1) "Local governing body" means the chief governing body of a city, county, consolidated local government, or urban-county having legislative powers.

(2) "Local government" means:

- (a) A city, as established in KRS Chapter 67A, 67C, 83, and 83A;
- (b) A county, as defined by KRS 212.626(5);
- (c) A consolidated local government; and
- (d) An urban-county government.

Section 2. Uniform Criteria for Granting Expanded Jurisdiction. To apply for expanded jurisdiction pursuant to KRS 198B.060(5), a local government shall comply with the requirements established in this section.

(1) An authorized representative of a local government shall complete the Application for Local Expanded Jurisdiction, Form BCE/EJ #1, and submit it to the department together with the supporting documentation required by this administrative regulation.

(2) Certified inspectors required.

(a) The local government shall certify that it employs or contracts with a person, firm, or company to perform the plan reviews, specifications, and building inspection functions granted to the local government.

(b) The local government shall employ or execute a legal contract with at least one (1) person certified as a building inspector level III, pursuant to 815 KAR 7:070. The building inspector level III shall be responsible for reviewing plans, reviewing specifications, and performing building inspections.

(c) The local government shall employ or execute a legal contract with a certified electrical inspector to enforce the National Electric Code (NFPA 70) as adopted and incorporated into the Kentucky Building Code (815 KAR 7:120) and Kentucky Residential Code (815 KAR 7:125).

(3) Additional personnel. A complete list of code enforcement personnel, including the building inspector level III and certified electrical inspector, employed or contracted with to enforce the code within the expanded jurisdiction shall be submitted with the application. The list of personnel shall include the name, job title, and certification status of each individual.

(4) Construction activity. The local government shall provide documentation of the permits issued and fees collected for the previous calendar year, if any, and an estimation of the anticipated increase in activity if granted expanded jurisdictional authority.

(5) Local government contracts.

(a) If a local government associates with other local governments to share plan and specifications inspection or building functions pursuant to KRS 198B.060(15), the documentation of permit and fee activity required by subsection (4) of this section shall be provided by the applicant; or

(b) If a local government contracts with a person, firm, or company to provide plan and specification inspections or building inspection functions, and the person, firm, or company, the documentation of permit and fee activity required by subsection (4) of this section shall be provided by the applicant.

(6) Official contact person. The local government shall identify and provide:

- (a) The name and title of the chief building code official;
- (b) The name of the department;
- (c) The official mailing address;
- (d) The phone number;
- (e) The fax number; and
- (f) The e-mail address, if applicable.

(7) Inclusions and exclusions.

(a) Application for expanded jurisdiction pursuant to KRS 198B.060(5) shall include:

1. A list of each building occupancy classification and size for which expanded jurisdiction is requested;

2. A list of each building occupancy classification and size for which expanded jurisdiction is not requested;

3. A copy of the local ordinance requiring single family dwelling plan review and inspection within the jurisdiction; and

4. A copy of the schedule of fees as adopted by the local governing body.

(b) The minimum responsibilities required by KRS 198B.060(2) shall be maintained by the local government, unless specifically agreed otherwise in writing between the local government and the department.

(8) State jurisdiction. The department shall retain plan review, inspection, and enforcement responsibility under the Kentucky Building Code for all buildings that are:

- (a) Institutional buildings;
- (b) Educational buildings, unless specifically agreed in writing by the local government and the department;
- (c) Licensed facilities as mandated by the Cabinet for Health and Family Services, including day care centers, hospitals, and nursing homes;
- (d) State-owned and state-leased buildings and facilities;
- (e) High-hazard occupancies, unless specifically agreed in writing by the local government and the department; and
- (f) Industrialized building systems (including modular homes) except for site placement and assembly of individual modular homes. A local government may permit placement and assembly locally with written notification to the department for each placement.

Section 3. Procedures for Maintaining Expanded Jurisdiction.

(1) The department shall monitor the program of each local government granted expanded jurisdiction responsibilities. If a local government is found to be in violation of the requirements of this administrative regulation, the Kentucky Building Code, the Kentucky Residential Code, the terms of the applicable expanded jurisdiction agreement, or KRS Chapters 198B, 236, or 318, the department may preempt the local program in whole or in part ~~[upon approval of the board]~~.

(2) Each agreement for expanded jurisdiction shall be in effect for three (3) years, unless:

- (a) Canceled by agreement of the parties in writing; or
- (b) Preempted in whole or in part pursuant to subsection (1) of this section.

(3)~~(a)~~ The local government shall notify the department, within thirty (30) days of any changes in personnel or fees during the terms of the agreement.

~~(b) Failure to notify the department of changes may result in the revocation of expanded jurisdiction responsibilities pursuant to KRS 198B.060(4).~~

(4) Before the expiration of the three (3) year agreement for expanded jurisdiction, the local jurisdiction shall submit a Renewable Application for Expanded Jurisdiction on Form BCE/EJ #2. The renewal application shall contain the following:

- (a) A list of each building occupancy classification and size for which expanded jurisdiction is requested to continue;
- (b) A list of each building occupancy classification and size for which expanded jurisdiction is not requested;
- (c) A copy of the local ordinance, if different than submitted with previous application requiring single family dwelling plan review and inspection within the jurisdiction; and
- (d) A copy of the current schedule of fee as adopted by the local governing body.

(5) After receiving and reviewing the local government's application for renewal, the department shall:

- (a) Reevaluate the building code enforcement program of the local government; and
- (b) ~~Either [Make a recommendation to the board supporting or withholding support for continuation and renewal of the expanded jurisdiction].~~

~~(6) Upon receiving comments from the board, the department shall either renew the local government's expanded jurisdiction or deny the renewal request within 45 days of receiving the local program's renewal application and supporting documentation.~~

~~(6) The department shall report to the Board of Housing, Buildings and Construction the department's decision regarding the~~

renewal of expanded building code enforcement program of the local government.

(7) ~~[(The minimum responsibilities required by KRS 198B.060(2) shall continue by the local government, or as agreed under the initial application and approval.]~~

(8) The department shall retain plan review, inspection and enforcement responsibility under the Kentucky Building Code for all buildings as specified in the original agreement for expanded local jurisdiction with the local government.

Section 4. Local Appeals Board. (1) The local government with expanded jurisdiction may establish a local appeals board in accordance with KRS 198B.070.

(2) If the local government establishes a local appeals board, the local government shall send a written notice to the department, which shall:

(a) Identify each member by name and qualifications for being appointed to the appeals board; and

(b) Include contact information for the local appeals board.

(3) If a local appeals board is not established, all costs incurred by the department and Board of Housing, Buildings and Construction to conduct hearings for ~~[in-processing any]~~ appeals filed pursuant to KRS 198B.070(5) shall be charged to the local government.

Section 5. One (1) and Two (2) Family Dwellings. (1) The local building inspection program shall not include the plan review and inspection for one (1) and two (2) family dwellings that are:

(a) Manufactured homes;

(b) Modular homes; or

(c) Farm dwellings.

(2) The local building inspection program shall include permits and inspections for the foundation system and other on-site construction related to modular home installations.

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

(a) "Application for Local Expanded Jurisdiction", Form BCE/EJ #1, December 2012 ~~[October 2007]~~; and

(b) "Renewal Application for Expanded Jurisdiction", Form BCE/EJ #2, December 2012. ~~[August 2010]~~

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 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: December 12, 2012

FILED AT LRC: December 14, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2013, at 9:00 am, EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2013 (five working days prior to the hearing) of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone 502-573-0365 Ext. 144, fax 502-573-1057.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for local building programs to request and be granted expanded building plan review and inspection jurisdiction by the department.

(b) The necessity of this administrative regulation: This amendment is necessary to update renewal requirements and procedures in compliance with statutory authority, as well as update applications and renewal form.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.050(5) and (6) authorizes a local government to petition the commissioner to request additional plan review and inspection functions to be allocated to that local government.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide updated requirements for expanded jurisdictions in accordance with statutory authority.

(2) If 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 amended regulation brings renewal requirements and procedures into statutory compliance and incorporates updated application and renewal forms.

(b) The necessity of the amendment to this administrative regulation: These amendments update existing application and clarifies language.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation updates existing regulation to provide clarifies procedures and requirements for applying for and being granted expanded jurisdiction plan review and inspection requirement for construction projects.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist jurisdictions requesting additional plan review and inspection responsibilities by clarifying confusing language and providing updated, standardized forms for application and renewal.

(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, as well as local building inspection programs with, or applying for, expanded jurisdiction responsibilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Affected entities must comply with the application and renewal standards established herein, as well as the department in granting or denying applications/renewals.

(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 anticipated additional cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits anticipated from this regulation will be clarification of confusing terms/requirements, definitive deadlines for approval or denial of applications and updated forms.

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

(a) Initially: No cost to implement.

(b) On a continuing basis: No cost to implement.

(6) What if the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing Division of Building Code Enforcement restricted funds.

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

ments to this regulation require no increase to fees or funding for implementation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable to 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, local jurisdictions applying for expanded local jurisdiction plan review and inspection responsibilities and those applying for renewal of such responsibilities.

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.050(5), 198B.060(5), (6) and (18).

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 no revenues nor creates expenditures. The amendment merely clarifies existing procedures and forms relating to applying for and being granted expanded jurisdiction building plan review and inspection responsibilities.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. Not applicable.

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

(c) How much will it cost to administer this program for the first year? Not applicable.

(d) How much will it cost to administer this program for subsequent years? Not applicable.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: There is no anticipated fiscal impact from this administrative regulation to state or local government.

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Building Codes Enforcement**  
**(Amendment)**

**815 KAR 7:120. Kentucky Building Code.**

RELATES TO: KRS 132.010(9), (10), 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990, 227.300, 227.550(7)

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) and 198B.050 require the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform statewide building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation establishes the Kentucky Building Code's general provisions.

Section 1. Definitions. (1) "Board of Housing" or "board" means the Kentucky Board of Housing, Buildings, and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) "Commissioner" is defined by KRS 198B.010(9).

(4) "Department" is defined by KRS 198B.010(11).

(5) "Farm" means property:

(a) Located outside the corporate limits of a municipality on at least ten (10) acres;

(b) Used for purposes set forth in the definitions of "agricultural land" and "horticultural land", established in KRS 132.010(9) and (10), respectively; and

(c) Qualified by and registered with the property valuation administrator in that county.

(6) "Fire Code Official" means the State Fire Marshal, fire chief, or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety as established in 815 KAR 10:060.

(7) "Industrialized building system" or "building system" is defined by KRS 198B.010(16).

(8) "KBC" means the Kentucky Building Code as established in this administrative regulation.

(9) "Kentucky Residential Code" means the International Residential Code[-2006-] as adopted and amended for application in Kentucky by 815 KAR 7:125.

(10) "Kentucky Standards of Safety" means the requirements established in 815 KAR 10:060, which serve as the fire prevention code for existing buildings as well as a supplement to this code.

(11) "Manufactured home" is defined by KRS 227.550(7).

(12) "Modular home" means an industrialized building system, which is designed to be used as a residence and that is not a manufactured or mobile home.

(13) "Ordinary repair" is defined by KRS 198B.010(19).

(14) "Single-family dwelling" or "one (1) family dwelling" means a single unit which:

(a) Provides complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) Shall not be connected to any other unit or building.

(15) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(16) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

Section 2. Administration and Enforcement of the Building Code. (1) Notwithstanding the requirements of the 2012 International Building Code [2006], the Kentucky amendments [changes] established in the 2012 [2007] Kentucky Building Code shall be mandatory and shall supersede any conflicting provision of the international code.

(2)(a) Except as provided in paragraph (b) and (c) of this subsection and as superseded by the provisions of this administrative regulation and the 2012 [2007] Kentucky Building Code, the 2012 International Building Code [2006], shall be the mandatory state building code ~~for Kentucky~~ for all buildings constructed in Kentucky.

(b) One (1) and two (2) family dwellings and townhouses shall be governed by 815 KAR 7:125.

(c) Manufactured homes shall be governed by KRS 227.550 to 227.665.

Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the department [office].

(1) Fast track elective.

(a) A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee.

(b) The additional fifty (50) percent fee shall not be less than \$400 and not more than \$3,000.

(c) The entire fee shall be paid with the initial plan submission.

(2) New buildings.

(a) The department's [office's] inspection fees shall be calculated by:

1. Multiplying the total building area under construction by the

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cost per square foot of each occupancy type as listed in subsection (3) of this section; and

2. Computing the square footage by the outside dimensions of the building.

(b) The fee for buildings with multiple or mixed occupancies shall be calculated using the cost per square foot multiplier of the predominant use.

(3) Table 121.3.1, Basic Department [Office] Fee Schedule. The basic plan review or inspection fee shall be:

- (a) Assembly occupancies, fourteen (14) cents;
  - (b) Business occupancies, thirteen (13) cents;
  - (c) Day care centers, thirteen (13) cents;
  - (d) Educational occupancies, thirteen (13) cents;
  - (e) High hazard occupancies, twelve (12) cents;
  - (f) Industrial factories, twelve (12) cents;
  - (g) Institutional occupancies, fourteen (14) cents;
  - (h) Mercantile occupancies, thirteen (13) cents;
  - (i) Residential occupancies, thirteen (13) cents;
  - (j) Storage, eleven (11) cents; or
  - (k) Utility and miscellaneous, eleven (11) cents.
- (4) Additions to existing buildings.

(a) Plan review fees for additions to existing buildings, which shall not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with the schedule listed in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition.

(b) The minimum fee for review of plans under this subsection shall be \$250.

(5) Change in use.

(a) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in subsection (3) of this section by using the total square footage of the entire building or structure under the new occupancy type as determined by the outside dimensions.

(b) The minimum fee for review of plans under this subsection shall be \$250.

(6) Alterations and repairs.

(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of:

1. Multiplying the cost for the alterations or repairs by 0.0025; or

2. Multiplying the total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.

(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.

(c) The minimum fee for review of plans under this subsection shall be \$275.

(7) Specialized fees. In addition to the fees listed in subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:

(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule:

1. An inspection of four (4) through twenty-five (25) sprinklers shall be a fee of \$150;

2. An inspection of twenty-six (26) through 100 sprinklers shall be a fee of \$200;

3. An inspection of 101 through 200 sprinklers shall be a fee of \$250;

4. An inspection of 201 through 300 sprinklers shall be a fee of \$275;

5. An inspection of 301 through 400 sprinklers shall be a fee of \$325;

6. An inspection of 401 through 750 sprinklers shall be a fee of \$375; and

7. An inspection of over 750 sprinklers shall be a fee of \$375 plus thirty (30) cents per sprinkler over 750.

(b) Fire detection system review fee:

1. Zero to 20,000 square feet shall be \$275; and

2. Over 20,000 square feet shall be \$275 plus thirty (30) dollars for each additional 10,000 square feet in excess of 20,000 square feet.

(c) The standpipe plan review fee shall be \$275. The combination stand pipe and riser plans shall be reviewed under the automatic sprinkler review fee schedule.

(d) Carbon dioxide suppression system review fee:

1. One (1) through 200 pounds of agent shall be \$275; and

2. Over 200 pounds of agent shall be \$275 plus five (5) cents per pound in excess of 200 pounds.

(e) Clean agent suppression system review fee:

1.a. Up to thirty-five (35) pounds of agent shall be \$275; and

b. Over thirty-five (35) pounds shall be \$275 plus ten (10) cents per pound in excess of thirty-five (35) pounds; and

2. The fee for gaseous systems shall be ten (10) cents per cubic foot and not less than \$150.

(f) Foam suppression system review fee.

1. The fee for review of a foam suppression system shall be fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.

2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed under the automatic sprinkler review fee schedule.

3. The fee for review of plans under subparagraph 1 of this paragraph shall not be less than \$275 or more than \$1,500.

(g) The commercial range hood review fee shall be \$225 per hood.

(h) Dry chemical systems review fee (except range hoods). The fee for review of:

1. One (1) through thirty (30) pounds of agent shall be \$275; and

2. Over thirty (30) pounds of agent shall be \$275 plus twenty-five (25) cents per pound in excess of thirty (30) pounds.

(i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be \$100 for the first tank, plus fifty (50) dollars for each additional tank and \$100 per piping system including valves, fill pipes, vents, leak detection, spill and overfill detection, cathodic protection, or associated components.

(j) Boiler and unfired pressure vessel fees. Plan review fees of boiler and unfired pressure vessel installations shall be in accordance with 815 KAR 15:027.

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

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

(a) "2012 International Building Code[–2006]", First Edition, International Code Council, Inc.; and

(b) "2012 Kentucky Building Code", First Edition, 2012, December 2012; and

(c) Kentucky State Plumbing Code, 815 KAR Chapter 20. ["2007 Kentucky Building Code", Ninth Edition, 2007, revised August 2011]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings and Construction, 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: December 12, 2012

FILED WITH LRC: December 13, 2012, at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2013 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 January 14, 2013 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public

hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2013. 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 uniform Kentucky Building Code as required pursuant to KRS 198B.050.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to adopt the Kentucky Building Code as required pursuant to KRS 198B.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation utilizes the International Building Code as the basis for construction standards and allows the Board of Housing, Buildings and Construction to make amendment unique to Kentucky after due consideration of equivalent safety measures as required by KRS 198B.050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth standards authorized by the statute for the enforcement of the building code, incorporating all applicable laws into its processes.

(2) If 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 updates the Kentucky Building Code to the model 2012 International Building Code standards of construction.

(b) The necessity of the amendment to this administrative regulation: Updating standards of construction will better serve the constituents of the Commonwealth and ensure the technologically advanced construction methods and materials.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B mandates the Board of Housing, Buildings and Construction to establish a uniform statewide building code. The Board of Housing, Buildings and Construction reviewed all amendments during multiple meetings and made final recommendation for promulgation at the regularly scheduled quarterly meeting of August 2012.

(d) How the amendment will assist in the effective administration of the statutes: These amendments to the Kentucky Building Code are intended to enhance public safety and to allow the industry to utilize current technologies, methods and materials in construction.

(3) List the type and number of individuals, businesses, organizations, or state and

local governments affected by this administrative regulation: Construction projects subject to the Kentucky Building Code will be affected by the amendments to this regulation, architects, engineers; contractors; project managers; businesses; and local government.

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

(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 identified entities must to comply with the new provisions of the updated building code.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities will incur the expense of obtaining new code books and costs/savings associated with the newly enacted standards.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Benefits include enhanced safety features, flexibility in building design, and increased clarity of construction standards.

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

(a) Initially: There are no additional or new costs associated with the implementation of this amended administrative regulation.

(b) On a continuing basis: There are no additional or new costs associated with implementation of this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments are anticipated to result in no additional costs to the agency beyond the cost of code books. Existing Building Codes Enforcement funds will be utilized for implementation and enforcement of the building code's provisions.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Established fees within this regulation are not being amended. New language has been provided to clarify that when plans are submitted for review and ultimately determined to be exempt, fees exceeding \$250 will be returned to the submitting party. As the regulation has historically read, the Department was entitled to retain all fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation. The Kentucky Building Code is to apply equally to all construction projects within the Commonwealth. All builders, contractors, local governments and owners are subject to the updated 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 Department of Housing, Buildings and Construction and local jurisdiction inspection and plan review programs.

(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.040(7) and KRS 198B.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. This administrative regulation establishes no new fees or creates new expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The regulatory amendment in anticipated to generate no additional 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? N/A

(c) How much will it cost to administer this program for the first year? There are no additional costs anticipated to administer the updated Kentucky Building Code.

(d) How much will it cost to administer this program for subsequent years? The costs of administering the Kentucky Building Code are anticipated to remain relatively constant after the first year of implementation and are offset by the revenues received for plan reviews and inspections.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: There is no anticipated fiscal impact from this amended administrative regulation to state or local government.



VOLUME 39, NUMBER 7 – JANUARY 1, 2013

PUBLIC PROTECTION CABINET  
Department of Housing, Buildings and Construction  
Division of Plumbing  
(Amendment)

815 KAR 20:195. Medical gas piping installations.

RELATES TO: KRS 198B.050, 318.010

STATUTORY AUTHORITY: KRS 198B.050(2), (5), 318.130[  
EO 2008-507]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.010(4)(e) includes in the definition of "plumbing" medical gas piping. KRS 318.134 requires that a person shall obtain a permit from the department [office] prior to the installation of plumbing and that the department [office] shall cause inspections as it may deem necessary. This administrative regulation establishes the requirements for medical gas piping installation.

Section 1. Definitions. (1) "Health care facility" means a hospital, nursing home, limited care facility, clinic, ambulatory care center, or office practice medical or dental office as defined in NFPA 99C.

(2) "Medical gas piping" means a permanent fixed piping system in a health care facility which is used to convey oxygen, nitrous oxide, nitrogen, carbon dioxide, helium, medical air and mixtures of these gases from its source to the point of use. Medical gas piping [and] includes the fixed piping associated with a medical, surgical or gas scavenging vacuum system, as well as a bedside suction system.

(3) "NFPA" means the National Fire Protection Association.

Section 2. Standards and Procedures. (1) Installation standards. A new medical gas piping installation or an addition to an existing medical gas piping system shall comply with the applicable provisions of "NFPA 99C, Standard on Gas and Vacuum Systems, 2002 Edition". However, Section 5.1.10.6.6 Branch Takeoffs, shall not be adopted herein nor enforced within the Commonwealth.

(2) Permit required. A [The] licensed master plumber shall make application for a permit to install medical gas piping prior to the installation. To obtain the permit, the master plumber shall:

(a) Pay a fee of thirty-five (35) dollars base permit for the medical gas system for each building;

(b) Pay a fee of five (5) dollars per opening; and

(c) Identify the person who shall perform the installation. The person making the installation shall be a certified medical gas installer as required by NFPA 99C as well as a licensed journeyman plumber.

(3) Supervision by [of] the master. It shall be the responsibility of the licensed master plumber to ensure [assure] that the person doing the installation:

(a) Is properly certified as required by NFPA 99C;

(b) Uses the proper products and stores them correctly; and

(c) Requests and receives all inspections at the initial pressure test for the complete system from a certified state plumbing inspector.

(4) Final approval. Upon completion of the installation, the master plumber shall furnish the Division of Plumbing with certification from the medical gas system verifier as required by NFPA 99C.

Section 3. Incorporation by Reference. (1) "NFPA 99C Standard on Gas and Vacuum Systems", 2002 Edition, National Fire Protection Association, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department [Office] of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) A copy may also be obtained by contacting the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101.

AMBROSE WILSON IV, COMMISSIONER  
ROBERT D VANCE, SECRETARY

APPROVED BY AGENCY: December 12, 2012

FILED WITH LRC: December 14, 2012, at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2013, at 9:00 am, EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2013 (five working days prior to the hearing) of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone 502-573-0365 Ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for medical gas piping inspections throughout the Commonwealth.

(b) The necessity of this administrative regulation: This amendment is necessary to delete a section of the referenced standard which has been determined not to be the best method of running medical gas piping by the Plumbing Code Committee at its November 7, 2012 regular meeting.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.134 requires that a person shall obtain a permit prior to installation of medical gas piping and for inspections of installations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide safer installations of medical gas piping.

(2) If 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 amended regulation deletes Section 5.1.10.6.6 Branch Takeoffs from the NFPA referenced standard. This section provided installation requirements for branch takeoffs on horizontal piping.

(b) The necessity of the amendment to this administrative regulation: These amendments update the plumbing code to provide improved installations to increase safety.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation updates existing regulation to provide an installation option for medical gas piping.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist those individuals in the plumbing industry by providing more increased safety in medical gas piping installations.

(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 Plumbing, the State Plumbing Code Committee, licensed plumbers and medical gas piping owners/operators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Affected entities must comply with the

approved installation standards for medical gas piping.

(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 anticipated additional cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits anticipated from this regulation will be improved installations of medical gas piping.

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

(a) Initially: No cost to implement.

(b) On a continuing basis: No cost to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing Division of Plumbing restricted funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable to 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 Plumbing, and the State Plumbing Code Committee 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 318.130 and 318.134.

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 no revenues nor creates 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. Not applicable.

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

(c) How much will it cost to administer this program for the first year? Not applicable.

(d) How much will it cost to administer this program for subsequent years? Not applicable.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: There is no anticipated fiscal impact from this administrative regulation to state or local government.

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (Amendment)

#### 902 KAR 30:001. Definitions for 902 KAR Chapter 30.

RELATES TO: KRS 200.650-200.676, 20 U.S.C. Chapter 33 [4431-1444], 34 C.F.R. Part 303

STATUTORY AUTHORITY: KRS 194A.050, 200.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes the definitions for 902 KAR Chapter 30 pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Definitions. (1) "Ability to pay" means a family has an income at 200 percent of the poverty level or above.

(2) "Assessment" means the ongoing procedures used by appropriate qualified service providers throughout the child's period of eligibility in First Steps to identify:

(a) The child's unique strengths and needs, and the services appropriate to meet those needs;

(b) The resources, priorities, and concerns of the family; and

(c) The supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's infant or toddler with a disability.

(d) Initial assessment means the assessment of the child and family assessment conducted prior to the child's first IFSP meeting.

(3) [(2)] "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is needed to increase, maintain, or improve the functional capabilities of a child with a disability and which is necessary to implement the individualized family service plan. The term does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g. mapping), maintenance, or replacement of that device.

(4) [(3)] "Assistive Technology Service" means a service that directly assists the child with a disability in the selection, acquisition, or use of an assistive technology device in accordance with 20 U.S.C. 1401(2).

(5) [(4)] "Cabinet-approved criterion referenced instrument" means any of the three (3) assessments, incorporated by reference in 902 KAR 30:120, used to assess children from birth to three (3) years of age.

(6) [(5)] "Cabinet-approved screening protocol" means a screening protocol that is:

(a) Designed to evaluate the developmental status of children; and

(b) Used by the cabinet.

(7) [(6)] "Child find" is defined by KRS 200.654(3).

(8) "Consent" is defined by 34 C.F.R. 303.7.

(9) "Destruction" means the physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under 34 C.F.R. 303.29.

(10) [(7)] "Direct supervision" means the continuous, on-site observation and guidance as activities are implemented with children and families.

(11) [(8)] "District Early Intervention Committee" or "DEIC" is defined by KRS 200.654(6).

(12) "Early intervention record" means all records, electronic and hard copy, regarding a child that are required to be collected, maintained, or used under part C of the Individuals with Disabilities Education Act and 902 KAR Chapter 30.

(13) "Early intervention service provider" is defined by 34 C.F.R. 303.12.

(14) [(9)] "Early intervention services" is defined by 34 C.F.R. 303.13 [KRS 200.654(7)].

(15) [(10)] "Established risk" means a diagnosed physical or

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mental condition that has a high probability of resulting in a developmental delay.

(16) [(14)] "Evaluation" means the use of procedures to determine eligibility for First Steps services in accordance with 902 KAR 30:120.

(17) [(42)] "Family-centered" means practices that:

- (a) Are driven by the family's priorities and concerns;
- (b) Support the family's role as the constant in a child's life;
- (c) Complement a family's natural activity settings and daily routines; and
- (d) Support, respect, encourage, and enhance the strengths, competence, and confidence of the family.

(18) [(43)] "First Steps" means Kentucky's early intervention system, which is defined by KRS 200.654(8).

(19) [(44)] "First Steps data management system" means the online data system that consists of each child's early intervention record and financial management data.

(20) [(45)] "Homeless child" means a child who meets the federal definition of homeless children and youths established in 42 U.S.C. 11434a(2).

(21) "Inability to pay" means a family's income is below 200% of the poverty level.

(22) [(46)] "Indirect supervision" means the regular, periodic, on-site observation and guidance as activities are implemented with children and families.

(23) [(47)] "Individualized family service plan" or "IFSP" means an individual family service plan as defined by 34 C.F.R. 303.340 [KRS 200.654(9)].

(24) [(48)] "Kentucky Early Childhood Data System" or "KEDS" means the internet based [a web-based] data collection system to provide data for analysis to determine the degree to which Kentucky's children are meeting the major child outcomes and learning standards required by the Office of Special Education Programs (OSEP) in the United States Department of Education and the state early childhood standards.

(25) [(49)] "Multidisciplinary team" is defined by 34 C.F.R. 303.24 [KRS 200.654(11)].

(26) [(20)] "Natural environments" is defined by 34 C.F.R. 303.26 [means settings, such as the home and the community, in which the child's same age peers who have no disability normally participate].

(27) [(24)] "Parent" means:

- (a) A natural, adoptive, or foster parent of a child;
- (b) A guardian (but not the state if the child is a ward of the state);
- (c) An individual acting in the place of a natural or adoptive parent including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- (d) An individual assigned as a surrogate parent pursuant to 20 U.S.C. [4415(b)(2) or] 1439(a)(5).

(28) [(22)] "Part C Coordinator" means the individual designated by the cabinet to be Kentucky's liaison with the federal Department of Education, Office of Special Education Programs (OSEP) to oversee the state's implementation of the early intervention system.

(29) "Participating provider or agency" is defined by 34 C.F.R. 303.403(c).

(30) [(23)] "Period of eligibility" means the time from referral to First Steps to termination of services due to:

- (a) Failure to meet initial program eligibility requirements;
- (b) Attainment of age three (3);
- (c) Documented refusal of service by the child's parent or legal guardian inclusive of disappearance; or
- (d) Change of residence to another state.

(31) [(24)] "Point of entry" or "POE" is defined by KRS 200.654(12).

(32) [(25)] "Prematurity" means a gestational age, at birth, of less than thirty-seven (37) weeks.

(33) "Primary referral source" is defined by 34 C.F.R. 303.302(c) and 34 C.F.R. 303.303(c).

(34) [(26)] "Primary service provider" means a professional who is a member of the IFSP team and is selected by the parent as the team lead to provide regular support to the family.

(35) [(27)] "Qualified service provider" means a provider who meets the qualifications listed in 902 KAR 30:150 [is defined by KRS 200.654(13)].

(36) [(28)] "Record review team" means a group of early intervention experts representing each discipline of early intervention providers as listed in 902 KAR 30:150, Section 2(1)(a)-(r) [(s)], who are utilized by the state lead agency to review complex cases for eligibility and service provision, and make recommendations to IFSP teams.

(37) [(29)] "Referral" means a child identified between birth and three (3) years of age who is:

(a) A Kentucky resident or a homeless child within the boundaries of the Commonwealth; and

(b) Suspected of having an established risk diagnosis or a developmental delay ~~[as confirmed by the cabinet-approved screening protocol]~~.

(38) [(30)] "State Lead Agency" means the designated staff in the Department for Public Health who are responsible for implementing the First Steps Program in accordance with 34 C.F.R. 303.22 [Part 303], 20 U.S.C. Chapter 33 [1431 to 1444], and KRS 200.650 to 200.676. [(31)] ~~"Transdisciplinary team" means professionals from various disciplines working together cooperatively by educating one another in the skills and practices of their disciplines and a commitment to work together across traditional discipline boundaries being consistent with the training and expertise of the individual team members.]~~

(39) [(32)] "Ward of the state" means a child declared by a circuit court judge to be a ward of the state pursuant to KRS 625.043(2) or 625.100(2).

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner  
AUDREY HAYNES, Secretary

APPROVED BY AGENCY: December 12, 2012

FILED WITH LRC: December 12, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2013, at 9:00 a.m. in Conference Suite 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 January 14, 2013, 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 regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business January 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756 ext 3973

(1) Provide a brief summary of 902 KAR 30:001:

(a) What this administrative regulation does: This administrative regulation provides definitions unique to the early intervention system as defined by Pub.L. 108-446, the Individuals with Disabilities Education Improvement Act.

(b) The necessity of this administrative regulation: 902 KAR 30:001 is necessary to define specific terminology used in the early intervention system.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.650 requires that the Cabinet for Health and Family Services be in compliance with federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and

regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds the following definitions: ability to pay, early intervention provider, early intervention record and destruction, inability to pay, participating provider or agency and primary referral source. The amendment expands the following definitions: assessment, assistive technology device. The term transdisciplinary team is deleted from this regulation.

(b) The necessity of the amendment to this administrative regulation: KRS 200.650 (6) requires compliance with federal law. KEIS needs to update the state regulations to stay in compliance with the updated federal regulations, 34 C.F.R. Part 303 released in September 2011.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment adds or expands the definitions related to early intervention services to conform with the updated definitions in federal regulation.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately fifteen hundred (1500) early intervention providers, including Point of Entry staff, will be affected by these regulations. No state or local governments are affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will continue to provide early intervention services as they currently practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs to entities to comply with the amended regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Early intervention providers will be eligible for continued funding and participation in First Steps.

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

(a) Initially: There are no costs to implement this regulation.

(b) On a continuing basis: There are no costs to implement this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increase any fees? No, this administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the 15 local Point of Entry offices, 1500 direct service providers as well as the state administrative office that

governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. Chapter 33, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.650-676

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 provides clarification of program terms.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no new revenue generated by this administrative regulation during the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulations during the subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

There is no fiscal impact on local or state government for this administrative regulation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 902 KAR 30:001

Contact Person: Paula Goff (502)564-3756 ext 3277

Federal Statute or regulation constituting the federal mandate. 34 C.F.R. 303 Subpart A—General list the definitions commonly used in early intervention services. As a recipient of federal Part C monies, Kentucky Early Intervention Services is mandated to fully comply with all federal statutes. The changes in the definitions bring KEIS into full compliance with this federal statute and are required for continued receipt of those funds.

State compliance standards.KRS 200.650 charges the Cabinet for Health and Family Services and the Department for Public Health to comply with federal law as it pertains to services for infants and toddlers with disabilities and their families.

Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to mirror the federal language regarding definitions the state will be in full compliance under this part of the federal statute.

Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Maternal and Child Health**  
**(Amendment)**

**902 KAR 30:110. Point of entry and service coordination.**

RELATES TO: KRS 200.662, 200.664, 200.668, 200.670, 20 U.S.C. 1400, 1435, 34 C.F.R. 303.34, 303.164, 303.165, 303.167, 303.344, and 303.403

STATUTORY AUTHORITY: KRS 194A.050, 200.660(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes the point of entry and service coordination provisions pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Point of Entry. (1)(a) The point of entry (POE) staff shall serve as the local lead agency and shall coordinate child find efforts with:

1. Programs authorized under part B of the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400 [Local education agencies in order to insure compliance with child find mandates by each entity]; and

2. Other state and federal programs serving this population. (b) The primary referral sources described in paragraph (a) of this subsection may include:

1. Maternal and child health programs, including the Maternal, Infant and Early Childhood Home Visiting Program, under Title V of the Social Security Act (42 U.S.C. 701(a));

2. Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C. 1396(a)(43) and 1396(a)(4)(B)) [Early and periodic screenings, diagnosis, and treatment (EPSDT) programs];

3. Head Start, including Early Head Start programs under section 645A of the Head Start Act (42 U.S.C. 9801);

4. ~~[Homeless shelters;~~

5. Supplemental Security Income (SSI) programs under Title XVI of the Social Security Act (42 U.S.C. 1381);

5. Child protection and child welfare programs, including programs administered by and services provided through the foster care agency and the state agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a));

6. ~~[The local Department for Community Based Services (DCBS) office for cases with a sustained or negligent complaint; and~~

7. Programs authorized through 42 U.S.C. 15001 to 15009, the Developmental Disabilities Assistance and Bill of Rights Act;

7. Child care programs;

8. Programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401);

9. Early Hearing Detection and Intervention (EDHI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC);

11. The Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa); and

12. Hospitals and physicians.

(2) Each POE staff shall maintain accessibility and provide public awareness activities in each of their districts.

(3) The POE staff shall maintain communication with the District Early Intervention Committee (DEIC) and the state lead agency on matters of child find, service options, and other issues relevant to the First Steps Program.

(4) The POE staff shall accept all referrals [inquiries] for First Steps services to determine eligibility for programs.

(a) Upon receiving a telephone or written referral [inquiry], POE staff shall determine if:

1. The family is aware that a referral [an inquiry] is being made; and

2. The referral is appropriate based on:

a. The child's age, which shall be between birth and three (3) years old;

b. The family's residence within the assigned district or the family being homeless; and

c. An established risk diagnosis or a developmental concern ~~[that is confirmed by administration of the cabinet approved screening protocol].~~

(b) A child who is referred due to a developmental concern, and not screened by the primary referral source, shall have a cabinet approved screening protocol completed prior to the initial evaluation.

(c) If the point of entry [initial screening] finds the child does not meet the criteria established in paragraph (a)2. of this subsection, the POE shall provide [:

1. Provide] to the referral source appropriate resources for the child and family for services that meet that child's needs. These resources may include:

1. ~~[a.]~~ Public schools;

2. ~~[b.]~~ The Department for Community Based Services;

3. ~~[c.]~~ Medical services;

4. ~~[d.]~~ Other appropriate community services; or

5. ~~[e.]~~ Another POE if residency alone is the reason for an inappropriate referral]; and

2. Provide a parent with a First Steps Notice of Action or a First Steps Notice of Action and Consent in accordance with 34 C.F.R. 303.403(b)].

(d) ~~[(e)]~~ If it is determined that the child meets the criteria established in paragraph (a)2. of this subsection, POE staff shall contact the family by telephone or letter within three (3) calendar [five (5) working] days of receipt of the referral to provide information about the program and obtain consent for intake ~~[determine if the family would like more information and an initial visit scheduled].~~

(e) For a child referred due to an established risk condition, if ~~[(d)]~~ the family is interested in early intervention services, the POE staff shall assign a service coordinator and continue with the intake process.

(f) For a child referred due to a developmental concern, that has been confirmed by the administration of the cabinet approved screening protocol, if the family is interested in early intervention services, the POE staff shall assign a service coordinator and continue with the intake process.

(g) The parent or guardian of a child referred due to a developmental concern shall:

1. Be provided with prior written notice of the POE's intent to administer the cabinet approved screening protocol. The notice shall include the option to request an evaluation at any time during the screening procedure; and

2. Give written consent prior to the administration of the cabinet approved screening protocol.

(h) ~~[(e)]~~ If the family is not interested in participating, the family shall be provided contact information for the POE and other community resources. The POE staff shall document in the child's record the refusal of services.

(i) If the POE staff is unable to contact the family within seven (7) calendar days from the date of the referral, a follow-up letter shall be sent to the family and the case closed.

(j) If the POE is able to contact the family initially but the family fails to return the screening protocol or consent, the POE shall send a First Steps Notice of Action (FS-9) and close the case three (3) calendar days from the date of notice.

(k) ~~[(f)]~~ Within fifteen (15) working days of the referral, the POE staff shall send, in writing, an acknowledgment to the referral source that the referral was received and the status of the processing of the referral, if known at that time.

(5) All children who are two (2) years and ten and one-half (10 1/2) months old to age three (3) years when first referred to First Steps shall not be eligible for First Steps. The POE shall notify the parent or guardian in writing that due to the child's age at the time of referral, the First Steps Program will not provide an evaluation to determine eligibility for First Steps, but with written consent will refer the child to the state and [will connect the parent or guardian with the] local education agency or other community resource.

(6) The POE staff shall maintain a complete record on all children referred through the POE and provide data to the state lead agency as requested. A complete record shall include:

- (a) A hard copy of all documents that include a parent signature;
  - (b) Any correspondence generated by the POE; and
  - (c) The data entered into the child's electronic early intervention record in the First Steps data management system.
- (7) The POE staff shall provide data as requested by the DEIC.

Section 2. Service Coordination. (1) The service coordinator shall serve as the main point of contact in helping families obtain the services and assistance they need.

(2) During the intake process [initial visit to the family], the service coordinator shall:

- (a) Identify the purpose of the visit;
- (b) Discuss the role of the service coordinator;
- (c) Explain the First Steps service delivery system, including:
  - 1. The consultative model and primary service provider; and
  - 2. The First Steps system of payment, which includes:
    - a. The family share participation fee; and
    - b. The billing of public and private insurance for early intervention services;

(d) Interview the family and document findings related to:

- 1. The parent or guardian's developmental concern for the child; and

2. The pregnancy, birth, and health information [(c) Explain the family rights by reviewing the Family Rights Handbook and the Statement of Assurances — Procedural Safeguards];

(e) Explain the family rights by reviewing the Family Rights Handbook;

(f) Discuss the forty-five (45) day timeline and determine the next action needed to determine eligibility for the child;

(g) Discuss evaluation and service options;

(h) Obtain parent or guardian signature on the First Steps Consent to Release/Obtain Information (FS-10) form for medical and developmental information;

(i) Collect insurance information and data necessary for billing, and obtain parent or guardian signature on the Notice and Consent for Use of Private Insurance (FS-12A) form;

(j) Assess the family's ability to pay using the Financial Assessment Verification (FS-13) form. [(d) Obtain the signature of a parent or guardian on the Statement of Assurances — Procedural Safeguards;

(e) Obtain consent for an initial evaluation as required by 902 KAR 30:180, Section 2(3);

(f) Request the First Steps Consent to Release/Obtain Information form be completed by a parent or guardian for medical or developmental information, risk indicators, or other diagnostic or hearing test results;

(g) Determine the willingness of the family to participate in First Steps services or refusal of services;

(h) Interview the family and document findings relating to:

- 1. The child's developmental status;
- 2. The pregnancy, birth, and health information;
- 3. Social relationships;
- 4. Context for learning, including the family's history, resources, priorities, and concerns; and
- 5. The family's daily routines and activities, the family's satisfaction level with these routines, and the family's desired outcomes;

(i) Determine the next action needed with the family to determine eligibility of the child;

(j) Discuss evaluation and service options;

(k) Establish the potential date for developing an Individual Family Service Plan (IFSP);

(l) Discuss the role of the service coordinator; and

(m) Collect insurance information and data necessary for billing;]

(3) The service coordinator shall:

(a) Assist the parents of infants and toddlers with disabilities in obtaining access to needed early intervention services and other services identified in the IFSP, including making referrals to providers for needed services and scheduling appointments for infants

and toddlers with disabilities and their families;

(b) Coordinate the provision of early intervention services and other services (including educational, social, or medical services that are not provided for diagnostic or evaluative purposes) that the child needs or is being provided;

(c) Coordinate evaluations and assessments;

(d) Facilitate and participate in the development, review, and evaluation of IFSPs;

(e) Conduct referral and other activities to assist families in identifying available early intervention service providers;

(f) Coordinate, facilitate, and monitor the delivery of early intervention services to ensure that the services are provided in a timely manner;

(g) Conduct follow-up activities to determine that appropriate early intervention services are being provided;

(h) Coordinate the funding sources for service;

(i) Facilitate the development of a transition plan to preschool, school, or if appropriate, to other services;

(j) Provide written confirmation in accordance with 34 C.F.R. 303.342(d)(2) to the parent or guardian and all IFSP team members [Notify parents, in accordance with the parental prior notice requirements of 34 C.F.R. 303.403, and all the IFSP team members in writing] of the date, time, and location of the meetings for the initial and annual Individual Family Service Plan (IFSP), the six (6) month review, and any other IFSP team meeting or the transition conference within [no less than] seven (7) calendar days prior to the IFSP, review, or transition conference date;]

(k) [(b)] If there is a cancellation of an IFSP meeting, notify the IFSP members in writing of the rescheduling of the IFSP meeting within five (5) working days of the cancelled meeting date; [and]

(l) Reassess the family's ability to pay at the six (6) month review and annual IFSP meeting, and at other times when requested by the family; and

(m) Following the IFSP meeting: [(c) Facilitate the initial, annual and six (6)-month review IFSP meetings and any IFSP meetings requested to address revisions. The service coordinator shall:]

1. Enter all IFSP data into the First Steps data management system;

2. Finalize the plan within five (5) calendar days of the date of the meeting;

3. Provide a written copy to the parent or guardian within five (5) calendar days of the meeting and provide copies to persons identified and consented to by the family;

4. Refer the family to appropriate agencies for service identified on the IFSP in accordance with 902 KAR 30:130, Section 2(5)(i); and

5. Ensure that transition steps and services are discussed with the family during each IFSP meeting.

(4) The service coordinator shall inform the family of the family's rights and procedural safeguards by:

(a) Summarizing the Family Rights Handbook at the initial IFSP, at each subsequent IFSP, and at any time the family requests;

(b) Familiarizing the family with the procedural safeguards at every IFSP meeting [and due process rules, and ensuring that the family reviews and signs the Statement of Assurances — Procedural Safeguards at every IFSP review];

(c) Ensuring that all materials are given to the family in a format the family can understand in the family's native language; and

(d) Assisting the family, at the family's request, with resolving conflicts among service providers.

(5) The service coordinator shall assist the family in identifying available service providers by:

(a) Keeping current on all available services in the district; and

(b) Having available to the families a list of all eligible First Steps services providers in each district. If the family chooses a service provider outside the First Steps approved provider list, the service coordinator shall inform the family that the provider is not approved through First Steps and may result in a cost to the family.

(6) The service coordinator shall ensure that service coordination is available to families during normal business hours and at the family's request.

(7) The service coordinator shall contact the child's family at a minimum of one (1) time per plan to discuss service coordination

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needs, unless otherwise stipulated in the IFSP.

(8) The service coordinator shall give the family a business address and phone number and any other information needed to contact the service coordinator.

(9) If a family desires a change in the family's service coordinator, the family shall contact the POE and the POE shall seek to resolve the situation.

(10) The service coordinator shall facilitate the development of a transition plan by:

(a) Knowing the transition procedures as established in 902 KAR 30:130, Section 3(4)(f) [2(8)(4)];

(b) Ensuring that all potential agencies and programs that could provide service to a particular child after the age of three (3) are included when introducing the parents to future program possibilities;

(c) Holding a transition conference at least ninety (90) calendar days and, at the discretion of all parties, not more than nine (9) months prior to the child's third birthday. The transition conference shall involve the family, IFSP team, the special education local school district representative, and staff from potential next placement options; and

(d) Including at least one (1) transition outcome as a part of every IFSP that is consistent with 34 C.F.R. 303.344(h).

(11) The service coordinator shall ensure that all contacts with the family or other service providers are documented in the child's record in the First Steps data management system. This documentation shall occur within five (5) [seven (7)] days of the date of service and include:

- (a) The date of contact;
- (b) Amount of time spent;
- (c) Reason for contact;
- (d) Type of contact whether by telephone or face-to-face;
- (e) Result of contact; and
- (f) Plan for further action.

(12) The service coordinator shall document in [as notes on] the First Steps data management system all contacts attempted but not made[, and the reason if services were not delivered in a timely manner].

(13) The service coordinator shall encourage the family to access all services identified on the individualized family service plan.

(14) If the family wants to voluntarily terminate a service or all services, the service coordinator shall:

(a) Document in the child's record which services are ending and the date of termination; and

(b) Send a follow-up letter that meets the requirements for prior written notice as specified in 34 C.F.R. 303.421 [403] to the family which includes what services are terminating, and the date services will terminate, within three (3) calendar [seven (7) working] days after notice from the family of the family's choice to end services.

(15) If the family is absent from a scheduled service with no prior notice for at least three (3) consecutive visits, the service provider shall notify the service coordinator [within seven (7) working days] after the last absence. If the service coordinator receives notice of no show from a provider, the service coordinator shall:

(a) Document the service provider's contact and try to make contact with the family to discuss the circumstances. The service coordinator shall:

1. If contact is made, notify each provider [within seven (7) working days] of the result of the discussion; or

2. If unable to contact the family within three (3) working days, send the family a notice of action without consent to indicate service will be terminated within seven (7) days of the date of the notice [no contact is made, send the family a letter within seven (7) working days]:

a. Requesting direction as to the choice of the family in continuation of services;

b. Stating that the service will be discontinued until a choice is made by the family by contacting the service coordinator; and

c. Stating that if no contact is made by the family, services will be terminated fifteen (15) working days from the date of the letter; and

(b) Notify the service provider, in writing, if services are terminated and the date of termination. ~~[(16) The service coordinator~~

~~shall be responsible for securing any Release of Information necessary to send or secure information, upon request from other service providers, including non-First Steps providers involved in the care of the child.~~

~~[(17) The service coordinator shall provide data to the cabinet upon request.~~

~~[(18) The service coordinator shall limit practice in First Steps to service coordination only.]~~

~~Section 3. [Determination of Child's Hearing Status. (1) If the referral is for a birth to three (3) year old child who is "at risk" as confirmed by the Early Hearing Detection and Intervention Data Base and the "at risk" indicator is the only reason the child was referred to First Steps, and no audiological evaluation has been performed, the family or guardian shall be notified to contact the child's primary health care provider, pediatrician, or an Approved Infant Audiological Assessment and Diagnostic Center as specified by KRS 211.647 and 216.2970 for an audiological evaluation to determine hearing status.~~

~~(2) If the referral is for a birth to three (3) year old child who is suspected of having a hearing problem, but not suspected of having any developmental problems, the family or guardian shall be notified to contact the child's primary health care provider, pediatrician, or an Approved Infant Audiological Assessment and Diagnostic Center as specified by KRS 211.647 and 216.2970 for an audiological evaluation to determine hearing status.~~

~~(3) If the referral is for a birth to three (3) year old child who has a diagnosis of significant hearing loss, as specified by KRS 200.654(10)(b), the child shall be considered to have an "established risk" diagnosis and be eligible for First Steps services and the referral process shall continue.~~

~~(4) If the referral is for a birth to three (3) year old child who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and who is suspected of having delays in developmental areas, the POE staff shall initiate the evaluation for First Steps, which shall include an audiological evaluation at an Approved Infant Audiological Assessment and Diagnostic Center as specified by KRS 211.647 and 216.2970.]~~

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

~~(a) "Family Rights Handbook", December 2010;~~

~~(b) "First Steps Notice of Action (FS-9)", September 2012 [December 2010];~~

~~(c) ["First Steps Notice of Action and Consent", December 2010;~~

~~(d)] "First Steps Consent to Release/Obtain Information (FS-10)", May 2012 [December 2010; and]~~

~~(e) "Financial Assessment Verification (FS-13)", May 2012; and~~

~~(f) "Notice and Consent for Use of Private Insurance (FS-12A)" May 2012 ["Statement of Assurances—Procedural Safeguards", December 2010].~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.~~

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner  
AUDREY HAYNES, Secretary

APPROVED BY AGENCY: December 12, 2012

FILED WITH LRC: December 12, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2013, at 9:00 a.m. in Conference Suite 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 January 14, 2013, 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 regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business January 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756 ext 3973

(1) Provide a brief summary of 902 KAR 30:110:

(a) What this administrative regulation does: This administrative regulation provides guidance and requirements for the Point of Entry (POE). The Point of Entry is the local lead agency that is responsible for public awareness activities, processing all referrals to the Kentucky Early Intervention System and is responsible for ongoing record keeping and service coordination activities.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance to the POE regarding primary referral sources and the processing of referrals for early intervention services. The role of service coordinators has been expanded in regulation to comply with federal regulations. The service coordinator is responsible for coordinating all services for an eligible child and family and this regulation sets the process for the development of this plan.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.652 (2-6) requires that there be an operational early intervention system. KRS 200.664 requires an individualized family service plan be developed for all eligible infants and toddlers. KRS 200.670 requires KEIS to implement public awareness activities to ensure access to early intervention services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change the existing administrative regulation: The amendments to this regulation remove obsolete language and procedures. Additional guidance is provided for clarity.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to fully comply with federal regulations found at 34 C.F.R. 303 and so that regulation reflects current practice and program reorganization.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.650 (6) and KRS 200.652 (3) require a statewide system, comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statutes: The changes to this regulation will provide guidance to the POE in matters related to child find or public awareness activities. Federal regulations require that all potentially eligible children be referred to the early intervention system as soon as possible. The enhanced list of those identified as a primary referral source will ensure compliance with this part of federal regulation. The changes to this regulation will also enhance the role of service coordinator to fully comply with federal regulation. The service coordinator is the leader of the individualized family service plan team and the updates to this regulation will elevate their role as team leader.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately fifteen hundred (1500) early intervention providers, including POE staff, will be affected by these regulations. Over six thousand (6000) eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The primary referral sources, early intervention providers, including service coordinators and POE staff, will need to learn and implement the amended regulations. Families currently receiving early intervention services will need to understand how the system operates so that they are informed consumers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The revisions to this administrative regulation do not cost the entities affected by the amended regulations any additional dollars.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will help to identify children potentially eligible for early intervention services, and will benefit early intervention providers, including service coordinators by providing needed clarity so that they are more effective in their roles within the system.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No continuing costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal funds and state general funds will be used to implement this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

This administrative regulation impacts the 15 Point of Entry offices, approx. 1500 direct service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1435, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.650-676

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 new revenue generated by this administrative regulation during the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this admin-



istrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will have an estimated \$1-2 million savings to the program.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303 outlines the states requirements for implementing early intervention services. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards.KRS 200.650 to 200.676 charges the Cabinet for Health and Family Services, Department for Public Health to implement early intervention services and comply fully with federal statutes and regulations.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky will be in full compliance under this part of the federal statute.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Public Health

##### Division of Maternal and Child Health (Amendment)

#### 902 KAR 30:120. Evaluation and eligibility.

RELATES TO: KRS 200.654, 200.668, 34 C.F.R. 303.11, 303.321 [303.309], 303.322, 20 U.S.C. 1434

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(7), 34 C.F.R. 303.321 [303.322], 20 U.S.C. 1434

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the evaluation, eligibility, and redetermination of eligibility requirements for First Steps, Kentucky's Early Intervention Program.

Section 1. Initial Eligibility. (1) Initial eligibility shall be determined by:

(a) Administering at least one (1) evaluation instrument designed to confirm the presence of a significant developmental delay;

(b) Gathering information about the child's developmental history through parent interview;

(c) Identifying the child's level of functioning in each developmental area;

(d) Gathering information from other sources, such as child-care workers; and

(e) Reviewing all available medical and educational records.

(2) A child shall be eligible for First Steps service if the child:

(a) Is age birth up to three (3) years;

(b) Is a resident of Kentucky or homeless within the boundaries of the state at the time of referral and resides in Kentucky while receiving early intervention services; and

(c)1. Has a documented established risk condition that has a high probability of resulting in developmental delay; or

2. Is determined to have a significant developmental delay

based on the evaluation and assessment process.~~[(2) A determination of initial eligibility, assessments, and the initial IFSP team meeting shall occur within forty-five (45) calendar days after a point of entry receives an initial referral for a child who meets the requirements established in subsection (1) of this section.]~~

(3) Eligibility by established risk conditions:

(a) In accordance with KRS 200.654(10)(b), a child meeting the criteria established in subsection (1)(a) and (b) of this section with a suspected established risk condition shall be eligible once the diagnosis is confirmed by a physician. The established risk condition shall be documented in the child's record through the First Steps on-line data management system [and documented in the medical records provided to the First Steps Program].

(b) A list of approved established risk diagnoses shall be maintained by the First Steps Program and made available in policies and procedures.

1. A child with an established risk shall have a five (5) area assessment, assessing the five (5) areas listed in subsection (4)(a) of this section, completed by a developmental evaluator using a cabinet-approved, criterion referenced assessment instrument in lieu of a primary level evaluation.

2. If the established risk condition relates to hearing loss, the five (5) area assessment shall:

a. Be [be] performed by a speech therapist or a teacher of the deaf and hard of hearing; and

b. Be authorized as a discipline specific assessment[who is approved as a developmental evaluator].

(4) Eligibility by developmental delay:

(a) A child meeting the criteria established in subsection (1)(a) and (b) of this section shall be eligible for First Steps services if the child is determined to have fallen significantly behind in development, based on the evaluation and assessment process, in one (1) or more of the following domains of development:

1. Total cognitive development;

2. Total communication area through speech and language development, which shall include expressive and receptive language;

3. Total physical development including motor development, vision, hearing, and general health status;

4. Total social and emotional development; or

5. Total adaptive skills development.

(b) Evidence of falling significantly behind in developmental norms shall be determined on a norm-referenced test by the child's score that is:

1. Two (2) standard deviations below the mean in one (1) skill area; or

2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.

(c)1. If a norm-referenced test reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria required by paragraph (b) of this subsection, a more in-depth standardized test in that area of development may be administered if the following is evident:

a. The primary level evaluator and a parent or guardian have a concern or suspect that the child's delay is greater than the testing revealed;

b. A different norm-referenced test tool reveals a standardized score which would meet eligibility criteria; and

c. There is one (1) area of development that is of concern.

2. The results of the alternate testing required by subparagraph 1. of this paragraph shall determine the child's eligibility if the standardized scores indicate a delay of at least [greater than] two (2) standard deviations.

(5) Eligibility by professional judgment. A child may be determined eligible by informed clinical opinion by the following multidisciplinary evaluation teams of professionals:

(a) An approved neonatal follow-up program team, as described in 902 KAR 30:150, Section 2(3)(e);

(b) An approved intensive level evaluation team, as described in 902 KAR 30:150 Section 2(3)(d); or

(c) The designated record review team, if reviewing for eligibility. ~~[(6) To be an approved neonatal follow-up program team, a university-based program shall:~~

~~(a) Submit to the cabinet the credentials and documentation of~~

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experience in conducting assessments for the birth-to-three (3)-age population for each proposed team member; and

(b) ~~Contract with the cabinet to conduct neuro-developmental follow-up of high risk infants.~~

(7) ~~To be an approved intensive level evaluation team, two (2) or more professionals who meet the criteria established in Section 2(9) of this administrative regulation shall:~~

(a) ~~Submit to the cabinet their credentials and documentation of experience in conducting assessments for the birth-to three (3) age population for each proposed team member; and~~

(b) ~~Contract with the cabinet to conduct intensive level evaluations.]~~

Section 2. Initial Child Evaluation. (1) Prior to the administration of an evaluation instrument the child's vision and hearing status shall be determined through screening or evaluation.

(2) A child referred to the First Steps Program who meets the criteria established in Section 1(2)(4)(a) and (b) of this administrative regulation shall receive an initial evaluation to determine eligibility if:

(a) There is a suspected developmental delay as confirmed by the cabinet-approved screening protocol; ~~and~~

(b) The child does not have an established risk diagnosis; and

(c) The parent requests and consents to an evaluation.

(3)(2) For a child without an established risk diagnosis, an initial [the primary level] evaluation shall be used to:

(a) Determine eligibility;

(b) Determine developmental status;

(c) Establish the baselines for progress monitoring; and

(d) Make recommendations to [for] the Individual Family Service Plan (IFSP) team [outcomes].

(4) For a child with an established risk diagnosis, a criterion referenced assessment shall be completed to:

(a) Determine developmental status;

(b) Establish the baseline for progress monitoring; and

(c) Make recommendations to the Individual Family Service Plan (IFSP) team.

(5)(3)(a) Initial [Primary level] evaluations shall include the five (5) developmental areas identified in Section 1(4)(a) of this administrative regulation using norm-referenced standardized instruments that provide a standard deviation score in the total domain for the five (5) areas and shall include a cabinet-approved criterion referenced assessment instrument.

(b) The initial [primary level] evaluation shall include:

1. A medical component completed by a physician or nurse practitioner that includes a recent complete history and physical examination and other medical information; and [:

a. History and physical examination;

b. Hearing and vision screening; and

c. Recent medical evaluation in accordance with the timelines established in subsection (5) of this section; and]

2. A developmental component completed by a cabinet-approved primary level evaluator that includes:

a. A review of pertinent health and medical information; and

b. Completion of each appropriate instrument needed to determine the child's unique strengths and needs; and

c. A recommendation of eligibility].

(c) [Results of the evaluation shall be explained to the family.

(d) An evaluation report shall be entered into the First Steps online data management system [written]:

1. Within five (5) [ten (10)] calendar days of the completion of the evaluation; and

2. In clear, concise language that is easily understood by the family.

(6)(4) Child records of evaluations transferred from a developmental evaluator outside the Kentucky Early Intervention System shall be reviewed by the Point of Entry staff and shall be used for eligibility determination if:

(a) The records meet evaluation timelines established in subsection (7)(5) of this section; and

(b) The records contain the developmental evaluation information required by subsection (5)(b) [(3)(b)] of this section.

(7)(5) If there is a recent medical or developmental evaluation available, as required by subsection (5)(b) [(3)(b)] of this section, it

shall be used to determine eligibility if the evaluation was performed within:

(a) Three (3) months prior to referral to First Steps, for a child under twelve (12) months of age; or

(b) Six (6) months prior to referral to First Steps, for a child between twelve (12) months of age and three (3) years of age.

(8)(6)(a) A child referred to the First Steps program who was born at less than thirty-seven (37) weeks gestational age shall be evaluated and assessed using an adjusted gestational age to correct for prematurity.

(b) For a child who is less than six (6) months corrected age, the primary evaluation shall be done by an approved intensive level evaluation team, ~~or an approved district child evaluation specialist in accordance with Section 1(5) of this administrative regulation.~~

(9)(7) If the child does not have an established risk diagnosis and is determined not eligible, the POE staff shall:

(a) Provide a First Steps Notice of Action (FS-9) in accordance with 34 C.F.R. 303.421; and

(b) Discuss [discuss] available community resources, such as Medicaid, EPSDT, the Department for Public Health's and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other community programs [third-party payers].

(10)(8) A review of the child's First Steps record by the record review team shall be the second level in the First Steps evaluation system that shall be utilized to determine eligibility for cases which are complex or have contradictory information from testing.

(a) Upon obtaining a written consent by the parent or guardian, a service coordinator shall submit a child's record to the Department for Public Health or the designee for a record review if:

1. The child does not meet eligibility guidelines at the primary level;

2. The primary level evaluator and a parent or guardian have concerns that the child is developing atypically; and

3. A determination of eligibility based on professional judgment is needed.

(b) Upon receiving a referral, a record review team shall conduct a record review and issue findings within ten (10) calendar days of receipt of the request. ~~[(9) If the record review team requests an intensive level clinical evaluation, this shall be conducted by a team of early intervention professionals approved by the Part C Coordinator that shall include the following:~~

~~(a) 1. A board-certified medical professional with expertise in early childhood development;~~

~~2. A board-certified developmental pediatrician;~~

~~3. A pediatrician who has training and experience in the area of early childhood development;~~

~~4. A board-certified pediatric psychiatrist; or~~

~~5. A board-certified pediatric neurologist; and~~

~~(b) One (1) or more developmental professionals identified in 902 KAR 30:150, Section 2(1)(a)-(e).]~~

Section 3. Annual Redetermination of Eligibility. (1) A redetermination of eligibility shall not be used to address concerns that are medical in nature.

(2) A child shall have continuing program eligibility for First Steps services if:

(a) The child is:

1. Under three (3) years old; and

2. A resident of Kentucky or homeless within the boundaries of the state; and

(b) The result of the most recent [semi-annual] progress review, including the annual five (5) area assessment, demonstrates:

1. A delay of at least three (3) months as indicated by comparing the developmental age to the chronological or corrected age [An ongoing delay or failure to attain an expected level of development] in one (1) or more developmental areas; and

2. Continued First Steps services are required in order to support continuing developmental progress ~~[by consensus of the IFSP team].~~

(3) Based on the results of the redetermination of eligibility, the IFSP team shall:

(a) Continue with the same outcomes and services;

- (b) Continue with modified outcomes and services; or
- (c) Transition the child from First Steps services.
- (4) Redetermination of eligibility shall occur at least annually.

(a) The annual redetermination shall be part of the child's on-going assessment and shall include an assessment in all five (5) areas by the Primary Service Provider (PSP) using a cabinet-approved criterion referenced instrument.

(b) If a person directly involved in conducting the evaluation and assessments is unable to attend an IFSP meeting, arrangements shall be made for that person's involvement by other means including participating in a telephone conference call, having a representative attend the meeting, or making [pertinent] records and reports available at the meeting.

Section 4. Determination of Child's Hearing Status. (1) If the referral is for a child who has a diagnosis of significant hearing loss, as specified by KRS 200.654(10)(b), the child shall be considered to have an established risk diagnosis and be eligible for First Steps services and the referral process shall continue.

(2) If the referral is for a child who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and who is suspected of having developmental delays, the POE staff shall initiate the evaluation for First Steps, which shall include an audiological evaluation at an approved Infant Audiological Assessment and Diagnostic Center as specified by KRS 211.647 and 216.2970.

Section 5. Incorporation by Reference. (1) "First Steps Notice of Action (FS-9)", September 2012 edition, is incorporated by reference. This notice is required to give the parent of a child not eligible the right to challenge that decision through due process. ["The Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) Periodicity Schedule", August 2003 edition, is incorporated by reference.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner  
AUDREY HAYNES, Secretary

APPROVED BY AGENCY: December 12, 2012

FILED WITH LRC: December 12, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2013, at 9:00 a.m. in Conference Suite 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 January 14, 2013, 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 regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business January 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756

- (1) Provide a brief summary of 902 KAR 30:120:

(a) What this administrative regulation does: This administrative regulation provides requirements to establish a child's initial eligibility and the annual redetermination of eligibility for the Kentucky Early Intervention System. The requirements for child evaluation are included in this regulation.

(b) The necessity of this administrative regulation: States must establish the specific detail for eligibility to receive early intervention services. While federal statute and regulation describe the mandatory populations of infants and toddlers to be served under Part C of the Individuals with Disabilities Education Improvement Act (PL 108-446), states set the specific procedures and criteria for eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.650-200.676 requires the state to develop and implement a comprehensive, statewide early intervention system that complies with federal statute and regulation. KRS 200.652(2) specifically requires the state to provide assistance and support to the family of an infant or toddler with a disability.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will ensure that children who are eligible for early intervention service are appropriately identified. It also provides for the requirement for continued eligibility for early intervention services.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides specific guidance for evaluation and assessment, reflecting current program structure and best practices in the field of early intervention. It also removes obsolete and redundant language. Required federal regulatory language is also added to the administrative regulation. The listing of eligible medical conditions is updated. Criteria for eligibility by developmental delay is unchanged.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to reduce costs for unnecessary evaluations and assessments and to specify procedures for federal requirements for reporting the entry and exit status of all children served by Part C of Pub.L. 108-446 (Federal requirement is found at 34 C.F.R. 303.721).

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.650(6) and KRS 200.652(3) require a statewide system, comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statute: The changes to the requirements for evaluation and assessment will allow the state regulations to align with federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately two hundred (200) early intervention providers, including Point of Entry staff, will be affected by these regulations. Over six thousand (6000) eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The early intervention providers, including service coordinators, will need to learn and implement the amended regulations. Families currently receiving early intervention services will need to understand how the system operates so that they are informed consumers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Kentucky Early Intervention System currently costs approximately \$40 million. The revisions to this administrative regulation will not cost the affected entities any additional dollars. Changes to evaluation and assessment represent an elimination of unnecessary and duplicative testing, resulting in efficiencies to the system as a whole.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinator by providing needed clarity so that they are more effective in their

roles within the system. Families will benefit by not undergoing unnecessary and duplicative testing and will be more informed consumers of the public services.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No new costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation: Federal funds (12%) and 88% state general funds will be used to implement this administrative regulation. No state match is required.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the 15 local Point of Entry, approx. 1500 direct service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1434, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.650-676

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 new revenue generated by this administrative regulation during the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.310 through 303.322 outlines the states responsibilities in identifying, evaluating and assessing children potentially eligible to receive early intervention services. This amendment ensures full compliance with the provisions under that

part.

2. State compliance standards. KRS 200.650 charges the Cabinet for Health and Family Services, Department for Public Health to comply with all federal statutes and regulations.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to differentiate the process for initial eligibility (and the redetermination of eligibility Kentucky has streamlined the evaluation and assessment process.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (Amendment)

#### 902 KAR 30:130. Assessment, service planning, and assistive technology.

RELATES TO: KRS 200.660(6), 200.664, 34 C.F.R. 303.322, 303.340-303.346, 20 U.S.C. 1435, 1436, 1437

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(8), 34 C.F.R. 303.500, 20 U.S.C. 1436

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the requirements for assessment, the Individualized Family Service Plans used in First Steps, and assistive technology.

Section 1. Assessment. (1) Assessment shall be an on-going procedure used by personnel meeting the qualifications established in 902 KAR 30:150 throughout the child's period of eligibility for First Steps. An assessment shall reflect:

- (a) The child's unique strengths and needs;
- (b) The services appropriate to meet those needs; (c) The family's resources, priorities and concerns which shall be:
  - 1. Voluntary on the part of the family;
  - 2. Family-directed; and
  - 3. Based on information provided by the family through personal interview; and

(d) The supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's child.

(2) Assessments shall be ecologically valid and reflect appropriate multisource and multimeasures. One (1) source or one (1) measure shall not be used as the sole criterion for determining an intervention program.

(a) Assessment methods shall include direct assessment and at least one (1) of the following:

- 1. Observations;
- 2. Interview and parent reports; or
- 3. Behavioral checklist and inventories.

(b) Direct assessment shall include one (1) or more instruments that are:

- 1. Appropriate for an infant or toddler and allow for adaptations for a disability as needed; and
- 2. Criterion-referenced, which compares the child's level of development with skills listed in a chronological sequence of typical development.

(3) If, after the initial evaluation and assessments are completed, the IFSP team determines that a subsequent assessment is warranted, the following shall be documented on the IFSP:

- (a) The IFSP team's reasons for an additional assessment;
- (b) Whether a current provider on the IFSP team can assess the area or areas of concern; and
- (c) Circumstances relating to the child's ability or the family's

capacity to address the child's developmental needs that warrant the subsequent assessment.

(4) A service coordinator shall obtain a physician's or advanced practice registered nurse's (APRN's) written approval in order to complete an assessment on a child deemed medically fragile. The approval shall be specific as to the modifications needed to accommodate the child's medical status.

(5) A formal, direct assessment shall include a written report if performed for initial assessment, the annual assessment, or exit progress monitoring, or if authorized by the IFSP in accordance with subsection (3) of this section. This report shall include:

(a) A description of the assessment instruments used in accordance with subsection (2)(b) of this section;

(b) A description of the assessment activities and the information obtained, including information gathered from the family;

(c) Identifying information, including:

1. The child's First Steps identification number;
2. The name of the child;
3. The child's age at the date of the assessment;
4. The name of the service provider and discipline;
5. The date of the assessment;
6. The setting of the assessment;
7. The state of health of the child during the assessment;
8. The parent's assessment of the child's performance in comparison to abilities demonstrated by the child in more familiar circumstances;

9. The medical diagnosis if the child has an established risk condition;

10. The formal and informal instruments and assessment methods and activities used; and

11. Who was present for the assessment;

(d) A profile of the child's level of performance, in a narrative form which shall indicate the:

1. Concerns and priorities;
2. Child's unique strengths, needs, and preferences;
3. Skills achieved since the last report, if applicable;
4. Current and emerging skills, including skills performed independently and with assistance; and
5. Recommended direction for future service delivery; and

(e) Recommendations that address the family's priorities as well as the child's holistic needs based on the review of pertinent medical, social, and developmental information, the evaluation, and the assessment.

(6) A copy of the cabinet-approved criterion referenced assessment protocol shall be submitted electronically to the Kentucky Early Childhood Data System within ten (10) calendar days of the completion of the assessment.

(7)(a) The initial or other formal assessments, with written reports, shall be completed and recorded in the child's record using the First Steps data management system within ten (10) calendar days of the provider completing the assessment.

(b) The provider who performed the assessment shall:

1. Verbally share the assessment report with the family and shall document the contact in the assessor's notes;

2. Provide the written report to the family and the service coordinator within the time frame established in paragraph (a) of this subsection; and

3. Write the report in family-appropriate language that the child's family can easily understand.

(c) If the time frame established in paragraph (a) of this subsection is not met due to illness of the child or a request by the parent, the assessor shall document the delay circumstances in staff notes with supportive documentation made in the child's record by the service coordinator, and the report shall be provided to the service coordinator within five (5) calendar days of completing the assessment.

(8)(a) An assessment provided as a general practice of a discipline, not due to the child or family's needs, shall be considered early intervention, not an assessment.

(b) Ongoing assessment shall ensure that the IFSP and services are flexible and accessible.

(9) Ten (10) calendar days prior to either the annual or six (6) month review of the IFSP or the expiration date of the IFSP, a service provider shall supply progress reports to the primary ser-

vice coordinator and family.

(10)(a) Within 120 days prior to exiting the First Steps program at age three (3), each child shall receive an assessment in all five (5) developmental domains by the Primary Service Provider (PSP) using a cabinet-approved criterion referenced instrument.

(b) The assessment used for annual redetermination of eligibility may be used to meet the assessment required by paragraph (a) of this subsection if it is completed within 120 days prior to the child's exit from the First Steps Program.

Section 2. Individualized Family Service Plan (IFSP). (1) The signed IFSP shall be a contract between the family and service providers. A service included on the IFSP shall be provided as authorized, unless the family chooses not to receive the service and this choice is documented in the child's record.

(2) The IFSP shall be completed within five (5) calendar days of the meeting and shall include:

(a) Appropriate evaluation and assessment reports in accordance with 902 KAR 30:120, Section 2;

(b) A statement of the specific early intervention services, founded on scientifically based research to the extent practicable, necessary to meet the unique needs of the child and the family to achieve the outcomes identified, including the frequency, intensity, and method of delivering the services;

(c) Service delivery settings; and

(d) A list of IFSP team members and how they participated in the meeting.

(3)(a) An authorized IFSP shall be valid for a period not to exceed six (6) months. An amendment that is made to the IFSP shall be valid for the remaining period of the plan.

(b) A parent or guardian's signature on the IFSP shall constitute written consent for early intervention services.

(4) If the family or service provider is unable to keep a scheduled appointment due to illness or any other reason, the service provider shall document the circumstances in staff notes.

(5) In the development and implementation of the IFSP, IFSP team members shall:

(a) Provide a family-centered approach to early intervention;

(b) Honor the racial, ethnic, cultural, and socioeconomic diversity of families;

(c) Show respect for and acceptance of the diversity of family-centered early intervention;

(d) Allow families to choose the level and nature of their involvement in early intervention services;

(e) Facilitate and promote family and professional collaboration and partnerships, which are the keys to family-centered early intervention and to successful implementation of the IFSP process;

(f) Plan and implement the IFSP using a team approach;

(g) Reexamine their traditional roles and practices and develop new practices as appropriate that promote mutual respect and partnerships which may include a transdisciplinary approach;

(h) Ensure that First Steps services are flexible, accessible, founded on scientifically based research to the extent practicable, and are necessary to meet the unique needs of the child and family to achieve the outcomes identified, including the frequency, intensity, and method of delivery of the services; and

(i) Ensure that families have access and knowledge of services that shall:

1. Be provided in as normal a fashion and environment as possible;

2. Promote the integration of the child and family within the community;

3. Be embedded in the family's normal routines and activities; and

4. Be conducted in the family's natural environment, if possible, and in a way that services promote integration into a community setting which includes children without disabilities.

(6) For a child who has been evaluated for the first time and determined eligible in accordance with 902 KAR 30:120, a meeting to develop the initial IFSP shall be conducted within forty-five (45) days after the point of entry receives the referral.

(7) The IFSP shall be reviewed by convening a meeting at least every six (6) months. An IFSP team meeting shall be convened more frequently if:

- (a) A periodic IFSP review meeting is requested by:
  1. The family; or
  2. The family and a team member; or
- (b) An early intervention service is added or increased.
- (8) The IFSP shall include:
  - (a) 1. A summary of the Family Rights Handbook;
  2. A signed Statement of Assurances - Procedural Safeguards by the family; and
  3. A statement signed by the parent that complies with KRS 200.664(6);
  - (b) Information about the child's present level of developmental functioning. Information shall cover the following domains:
    1. Physical development that includes fine and gross motor skills, vision, hearing, and general health status;
    2. Cognitive development that includes skills related to a child's mental development and includes basic sensorimotor skills, as well as preacademic skills;
    3. Communication development that includes skills related to exchanging information or feelings, including receptive and expressive communication and communication with peers and adults;
    4. Social and emotional development that includes skills related to the ability of infants and toddlers to successfully and appropriately select and carry out their interpersonal goals; and
    5. Adaptive development that includes self-help skills and the ability of the child's sensory systems to integrate successfully for independent functions;
  - (c) Performance levels to determine strengths which can be used to enhance functional skills in daily routines when planning instructional strategies to teach skills;
  - (d) A description of:
    1. Underlying factors that may affect the child's development including the established risk condition; and
    2. What motivates the child, as determined on the basis of observation in appropriate natural settings, during child interaction, and through parent report;
  - (e) With concurrence of the family, a statement of the family's resources, priorities and concerns related to enhancing the development of the child;
  - (f) A statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and time lines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary. Outcome statements shall:
    1. Be functionally stated;
    2. Be representative of the family's own priorities;
    3. Fit naturally into the family's routines or schedules;
    4. Reflect the use of the family's own resources and social support network; and
    5. Be flexible to meet the child and family's needs in expanded current and possible future environments;
  - (g) The specific First Step services necessary to meet the unique needs of the child and family to achieve the outcomes.
    1. Service documentation shall be stated in frequency, intensity, duration, location, and method of delivering services, and shall include payment arrangements, if any; and
    2. With the exception of group intervention, and unless prior authorization is granted in accordance with 902 KAR 30:200, Section 4, based on individual needs of the child, the frequency and intensity for early intervention for each child shall not exceed one (1) hour per discipline per day for the following disciplines:
      - a. Audiologist;
      - b. RN or LPN;
      - c. Nutritionist or dietician;
      - d. Occupational therapist or occupational therapist assistant;
      - e. Orientation and mobility specialist;
      - f. Physical therapist or physical therapist assistant;
      - g. Psychologist, psychological practitioner, certified psychologist with autonomous functioning, psychological associate, family therapist, licensed social worker, or licensed professional clinical counselor;
      - h. Speech language pathologist;
      - i. Vision specialist including a teacher of the visually impaired;
      - j. Teacher of the deaf and hard of hearing; or

- k. Developmental interventionist;
- (h) 1.a. A description of the natural environment, which includes natural settings and service delivery systems, in which the early intervention service is to be provided;
  2. How the skills shall be transferred to a caregiver so that the caregiver can incorporate the strategies and activities into the child's natural environment;
  3. How the child's services may be integrated into a setting in which other children without disabilities participate; and
  4. If the service cannot be provided in a natural environment, the reason, including:
    - a. Why the early intervention service cannot be achieved satisfactorily in a natural environment;
    - b. How the service is supported by the peer reviewed research;
    - c. How the service provided in this location or using this approach will support the child's ability to function in his or her natural environment; and
    - d. A timeline as to when the service might be expected to be delivered in a natural environment approach;
  - (i) The projected dates for initiation of the services, and the anticipated length, duration, and frequency of those services;
  - (j) Other services that the child needs that are not early intervention services, such as medical services or housing for the family. The funding sources and providers to be used for those services or the steps that will be taken to secure those services through public or private resources shall be identified;
  - (k) The name of the service coordinator representing the child's or family's needs and the primary service provider. The service coordinator shall be responsible for the implementation of the IFSP and coordination with other agencies and persons in accordance with 902 KAR 30:110, Section 2;
  - (l) At least one (1) transition outcome that addresses transition to preschool services to the extent that those are appropriate or to other services that may be available, if appropriate, as a part of every IFSP and is supported by steps that may include:
    1. A description of types of information the family might need in relation to future placements;
    2. Activities to be used to help prepare the child for changes in the service delivery;
    3. Specific steps that will help the child adjust to and function in the new setting;
    4. How and when assistive technology equipment will be returned and how it will be replaced in the next setting, if appropriate; and
    5. A description of information that will be shared with the new setting, timelines to share the information, and ways to secure the necessary releases to refer and transmit records to the next placement; and
  - (m) Documentation substantiating the following if the child is being provided group intervention:
    1. If the child is enrolled in day care or attending a group during normal routines, why the early intervention cannot be provided in the child's current group setting; and
    2. Early intervention during group shall be directly related to the child's individualized strategies and activities as identified on the IFSP.
  - (9) If the IFSP team determines that an early intervention service shall be provided using a transdisciplinary team approach, the IFSP, provider notes and progress documentation shall include:
    - (a) Which disciplines are providing the therapy using this approach;
    - (b) Evidence of transdisciplinary planning and practice, including documentation of how role-release is occurring;
    - (c) How the skills are being transferred so that one (1) provider is capable of providing the services previously provided by the team;
    - (d) Statements showing that the service is individualized to the particular family and child's needs; and
    - (e) If more than one (1) provider is present and providing early intervention services at the same time using a co-treatment approach:
      1. Why this approach is being used;
      2. The outcomes and activities;
      3. Who is performing what activities; and

4. That the service providers involved are providing or learning about the early intervention at the same time.

(10) The family shall be encouraged to discuss the family's child's activities, strengths, and likes and dislikes exhibited at home.

(11) The IFSP shall highlight the child's abilities and strengths, rather than focusing just on the child's deficits.

(12) Every attempt shall be made to explain the child assessment process by using language the family uses and understands.

(13) The family may agree, disagree, or refute the assessment information.

(14) The family interpretation and perception of the assessment results shall be ascertained and the family's wishes and desires shall be documented as appropriate.

(15) If an agency or professional not participating on the IFSP team but active in the child's life makes a recommendation for an early intervention service, it shall not be provided as a First Steps service unless the IFSP team:

- (a) Considers the recommendation;
- (b) Determines that it relates to a chosen outcome, and family priority; and
- (c) Agrees that it is a necessary service.

Section 3. Assistive Technology. (1) To assess assistive technology services and devices, the child shall:

- (a) Be eligible for First Steps; and
- (b) Have a need for and use of assistive technology devices and services documented in the IFSP.

(2) To be an approved assistive technology review team, an assistive technology center shall:

(a) Submit to the cabinet the credentials and documentation of experience in providing services to the birth to three (3) age population for each proposed team member; and

(b) Contract with the cabinet to conduct reviews of requests for assistive technology devices in accordance with this section.

(3) The First Steps assistive technology review team shall review:

(a) Each equipment request for which the purchase price exceeds \$100; or

(b) A request submitted by the service coordinator, other POE staff, or state lead agency staff.

(3) A request shall be processed within ten (10) calendar days of the receipt of required information. The required information shall include:

- (a) A current IFSP;
- (b) Assessments with recommendations;
- (c) Justification statement for each device based on needs, including documentation of attempts to find alternative funding sources;

(d) Information regarding the equipment or device request, including information regarding the training of the family on the use of equipment; and

(e) Documentation of safety and approved uses in the birth to three (3) age population.

(4) The decision made through the review process may be appealed to the Part C Coordinator who shall:

(a) Consult with the monitoring assistive technology review team; and

(b) Issue the final decision.

(5) If the IFSP team is not in agreement with the decision of the Part C Coordinator:

(a) The child's IFSP team shall reconvene for an IFSP meeting with a representative from the assistive technology review team and a representative of the state lead agency; and

(b) If the IFSP team concludes at that IFSP meeting that the assistive technology device is still needed, payment for the device shall be authorized for the duration of the current IFSP.

Section 4. Incorporation by Reference. (1) "Individualized Family Service Plan", December 2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday

through Friday, 8 a.m. to 4:30 p.m.

STEPHANIE MAYFIELD GIBSON, MD, FCAP

AUDREY HAYNES, Secretary

APPROVED BY AGENCY: December 12, 2012

FILED WITH LRC: December 12, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2013, at 9:00 a.m. in Conference Suite 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 January 14, 2013, 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 regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business January 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, Phone: 502-564-7905, fax 502-564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756

(1) Provide a brief summary of 902 KAR 30:130:

(a) What this administrative regulation does: This administrative regulation outlines the requirements for assessment, service planning through the development of an individualized family service plan and assistive technology within the Kentucky Early Intervention System.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance to service coordinators, primary level evaluation providers, intensive level evaluation teams and other service providers on child assessments, service planning and assistive technology. Assessment is a service that all children in the Kentucky Early Intervention System receive and provides the foundational information to develop service plans. This regulation outlines new requirements for a family assessment. This regulation also lists the requirement for assistive technology service and devices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.650 (6) requires the state to be in compliance with federal statute and regulations. KRS 200.664 outlines the legal requirements for the development of an individualized family service plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this regulation adds guidance for the required family assessment. It also provides greater detail for the requesting of assistive technology devices. The language regarding service planning is not new language but has been revised to align the state requirements to the newly released federal regulations.

(b) The necessity of the amendment to this administrative regulation: Language consistent with applicable federal regulations and statute is added to ensure compliance with federal regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650(6) and KRS 200.652(3) require a statewide system, comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration

tion of the statutes: The changes to this regulation will assist the state by creating a more streamlined system that is easier to supervise and monitor. The changes to the requirements for the IFSP will bring IFSPs into alignment with federal regulations. Also, regulations will now reflect the current practices assistive technology thus eliminating confusion between regulation and practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately fifteen hundred (1500) early intervention providers, including Point of Entry staff, will be affected by these regulations. Over six thousand (6000) eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The early intervention providers, including service coordinators, will need to learn and implement the amended regulations. Families currently receiving early intervention services will need to understand how the system operates so that they are informed consumers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be associated with the amendment to this administrative regulation.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinators by providing needed clarity so that they are more effective in their roles within the system. Families will benefit by not undergoing unnecessary and duplicative testing and will be more informed consumers of the public services. This increased knowledge of the early intervention system may lead to increased supports and progress for their children.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No new costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation: Federal Part C funds and state general funds will be used to implement this administrative regulation.

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

(8) State whether or not this administrative regulation establishes an fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the 15 local Point of Entry, approx. 1500 direct service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1435, 1436, 1437; 34 C.F.R. Part 303; KRS 194A.050; KRS 200.650-676

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? There will be no new revenue generated by this administrative regulation during the first year.

(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?

(b) There will be no revenue generated by this administrative regulation during the subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no new expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Changes to this administrative regulation will save an estimated \$10,000 per year by reducing the number of unnecessary plan revisions and duplicate service assessments.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.340 through 303.346 outlines the states responsibilities in the development and implementation of the Individual Family Service Plan. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards KRS 200.664 charges the Cabinet for Health and Family Services, Department for Public Health with the development of the IFSP for eligible children.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is in full compliance with the federal statutes.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Public Health

##### Division of Maternal and Child Health

##### (Amendment)

#### 902 KAR 30:150. Personnel qualifications.

RELATES TO: KRS 200.666, 20 U.S.C. 1435(8) and (9) [1434], 34 C.F.R. 303.31 [22, 303.23(d)], 303.119, [360, 303.364], 303.121 [526]

STATUTORY AUTHORITY: KRS 194A.050, 200.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 to 20.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the provider qualifications for participation in First Steps, Kentucky's Early Intervention Program.

Section 1. Enrollment Process for Provider Participation. (1) The program shall enroll providers to carry out the early intervention services according to the provisions of KRS 200.650 to 200.676.

(2) The program shall contract only with an individual or agen-



cy who meets the qualifications established in Section 2 of this administrative regulation.

(3) The program shall reserve the right to contract or not contract with any potential provider or agency.

(4) Any provider or agency that wishes to participate as a provider in the First Steps program shall submit an application packet to the cabinet;

(a) ~~[Submit an application packet to the cabinet.]~~ The application packet for the individual provider shall include:

1. A copy of the provider's professional license, registration, or certificate; and

2. The Individual Provider Application (RF 6A(I)) ~~[A completed Provider Enrollment Form; and~~

3. A signed First Steps Provider Code of Ethical Conduct;

(b) The application packet for the agency shall include:

1. A copy of each provider's professional license, registration, or certificate; and

2. The Agency Application (RF 6A(A)).

(c) All potential providers shall

1. Have a background check performed by the Administrative Office of the Courts, the Division of Protection and Permanency, and the Sex Offender Registry, with those agencies submitting the results of each background check directly to the cabinet;

2. ~~[(e)]~~ Agree to provide service within the individual's or agency's scope of practice and in accordance with state and federal regulations and laws relating to First Steps; and

3. ~~[(d)]~~ Be enrolled as a participating provider prior to being eligible to receive reimbursement in accordance with federal and state laws.

(5) The application shall not be considered complete and shall not be processed until all information and any subsequent documentation requested by the program is provided.

(6) The program shall make an enrollment determination within ninety (90) ~~calendar~~ days of receipt of the information required by subsections (4) and (5) of this section.

(7) If the applicant is approved for enrollment, the Service Provider Agreement shall be executed and the provider shall be issued a contract number that shall be used by the provider solely for identification purposes.

(8) A provider's participation shall begin and end on the dates specified in the executed Service Provider Agreement.

(9) If an agency is the enrolled provider, the agency shall be responsible for ensuring that all staff from that agency providing First Steps services meet the First Steps personnel qualifications.

(10) Provider enrollment shall be renewed every even-numbered year. An individual or agency wishing to renew the [a] Service Provider Agreement shall submit the documentation required by subsections (4) and (5) of this section prior to the end date specified in the Service Provider Agreement.

(11) If a provider agency is enrolling to provide group services, the agency shall submit:

(a) A copy of a valid child care licensure that meets the requirements stated in 922 KAR 2:090; or

(b) Approval as a contractor for group instruction through the Kentucky Department of Education.

Section 2. Personnel Qualifications. (1) Minimum qualifications for professionals or disciplines providing services in First Steps shall be as established in this subsection.

(a) An audiologist shall have:

1. A master's degree; and

2. A license from the Kentucky Board of Speech-Language Pathology and Audiology.

(b) A licensed marriage and family therapist shall have:

1. A master's degree; and

2. A license from the Kentucky Board of Licensure of Marriage and Family Therapists.

(c) A developmental interventionist shall have:

1. A bachelor's degree; and

2. [a.] An interdisciplinary early childhood education (IECE) certificate by the Kentucky Education Professional Standards Board, Division of Certification or be able to obtain a probationary or emergency IECE certificate issued by the Educational Professional Standards Board; ~~or~~

~~b. A valid out-of-state certificate for the teacher of children ages birth to three (3) years with disabilities].~~

(d) A nurse shall have:

1. An associate degree or diploma from a registered program; and

2. A license from the Kentucky Board of Nursing.

(e) ~~[A nutritionist shall have:~~

1. ~~A master's degree; and~~

2. ~~A certificate from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.~~

~~(f)]~~ A dietitian shall have:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

~~(f) [(g)]~~ An occupational therapist shall have:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Licensure for Occupational Therapy.

~~(g) [(h)]~~ An orientation and mobility (O and M) specialist shall have in accordance with the Division of Exceptional Children Services, Kentucky Department of Education a bachelor's degree in Special Education with emphasis on visual impairment and O and M.

~~(h) [(i)]~~ A physician shall have:

1. A doctor of medicine degree or doctor of osteopathy degree; and

2. A license from the Kentucky Board of Medical Licensure.

~~(i) [(j)]~~ A physical therapist shall have:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Physical Therapy.

~~(j) [(k)]~~ A licensed psychologist shall have:

1. A doctoral degree; and

2. A license from the Kentucky Board of Examiners of Psychology.

~~(k) [(l)]~~ A certified psychologist with autonomous functioning, a licensed psychological practitioner, a certified psychologist or licensed psychological associate shall have:

1. A master's degree; and

2. A license or a certificate from the Kentucky Board of Examiners of Psychology.

~~(l) [(m)]~~ A social worker shall have:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Social Work.

~~(m) [(n)]~~ A speech-language pathologist shall have:

1. A master's degree; and

2.a. A license from the Kentucky Board of Speech-Language Pathology and Audiology; or

b. A temporary license from the Kentucky Board of Speech-Language Pathology and Audiology and be under the supervision of a currently-enrolled First Steps speech-language pathologist.

~~(n) [(o)]~~ A teacher of children who are deaf and hard of hearing shall have:

1. A bachelor's degree; and

2. A certificate for teaching the ~~[hard-of-hearing, deaf, or]~~ hearing impaired, ~~[or a certificate for teaching the hearing-impaired,]~~ grades P-12, ~~[K-12]~~ issued by the Kentucky Education Professional Standards Board, Division of Certification.

~~(o) [(p)]~~ A teacher of the visually impaired shall have:

1. A bachelor's degree; and

2. A certificate for teaching ~~[of]~~ the visually impaired, grades P-12, ~~[or a certificate for teaching the partially-seeing, blind, or visually-impaired, K-12]~~ issued by the Kentucky Education Professional Standards Board, Division of Certification.

~~(p) [(q)]~~ A licensed professional clinical counselor shall have:

1. A master's degree; and

2. A license from the Kentucky Board of Licensed Professional Counselors.

~~(q) [(r)]~~ An optometrist shall have:

1. A degree from an accredited school or college of optometry; and

2. A license from the Kentucky Board of Optometric Examiners.

~~(r) [(s)]~~ An ophthalmologist shall have:

1. A doctor of medicine degree or doctor of osteopathy degree;

2. A license from the Kentucky Board of Medical Licensure; and

3. Certification from the American Board of Ophthalmology.

(2) The minimum qualification for paraprofessionals providing services in First Steps shall be as established in this subsection.

(a) ~~A developmental associate shall:~~

~~1. Have an associate degree in the area of interdisciplinary early childhood education (IECE); and~~

~~2. Be directly supervised by a developmental interventionist.~~

~~(b) An occupational therapy assistant shall have:~~

~~1. An associate's degree in occupational therapy; and~~

~~2. A license from the Kentucky Board of Licensure for Occupational Therapy.~~

~~(b) [(e)] A physical therapist's assistant shall have:~~

~~1. An associate degree in physical therapy assistance; and~~

~~2. A license from the Kentucky Board of Physical Therapy. [(d)]~~

~~A licensed practical nurse shall have:~~

~~1. A high school diploma or a GED;~~

~~2. Completed a state approved LPN education program; and~~

~~3. A license from the Kentucky Board of Nursing.]~~

(3) The minimum qualifications for recognized service positions providing services in First Steps shall be as established in this subsection.

(a) A service coordinator shall:

1. Be employed by the Point of Entry;

2. Meet the minimum highest entry-level requirement for one (1) of the professions identified in subsection (1)(a)-(s) of this section [delineated in this administrative regulation]; or

3. [2-] Have a bachelor's degree and the equivalency of two (2) years [years-] experience in working with young children ages birth through five (5) years, or have a bachelor's degree and two (2) years [years-] experience working with families with young children ages birth through five (5) years, in a position in which the following skills and competencies have been demonstrated:

a. Communication skills in interviewing, negotiating and mediating, and providing informal support;

b. Problem-solving by finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;

c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and

d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.

(b) A District Child Evaluation Specialist shall:

1. Be employed by the Point of Entry to conduct screening, evaluations and assessments, and provide consultation to service coordinators and primary level evaluators;

2. Meet the minimum highest entry-level requirements for one (1) of the professions identified in subsection (1)(a)-(s) of this section;

3. Have two (2) years experience working directly with young children birth through two (2) years of age, including children with disabilities or atypical development;

4. Have one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers birth through two (2) years of age, completed as part of formal training or in supervised practice; and

5. Be approved by the cabinet in accordance with KRS 200.666(1).

(c) A primary level evaluator shall:

1. Meet the minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation;

2. Have two (2) years experience working directly with young children birth through two (2) years of age, including children with disabilities or atypical development;

3. Have one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers birth through two (2) years of age, completed as part of formal training or in supervised practice; and

4. Be approved by the cabinet in accordance with KRS 200.666(1).

(d) An intensive level evaluation team shall be approved by the Part C Coordinator and shall include:

1. a. A board certified medical professional with expertise in early childhood development;

b. A board certified developmental pediatrician;

c. A pediatrician who has training and experience in the area of early childhood development;

d. A board certified pediatric psychiatrist; or

e. A board certified pediatric neurologist; and

2. One (1) or more developmental professionals identified in subsection (1)(a)-(s) of this section.

(e) An approved neonatal follow-up program team shall be a university-based program that has:

1. Submitted to the cabinet the credentials and documentation of experience in conducting assessments for the birth to three (3) age population for each proposed team member; and

2. Contracted with the cabinet to conduct neuro-developmental follow-up of high risk infants.

(f) [(e)] An assistive technology specialists shall:

1.a.(i) Meet the minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation; and

(ii) Have extensive knowledge, training, and experience in the field of assistive technologies for infants and toddlers with disabilities; or

b.(i) Meet the qualifications established in clause a.(ii) of this paragraph; and

(ii) Be employed by an agency that currently provides assistive technology service in First Steps; and

2. Be approved by the cabinet in accordance with KRS 200.666(1).

(g) To be an approved assistive technology review team, an assistive technology center shall:

1. Submit to the cabinet the credentials and documentation of experience in providing services to the birth to three (3) age population for each proposed team member; and

2. Contract with the cabinet to conduct reviews of requests for assistive technology devices in accordance with 902 KAR 30:130, Section 4.

(h) [(d)] A respite provider shall:

1. Meet all license, administrative regulations, and other requirements applicable to the setting in which respite is provided; and

2. Be approved by the individualized family service planning team.

(i) A sign language and cued language specialist shall:

1. Meet the qualifications established in 201 KAR 39:030, Section 3(1)(a), (b), (c), (e), (m) or (2)(a), (b), (c); and

2. Be approved by the cabinet in accordance with KRS 200.666(1).

Section 3. Field Experiences - Intervention Services Implemented by a Student.

(1) With family consent, a student may provide early intervention services under the direct one-to-one supervision of a provider qualified in accordance with Sections 1 and 2 of this administrative regulation.

(2) A student who provides early intervention services shall complete and sign staff notes for each session in which the student facilitates or provides intervention.

(3) The approved First Steps provider shall also include a staff note for each session involving a student.

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

(a) "Form 6A(I), Individual Provider Application (New)", October 2012 edition ["Form 6, Provider Enrollment Form", April 2008 edition];

(b) "Form 6A(A) Agency Application (New)", October 2012 edition;

(c) "Form 6B(I) Individual Provider Application (Renewal)", January 2012 edition;

(d) "Form 6B(A) Agency Application (Renewal)", January 2012 edition;

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(e) "First Steps Provider Code of Ethical Conduct"; January 2012 [April 2010] edition; and

(f) [(c)] "Form 5A, Service Provider Agreement", January 2012 [April 2010] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner  
AUDREY HAYNES, Secretary

APPROVED BY AGENCY: December 12, 2012

FILED WITH LRC: December 12, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2013, at 9:00 a.m. in Conference Suite 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 January 14, 2013, 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 regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business January 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756 ext 3973

(1) Provide a brief summary of 902 KAR 30:150:

(a) What this administrative regulation does: This regulation outlines the process for provider enrollment with the Kentucky Early Intervention System program and defines the minimum qualifications for the professionals or disciplines that provide early intervention services.

(b) The necessity of this administrative regulation: 902 KAR 30:150 is necessary to define the professionals or disciplines that may provide early intervention services.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.650(6) requires the cabinet to comply with federal law as it pertains to services for infants and toddlers with disabilities and their families. KRS 200.666 requires the cabinet to monitor personnel standards for providers wishing to contract with Kentucky Early Intervention System.

(d) How this administrative regulation currently assists in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change the existing administrative regulation: The amendment to this regulation removes the allowance for a developmental interventionist to hold an out of state certificate and removes the discipline of nutritionist which has been removed from federal regulations. The qualifications for a district child evaluation specialist have been added to this amendment. The qualifications for an intensive level evaluation team and a neonatal follow up program team have been moved from 902 KAR 30:120 to this regulation. The requirements for the assistive technology monitoring committee were added to this regulation. The discipline for a sign language and cued speech language specialist has been added to comply with federal regulation.

(b) The necessity of the amendment to this administrative

regulation: Because changes in the federal regulations eliminated nutritionist and added sign language and cued speech KEIS was required to update the state regulation to be in compliance with federal regulations. The other changes make this regulation more detailed and streamline the other regulations that were changed by moving the requirements for the intensive level evaluation team, neonatal follow up program team and assistive technology monitoring committee qualifications.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650(6) requires that the state be in compliance with federal law and KRS 200.652(3) requires a statewide system of early intervention services. The amendments to the administrative regulations accomplish these two requirements.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. No state or local governments are affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will continue to provide early intervention services as they currently practice. Professionals who practice the discipline of sign language and cued speech language will be able to enroll as First Steps providers. Those who are wishing to enroll as an intensive level evaluation team, a neonatal follow up program team, an assistive technology monitoring committee member or as a district child evaluation specialist will have to be approved by the state lead agency.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs to entities to comply with the amended regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Individuals who meet the early intervention provider qualifications are eligible to enroll as a provider for and be paid by the First Steps system.

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

(a) Initially: There are no costs to implement the amendment to this regulation.

(b) On a continuing basis: There are no costs to implement the amendment to this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the 15 local Point of Entry, approx. 1500 direct

service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. Chapter 33, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.652, and 200.666

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 new revenue generated by this administrative regulation during the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.118 through 303.119 outline the requirements for a comprehensive system of personnel development (CSPD) and personnel standards. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards KRS 200.666 charges the Cabinet for Health and Family Services, Department for Public Health to monitor personnel standards for service providers to ensure the qualified service providers necessary to carry out the provisions of KRS 200.650 to 200.676 are appropriately and adequately prepared and trained in order to comply with the requirements of federal law and regulations.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is ensuring that all those interested in becoming early intervention providers and service coordinators meet the highest level of qualifications for their contracted discipline.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (Amendment)

#### 902 KAR 30:160. Covered services.

RELATES TO: KRS 200.656, 20 U.S.C. 1435, 34 C.F.R. 303.13 [42]

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 200.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer

all funds appropriated to implement provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the provisions of covered services under First Steps, Kentucky's Early Intervention Program.

Section 1. Covered Services. (1) Services shall be covered if the services are included and authorized through parent signature on the Individualized Family Service Plan (IFSP) developed by an IFSP team which shall include, at a minimum, the family and two (2):

(a) Professionals as identified in 902 KAR 30:150, Section 2(1);

(b) Paraprofessionals as identified in 902 KAR 30:150, Section 2(2); or

(c) Service positions as identified in 902 KAR 30:150, Section 2(3).

(2) Services covered shall include: (a) Service coordination as provided in accordance with 902 KAR 30:110, Section 3[2], and this paragraph:

1. A child shall have only one (1) designated service coordinator at a given time;

2. Service coordination shall be provided by qualified professionals in accordance with 902 KAR 30:150, Section 2(1); and

3. Service coordination shall be provided under the limitations of 902 KAR 30:200, Sections 2(2)(a) and 2(3)(b);

(b) Initial [Primary] evaluation as provided in accordance with 902 KAR 30:120 and this paragraph. Initial [Primary] evaluation shall be:

1. Considered the first level of a two (2) tier system of evaluation; and

2. Provided by qualified professionals in accordance with 902 KAR 30:150, Section 2(3)(c)[(b)];

(c) Intensive team evaluation as provided in accordance with 902 KAR 30:120, Section 1(4), and this paragraph. Intensive team evaluation shall be:

1. Considered the second level of a two (2) tier system of evaluation; and

2. Provided by qualified professionals in accordance with 902 KAR 30:120, Section 2(9);

(d) Assessment of the child as provided in accordance with 902 KAR 30:130, Section 1, and 902 KAR 30:200, Section 3(1);

(e) Early intervention.

1. Early intervention shall be provided in accordance with 34 C.F.R. 303.13(a) and (b).

2. Except as provided in subparagraph 3. [2-] of this paragraph, early intervention, which is face-to-face intervention with the child and caregivers within the context of the environment, shall include four (4) [three (3)] types of service:

a. Individual home or community service which shall include intervention provided by a First Steps qualified professional to an eligible child at the child's home or other natural setting in which children under three (3) years of age are typically found (including non-First Steps provider day care centers or family day care homes) under the limitations of 902 KAR 30:200, Section 3(2);

b. Individual office or center-based service which shall include intervention provided by First Steps qualified professionals to an eligible child at the professional's office or center site under the limitations of 902 KAR 30:200, Section 3(2); [or]

c. Group intervention which shall include the provision of early intervention services by First Steps qualified personnel in a group, with two (2) or more eligible children, at an early intervention professional's site, office, center, or other community-based setting where children under three (3) years of age are typically found.

(i) The group may also include children without disabilities as long as a three (3) to one (1) ratio of children to staff is maintained.

(ii) Group intervention shall be provided under the limitations of 902 KAR 30:200, Section 3(2)(b); or

d. Co-treatment which shall occur if more than one (1) provider is present and providing early intervention services at the same time. Each provider's service log shall document:

(i) Why this approach is being used;

(ii) The outcomes and activities;

(iii) Who is performing the activities; and

(iv) That the service providers involved are providing or learning about the early intervention at the same time.

3. [2.] If early intervention services are provided by a psychologist, counselor, marriage and family therapist, or social worker, the child shall not be required to attend the intervention. The reason the child's presence is clinically contraindicated shall be documented in the service note.

4. [3.] Disciplines providing early intervention shall be qualified professionals in accordance with 902 KAR 30:150, Section 2(1), or qualified paraprofessionals in accordance with 902 KAR 30:150, Section 2(2), and shall include the following:

- a. An audiologist;
- b. A marriage and family therapist;
- c. A developmental interventionist;
- d. [A-developmental-associate;
- e.] A nurse;
- e. [f.-An-LPN;
- g.-A-nutritionist;
- h.-] A dietitian;
- f. [i.] An occupational therapist;
- g. [j.-] An occupational therapy assistant;
- h. [k.-] An orientation and mobility specialist;
- i. [l.-] A physical therapist;
- j. [m.-] A physical therapist's assistant;
- k. [n.-] A licensed psychologist, a certified psychologist with autonomous functioning, a licensed psychological practitioner, certified psychologist, or licensed psychological associate;
- l. [o.-] A speech-language pathologist;
- m. [p.-] A licensed social worker;
- n. [q.-] A licensed professional clinical counselor (LPCC);
- o. [r.-] A teacher of the visually impaired;
- p. [s.-] A teacher of the deaf and hard of hearing;
- q. [t.-] A physician;
- r. [u.-] An optometrist; [or]
- s. [v.-] An ophthalmologist; or
- t. A sign language and cued language specialist;

(f) ~~Integrated disciplines center-based service shall be provided by an agency that is approved by the Department for Public Health to be qualified to offer services:~~

1. ~~By at least three (3) of the following disciplines working together in a group setting who qualify in accordance with 902 KAR 30:150, Section 2(1)(c), (g), (j), and (n):~~

- a. ~~Developmental interventionist;~~
- b. ~~Occupational therapist;~~
- c. ~~Physical therapist; or~~
- d. ~~Speech-language pathologist;~~

2. ~~At least three (3) disciplines shall be scheduled and present, except in routine absences due to sickness or other conflicts;~~

3. ~~The providers shall give evidence of transdisciplinary planning and practice;~~

4. ~~If integrated discipline center-based service is in the IFSP, with the majority of the group make-up being children who need three (3) or more disciplines, except if approved by the Department for Public Health; and~~

5. ~~Each child's record shall have a staff note from each discipline, except a staff note shall not be required from a discipline if the discipline is not identified in the IFSP as a needed service;~~

(g) [Collateral service as provided in accordance with 902 KAR 30:200, Section 3(4);

(q) [(h)] Assistive technology in accordance with 902 KAR 30:001(3) and 30:130 Section 4;

(h) [(i)] Respite which shall be a service provided to the family of an eligible child for the purpose of providing relief from the care of the child in order to strengthen the family's ability to attend to the child's developmental needs under the limitations of 902 KAR 30:200, Section 3(3);

(i) [(j)] Transportation and related cost which shall be the costs of travel that are necessary to enable an eligible child to receive early intervention services; and

(j) [(k)] Language access services for all families consistent with the provisions of the Individuals with Disabilities Education Improvement Act (IDEA), 34 C.F.R. 303.421(c) [303.403], that, at a minimum, assists the family in understanding the purpose of First Steps and the family's procedural safeguards during referral, eligi-

bility determination activities, and IFSP meetings.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner  
AUDREY HAYNES, Secretary

APPROVED BY AGENCY: December 12, 2012

FILED WITH LRC: December 12, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2013, at 9:00 a.m. in Conference Suite 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 January 14, 2013, 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 regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business January 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756

(1) Provide a brief summary of 902 KAR 30:160:

(a) What this administrative regulation does: This regulation describes the services that are provided and paid in the Kentucky Early Intervention system.

(b) The necessity of this administrative regulation: This regulation is necessary to eliminate confusion in the types of services provided and paid by the Kentucky Early Intervention System. The Kentucky Early Intervention System uses multiple funding streams to support the provision of services.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.652 (5) requires the coordination of payment for early intervention services from federal, state, local and private insurance coverage, and the use of sliding fee scales.

(d) How this administrative regulation currently assists in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change the existing administrative regulation: The changes in this regulation remove redundant and obsolete language. Changes were also made to bring the state regulation into compliance with the federal regulations.

(b) The necessity of the amendment to this administrative regulation: The requirements and intent of the federal statute for state early intervention systems needed clarification. The amendments to this regulation mirror the changes made to the approved disciplines in 902 KAR 30:160.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.652(3) and (5) require the state to implement a statewide, comprehensive, interagency system of early intervention and to facilitate payment from multiple funding streams.

(d) How the amendment will assist in the effective administration of the statute: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately fifteen hundred (1500) early intervention providers will be affected by these regulations. No state or local governments are affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will continue to provide early intervention services as they currently practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs to entities to comply with the amended regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Early intervention providers will be eligible for payment of covered services and participation in First Steps.

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

(a) Initially: There are no costs to implement the amendment to this regulation.

(b) On a continuing basis: There are no costs to implement the amendment to this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the 15 local Point of Entry, aprox. 1500 direct service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1435, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.650-676

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 revenue generated by this administrative regulation for the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulations during subsequent years.

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.340 through 303.346 outlines the content of the Individual Family Service Plan (IFSP), including the content of the IFSP and responsibility and accountability. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards KRS 200.664 charges the Cabinet for Health and Family Services, Department for Public Health to develop an Individual Family Service Plan the conforms to the federal requirements for the IFSP.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is in full compliance with federal statutes and regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

#### CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Maternal and Child Health

(Amendment)

#### 902 KAR 30:180. Procedural safeguards.

RELATES TO: KRS 200.672, 20 U.S.C. 1439, 34 C.F.R. 303.400 to 303.438 [303.460]

STATUTORY AUTHORITY: KRS 194A.050, 200.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes procedural safeguards for facilities participating in First Steps, Kentucky's Early Intervention System.

#### Section 1. Records. [Definitions:

(1) "Consent" means:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary and may be revoked at any time.

(2) "Native language" means the language or mode of communication normally used by the parent of a child eligible for or participating in First Steps.

(3) "Personally identifiable" means that information includes:

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's or parent's Social Security Number; or

(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Section 2.] (1) In accordance with 34 C.F.R. 303.400 through 303.417 [303.460], the parents of a child eligible for the Kentucky Early Intervention Program shall be afforded the opportunity to

inspect, [and] review and receive records relating to evaluations and assessments, eligibility determinations, the development and implementation of IFSPs, individual complaints dealing with the child, and any other records maintained by First Steps staff about the child and the child's family.

(2) The first requested copy of the early intervention record released to the parent or guardian shall be at no cost.

(3) A fee of ten (10) dollars shall be charged for each additional copy and shall not prevent the parent or guardian from exercising the right to inspect and review those records.

(4) An early intervention provider or agency shall inform parents when personally identifiable information collected, maintained, or used during the provision of early intervention services is no longer needed to provide services to the child.

Section 2. Parental Notice and Consent. (1) [(2)] Prior written notice.

(a) Prior written notice shall be given to the parents of an eligible child at least three (3) calendar ~~[seven (7)]~~ days before the Point of Entry (POE) staff or service provider proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) The notice shall be in sufficient detail to inform the parents about:

1. The action that is being proposed or refused;
2. The reasons for taking the action;
3. All procedural safeguards that are available to the parent;

and

4. The ~~[complaint]~~ procedures under 34 C.F.R. 303.430-303.434 ~~[303.510-303.512, including a description of how to file a complaint and the required timelines under those procedures].~~

(c) The written prior notice shall be:

1. Written in language understandable to the general public;

and

2. Provided in the native language or other mode of communication of the parents, unless it is clearly not feasible to do so.

(d) If the native language or other mode of communication of the parent is not a written language, the POE staff, or designated service provider, shall take steps to ensure that:

1. The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
2. The parent understands the notice; and
3. There is written evidence that the requirements of this paragraph have been met.

(2) [(e) If a parent is deaf or blind, or has no written language, the mode of communication shall be that normally used by the parent (which may include sign language, Braille, or oral communication).

(3)] Parent consent.

(a) Written parental consent shall be obtained before:

1. Administering any screening procedures;
2. Conducting all evaluations and assessments ~~[the initial evaluation and assessment]~~ of a child; ~~[and]~~
3. [2:] Initiating the provision of early intervention services;
4. Billing private insurance; and
5. Disclosing personally identifiable information.

(b) If consent is not given for screening, evaluation, assessment or early intervention services, the POE shall make reasonable efforts to ensure that the parent understands:

1. The nature of the evaluation and assessment or the services available; and
2. That the child will not receive the evaluation and assessment or services unless consent is given.

(4) [(5)] The parents of an eligible child may determine if they, their child, or other family members will accept or decline any early intervention service, and may decline a service after first accepting it, without jeopardizing other early intervention services.

Section 3. Representation of Children and Surrogate Parents.

(1) Each POE shall ensure that the rights of an eligible child are protected if:

(a) A parent, as defined in 902 KAR 30:001, Section 1 (27)

[(24)], cannot be identified;

(b) The POE, after reasonable efforts, cannot discover the whereabouts of a parent; or

(c) The child is a ward of the state.

(2) If the child is a foster child and does not reside with the child's parents, the POE shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation. The POE shall not be required to obtain parental consent if:

(a) Despite reasonable efforts, the POE cannot discover the whereabouts of the parent;

(b) The rights of the parents have been terminated; or

(c) The rights of the parents to make educational decisions have been subrogated by a court and the consent for initial evaluation has been given by someone appointed by the judge to represent the child.

(3)(a) If more than one (1) party meets the definition of parent under 902 KAR 30:001, Section 1 (23) ~~[(24)]~~, the biological or adoptive parent shall be presumed to be the parent unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child.

(b) If there is a judicial order that identifies a specific person to act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.

(4)(a) A POE shall determine if a child needs a surrogate parent and, if so, shall assign a surrogate parent to the child.

(b) The surrogate parent of the child shall have all the rights afforded parents under 34 C.F.R. Part 303 to make decisions about early intervention issues for a child.

(c) A POE shall ensure the rights of a child are protected by appointing a surrogate parent to make educational decisions for the child if:

1. An individual cannot be identified as a parent;
2. The POE, after reasonable efforts, cannot discover the whereabouts of the parents;
3. The child is a ward of the state; or
4. The child is an unaccompanied homeless child.

(5) The POE shall keep a record of the reasonable efforts made to discover the whereabouts of the parents, including:

(a) Detailed records of the telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(6) The POE shall have a procedure for selecting surrogates that is approved by the Department of Public Health. The department shall approve a procedure that is established to ensure that a surrogate:

(a) Is not an employee of the Kentucky Department for Public Health, the POE, or any other state agency that is involved in early intervention services or care of the child;

(b) Does not have any personal or professional interest that conflicts with the interests of the child; and

(c) Has knowledge and skills that ensure adequate representation of the child.

(7) A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the POE solely because he or she is paid by the POE to serve as a surrogate parent.

(8) If a child is an unaccompanied homeless child, appropriate staff of emergency shelters, transitional shelters, or street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in subsection (6) of this section until a surrogate parent can be appointed that meets all the requirements of this section.

(9) The POE shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) calendar days after there is a determination by the Point of Entry that the child needs a surrogate.

(10) Responsibilities. A surrogate parent shall represent a child in all matters related to:

(a) The evaluation and assessment of the child;

(b) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(c) The ongoing provision of early intervention services to the

child; and

(d) Any other rights established under this administrative regulation.

Section 4. Mediation. (1) Each POE shall ensure that procedures are established and implemented to allow parties to disputes involving any matter concerning the identification, evaluation, placement of the child or the provision of appropriate early intervention services to resolve the disputes through a mediation process which, at a minimum, shall be available if a hearing is requested under 34 C.F.R. 303.431 [303.420].

(2) The POE agency shall use the mediation system established by the Department for Public Health.

(a) Mediation shall be adopted as an option to resolve complaints.

(b) Mediation shall be voluntary and freely agreed to by both parties, and shall not deny or delay a parent's right to a due process hearing to be conducted at any time.

(c) Unless the parent of a child and the cabinet otherwise agree, the child shall continue to receive the early intervention services currently being provided during the interim of any proceeding involving a complaint. If the complaint involves the application for initial services, the child shall receive those services that are not in dispute.

(d) Mediators shall be trained in applicable state and federal law relating to the First Steps program.

(3) Time table for mediation.

(a) Within five (5) working days after a request for mediation is made to the department using a Mediation/Due Process Request Form, the appointment of a mediator shall be made.

(b) Either party may waive the mediation and, if waived, the parents shall be informed by the department within two (2) working days of this decision.

(c) Mediation shall be completed within thirty (30) working days of the receipt by the department of the request for mediation.

(d) At any time during the mediation process, a request for a due process hearing may be initiated.

(e) If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the lead agency who has the authority to enter into an agreement.

(f) A copy of the legally binding agreement [written resolution] shall be mailed by the mediator to each party within five (5) working days following the mediation conference. A copy shall also be filed by the mediator with the department. The agreement [written resolution] shall specify in writing the agreement reached by the parties.

(4) A written mediation agreement [Mediation resolutions] shall not conflict with state and federal laws and shall be to the satisfaction of both parties. Satisfaction shall be indicated by the signature of both parties on the legally binding agreement [written resolution].

(5) Discussions that occur during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding. The parties to the mediation process shall be required to sign a confidentiality pledge prior to the commencement of the process.

Section 5. Due Process Procedures for Parents and Children.

(1)(a) An administrative hearing shall be conducted within fifteen (15) days of receipt of a request for hearing by an impartial hearing officer appointed by the secretary of the cabinet.

(2)(b) The hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.080.

(3)(e) A recommended decision conforming in content to the requirements of KRS 13B.110 shall be forwarded to the family and the cabinet within ten (10) days of the administrative hearing.

(4)(d) All parties to the appeal shall have five (5) days to file written exceptions to the recommended decision.

(5)(e) A final decision on the recommendation shall be made no later than forty-five (45) days following receipt of the appeal.

(6)(f) Any parent involved in an administrative hearing may:

(a)(1-) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible for the First Steps Pro-

gram;

(b)(2-) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c)(3-) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five (5) days before the proceeding;

(d)(4-) Obtain a written or electronic verbatim transcription of the proceeding; and

(e)(5-) Obtain written findings of fact and decisions.

(7)(g) Any proceeding for implementing the complaint resolution process established in Section 4 of this administrative regulation shall be held at a time and place that is reasonably convenient to the parent.

(8)(h) Any party aggrieved by the findings and decision regarding an administrative hearing may bring a civil action in state or federal court under 20 U.S.C. 1439(a)(1).

(9)(i) During the pendency of any proceeding involving a hearing under this section, unless the POE and parents of a child otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided. If the complaint involves an application for initial early intervention services, the child shall receive those services that are not in dispute.

Section 6. [(2)] State Complaint Procedures. The procedures established in this section [subsection] shall apply to the Cabinet for Health and Family Services, Department for Public Health as to written complaints submitted pursuant to 34 C.F.R. 303.432-303.434 [303.320 through 303.460].

(1)(a) An organization or individual may file a signed written complaint. The complaint shall [be submitted on a First Steps Complaint Form and shall] include:

(a)(1-) A statement that the state lead agency, point of entry or early intervention provider has violated a requirement of state or federal law; [and]

(b)(2-) The facts on which the complaint is based; and

(c) The signature and contact information for the complainant.

(2) If the alleged violation is with respect to a specific child, the complaint shall include:

(a) The name and address of the child;

(b) The name of the early intervention provider serving the child;

(c) A description of the nature of the problem of the child, including facts related to the problem; and

(d) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(3)(b) The alleged violation shall have occurred not more than one (1) year before the date that the complaint is received by the Department for Public Health unless a longer period is reasonable because:

(a)(1-) The alleged violation continues for that child or other children; or

(b)(2-) The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three (3) years before the date on which the complaint is received by the Department for Public Health.

(4) The party filing the complaint shall forward a copy of the complaint to the point of entry or early intervention provider serving the child at the same time the party files the complaint with the state lead agency.

(5) [(e)] Within sixty (60) calendar days after a complaint is filed, the Department for Public Health shall:

(a)(1-) Carry out an independent on-site investigation, if the agency determines that an investigation is necessary;

(b)(2-) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(c)(3-) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of the Kentucky Early Intervention System;

(d)(4-) Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

1.(a-) Findings of fact and conclusions; and

2.(b-) The reasons for the agency's final decision;



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(e)[5-] Permit an extension of the sixty (60) day time limit only if exceptional circumstances exist with respect to a particular complaint; and

(f)[6-] Include procedures for effective implementation of the agency's final decision, if needed, including:

- 1.[a-] Technical assistance activities;
- 2.[b-] Negotiations; and
- 3.[c-] Corrective actions to achieve compliance.

(6) [(d)] If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of a due process hearing, the Department for Public Health shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. Any issue in the complaint that is not a part of the due process action shall be resolved within the sixty (60) calendar-day timeline using the complaint procedures established in this section.

(7) [(e)] If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties the:

- a. [The] Hearing decision shall be binding; and
- b. [The] Agency shall inform the complainant of that effect.

(8) [(f)] A complaint alleging a public agency's or private service provider's failure to implement a due process decision shall be resolved by the Department for Public Health.

Section 7 [5]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) First Steps Complaint Form, August 2012 edition [December 2010]; and

(b) Mediation/Due Process Request Form, May 2012 edition [November 2010].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner  
AUDREY HAYNES, Secretary

APPROVED BY AGENCY: December 12, 2012

FILED WITH LRC: December 12, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2013, at 9:00 a.m. in Conference Suite 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 January 14, 2013, 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 regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business January 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756

(1) Provide a brief summary of 902 KAR 30:180:

(a) What this administrative regulation does:

This administrative regulation establishes the procedural safeguards required by Part C of the Individuals with Education Act, Pub.L. 108-446, Section 639.

(b) The necessity of this administrative regulation:

Procedural safeguards are a required state component under 34 C.F.R. Subpart E 303.340 through 303.438.

(c) How this administrative regulation conforms to the content

of the authorizing statutes:

KRS 200.650 (6) requires the state to be in compliance with federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides a description of the actions and requirements for the agency, early intervention provider and family while implementing procedural safeguards.

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

(a) How the amendment will change the existing administrative regulation: The amendments for this regulation reflect the changes made to the federal regulations and bring KEIS into compliance with those regulations.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to be in compliance with federal statute and regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650 to 200.676 requires the Cabinet to administer all funds appropriated to implement administrative regulations and promulgate regulations.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: The affected entities include the Cabinet for Health and Family Services (one state agency), fifteen (15) points of entry/local lead agencies, one thousand five hundred (1500) providers and six thousand (6000) children and their families.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Cabinet for Health and Family Services will need to be prepared to implement mediation and due process if this is requested by a family when trying to resolve conflicts surrounding the early intervention services for their child. The Points of Entry/Local Lead Agencies will need to understand how to protect eligible children's rights and process a request for mediation and due process with the Cabinet. Providers and families will need to know how to request mediation or due process from the Cabinet. All stakeholders will need to learn how to file written complaints.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs to implement this regulation. The Cabinet has legal services as part of the administrative structure of the agency.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Families and providers will have rights protected and mediation and/or due process available when needed through the state lead agency.

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

(a) Initially: There are no new costs to implement this regulation as a result of the amendment.

(b) On a continuing basis: There are no new costs to implement this regulation as a result of the amendment.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The first copy of the early intervention record will be provided at no cost. However, a \$10 fee may be charged to those parents or guardians who request an additional copy of this record. All revenues generated through the \$10 fee charged for additional copies shall be used to offset the cost to produce and disseminate the early intervention record. Moreover, in those situations in which a parent or guardian

demonstrates that this \$10 fee would present a financial hardship, the cabinet may waive the aforementioned fee.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The first copy of the early intervention record will be provided at no cost. However, a \$10 fee may be charged to those parents or guardians who request an additional copy of this record. All revenues generated through the \$10 fee charged for additional copies shall be used to offset the cost to produce and disseminate the early intervention record. Moreover, in those situations in which a parent or guardian demonstrates that this \$10 fee would present a financial hardship, the cabinet may waive the aforementioned fee.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the 15 local Point of Entry, approx. 1500 direct service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1439, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.650-676

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 amount of revenue generated in the first year cannot be calculated at this time as it would depend on the number of parents or guardians who request an additional copy of the early intervention record (as the first copy is provided at no cost). Historically, there have been no requests for additional copies from a parent or guardian. Moreover, in those situations in which a parent or guardian demonstrates that this \$10 fee would present a financial hardship, the cabinet may waive the aforementioned fee.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue generated in subsequent years cannot be calculated at this time as it would depend on the number of parents or guardians who request an additional copy of the early intervention record (as the first copy is provided at no cost). Historically, there have been no requests for additional copies from a parent or guardian. Moreover, in those situations in which a parent or guardian demonstrates that this \$10 fee would present a financial hardship, the cabinet may waive the aforementioned fee.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303 Subpart E—Procedural Safeguards outlines the states responsibilities in assuring the rights of children

and parents who receive early intervention services. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.672 charges the Cabinet for Health and Family Services, Department for Public Health to protect the rights of disabled child, parent, or guardian being served by the system.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to mirror the federal language regarding procedural safeguards the state will be in full compliance under this part of the federal statute.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (Amendment)

#### 902 KAR 30:200. Coverage and payment for services.

RELATES TO: KRS 200.672, 34 C.F.R. 303.520, 303.521, [303.527, 303.528,] 20 U.S.C. 1438, 1440

STATUTORY AUTHORITY: KRS 194A.050, 200.654, 200.660(3), (7), (8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes the provisions relating to early intervention services for which payment shall be made on behalf of eligible recipients.

Section 1. Participation Requirements. An early intervention provider that requests to participate as an approved First Steps provider shall comply with the following:

(1) Submit to an ongoing review by the Department for Public Health, or its agent, for compliance with 902 KAR Chapter 30;

(2)(a) Meet the qualifications for a professional or paraprofessional established in 902 KAR 30:150; or

(b) Employ or contract with a professional or paraprofessional who meets the qualifications established in 902 KAR 30:150;

(3) Ensure that a professional or paraprofessional employed by the provider who provides a service in the First Steps Program shall attend training on First Steps' philosophy, practices, and procedures provided by First Steps representatives prior to providing First Steps services;

(4) Agree to provide First Steps services as authorized by an individualized family service plan as required by 902 KAR 30:130;

(5) Agree to maintain and to submit as requested by the Department for Public Health required information, records, and reports to ensure compliance with 902 KAR Chapter 30;

(6) Establish a contractual arrangement with the Cabinet for Health and Family Services for the provision of First Steps services; and

(7) Agree to provide upon request information necessary for reimbursement for services by the Cabinet for Health and Family Services in accordance with this administrative regulation, which shall include the tax identification number and usual and customary charges.

Section 2. Reimbursement. The Department for Public Health shall reimburse a participating First Steps provider the lower of the actual billed charge for the service or the fixed upper limit established in this section for the service being provided.

(1) A charge submitted to the Department for Public Health shall be the provider's usual and customary charge for the same service.

(2) The fixed upper limit for services shall be as established in this subsection.

(a) Initial evaluation [Service coordination. Primary service coordination shall be provided by face-to-face contact or by telephone on behalf of a child, with the parent of the child, a professional or other service provider, or other significant person in the family's life.

1. In the office, the fee shall be sixty-two (62) dollars and fifty (50) cents per hour of service.

2. In the home or community site, the fee shall be eighty-five (85) dollars per hour of service.

(b) Primary level evaluation. The developmental component of the initial [primary level] evaluation for a child without an established risk shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, the fee shall be \$270 per service event.

2. In the home or community site, the fee shall be \$270 per service event.

(b) [(e)] Five (5) Area Assessment. The developmental component of the initial [primary level] evaluation for the child with an established risk shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, the fee shall be \$175 per service event.

2. In the home or community-based site, the fee shall be \$175 per service event.

(c) Annual or exit assessment. The annual or exit assessment conducted by the primary service provider shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, the fee shall be \$175 per service event.

2. In the home or community-based site, the fee shall be \$175 per service event.

(d) Discipline specific assessment. The discipline specific assessment conducted by a direct service provider shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, the fee shall be \$175 per service event.

2. In the home or community-based site, the fee shall be \$175 per service event.

(e) [(d)] Record review. A record review shall be provided by a Department for Public Health approved team and paid at the contracted amount. [The fee shall be \$300 per service event.]

(f) [(e)] Intensive clinic evaluation. The intensive level evaluation shall be provided by a Department for Public Health approved team and shall include face-to-face contact with the child and parent.

1. In the office or center-based site, which involves a board certified physician, the fee shall be \$1,100 per service event.

2. In the community site, which involves a board certified physician, the fee shall be \$1,100 per service event.

(g) [(f)] Early intervention[, service assessment,] or collateral services in accordance with Section 3(1), (2), (4), and (5) of this administrative regulation shall have the fixed upper limits established in this paragraph.

1. For an audiologist:

a. In the office or center based site, the fee for a [service assessment,] collateral service[, or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a [service assessment,] collateral service[, or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.

2. For a marriage and family therapist:

a. In the office or center based site, the fee for a [service assessment,] collateral service[, or an early intervention service including cotreatment shall be sixty-three (63) per hour of service; or

b. In the home or community site, the fee for a [service assessment,] collateral service[, or an early intervention service including cotreatment shall be eighty-nine (89) per hour of service.

3. For a licensed psychologist, a licensed psychological practitioner, a licensed professional clinical counselor, or certified psy-

chologist with autonomous functioning:

a. In the office or center based site, the fee for a [service assessment,] collateral service[, or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a [service assessment,] collateral service[, or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.

4. For a licensed psychological associate or a certified psychologist:

a. In the office or center-based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-one (81) dollars per hour of service.

5. For a developmental interventionist:

a. In the office or center based site, the fee for a [service assessment,] collateral service[, or an early intervention service including cotreatment shall be sixty-three (63) [sixty-one (61)] dollars per hour of service; or

b. In the home or community site, the fee for a [service assessment,] collateral service[, or an early intervention service including cotreatment shall be eighty-nine (89) [eighty-one (81)] dollars per hour of service.

6. [For a developmental associate in a center based site, the fee for a collateral service or an early intervention service including cotreatment shall be twenty-four (24) dollars per hour of service.

7. For a registered nurse:

a. In the office or center based site, the fee for a [Service assessment,] collateral service[, or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a [service assessment,] collateral service[, or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.

7. [8. For a licensed practical nurse:

a. In the office or center based site, the fee for a collateral service or an early intervention including cotreatment shall be twenty-four (24) dollars per hour of service; or

b. In the home or community site, the fee for a collateral service or an early intervention including cotreatment shall be thirty-two (32) dollars per hour of service.

9. For a nutritionist:

a. In the office or center based site, the fee for a service assessment, collateral service, or an early intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service, or an early intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

10. For a dietitian:

a. In the office or center based site, the fee for a [service assessment,] collateral service[, or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a [service assessment,] collateral service[, or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.

8. [14. For an occupational therapist:

a. In the office or center based site, the fee for a [service assessment,] collateral service[, or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a [service assessment,] collateral service[, or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.

9. [12. For an occupational therapy assistant:

a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be forty-six (46) dollars per hour of service; or

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b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be seventy (70) dollars per hour of service.

10. [13.] For an orientation and mobility specialist:

a. In the office or center-based site, the fee for a [~~service-assessment;~~] collateral service[;] or an early intervention service including cotreatment shall be sixty-three (63) [~~sixty-one (61)~~] dollars per hour of service; or

b. In the home or community site, the fee for a [~~service-assessment;~~] collateral service[;] or an early intervention service including cotreatment shall be eighty-nine (89) [~~eighty-one (81)~~] dollars per hour of service.

11. [14.] For a physical therapist:

a. In the office or center based site, the fee for a [~~service-assessment;~~] collateral service[;] or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a [~~service-assessment;~~] collateral service[;] or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.

12. [15.] For a physical therapist assistant:

a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be forty-six (46) dollars per hour of service; or

b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be seventy (70) dollars per hour of service.

13. [16.] For a speech therapist:

a. In the office or center based site, the fee for a [~~service-assessment;~~] collateral service[;] or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a [~~service-assessment;~~] collateral service[;] or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.

14. [17.] For a social worker:

a. In the office or center based site, the fee for a [~~service-assessment;~~] collateral service[;] or an early intervention service including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a [~~service-assessment;~~] collateral service[;] or an early intervention service including cotreatment shall be eighty-one (81) dollars per hour of service.

15. [18.] For a teacher of the deaf and hard of hearing:

a. In the office or center based site, the fee for a [~~service-assessment;~~] collateral service[;] or an early intervention service including cotreatment shall be sixty-three (63) [~~sixty-one (61)~~] dollars per hour of service; or

b. In the home or community site, the fee for a [~~service-assessment;~~] collateral service[;] or an early intervention service including cotreatment shall be eighty-nine (89) [~~eighty-one (81)~~] dollars per hour of service.

16. [19.] For a teacher of the visually impaired:

a. In the office or center based site, the fee for a [~~service-assessment;~~] collateral service[;] or an early intervention service including cotreatment shall be sixty-three (63) [~~sixty-one (61)~~] dollars per hour of service; or

b. In the home or community site, the fee for a [~~service-assessment;~~] collateral service[;] or an early intervention service including cotreatment shall be eighty-nine (89) [~~eighty-one (81)~~] dollars per hour of service.

17. [20.] For a physician or a nurse practitioner providing a collateral service in the office or center based site, the fee shall be seventy-six (76) dollars per hour of service. A physician or a nurse practitioner shall not receive reimbursement for early intervention.

18. [24.] For an assistive technology specialist:

a. In the office or center based site, the fee for a [~~service-assessment;~~] collateral service[;] or an early intervention service including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a [~~service as-~~

~~essment;~~] collateral service[;] or an early intervention service including cotreatment shall be eighty-one (81) dollars per hour of service.

19. For a sign language and cued language specialist:

a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.

20. [22.] For an optometrist or ophthalmologist providing collateral service in an office or center based site, the fee shall be sixty-three (63) dollars per hour of service. An optometrist or ophthalmologist shall not receive reimbursement for early intervention.

(h) [(g)] Respite shall be seven (7) dollars and sixty (60) cents per hour.

(3)(a) For early intervention[; ~~service-assessment;~~] or collateral services, hours shall be determined using the beginning and ending time for a service.

1. Services shall be documented in the First Steps data management system and shall include a list of all those present during the session, a description of each early intervention service provided, the child's response, and future action to be taken. Service documentation shall be entered within five (5) calendar days of the service delivery date.

2. The hours shall be computed as follows:

a. Fifteen (15) to twenty-nine (29) minutes shall equal 0.25 hours;

b. Thirty (30) to forty-four (44) minutes shall equal 0.50 hours;

c. Forty-five (45) to fifty-nine (59) minutes shall equal 0.75 hours; and

d. Sixty (60) to seventy-four (74) minutes shall equal 1.00 hour.

(b) For service coordination services, hours shall be determined using the beginning and ending time for a service documented in staff notes in accordance with paragraph (a) of this subsection.

1. The hours shall be computed as follows:

a. One (1) to twenty-two (22) minutes shall equal 0.25 hours;

b. Twenty-three (23) to thirty-seven (37) minutes shall equal 0.50 hours;

c. Thirty-eight (38) to fifty-two (52) minutes shall equal 0.75 hours; and

d. Fifty-three (53) to sixty-seven (67) minutes shall equal 1.00 hour.

2. Service coordination minutes spent over the course of a day on a child or family shall be accumulated at the end of the day in order to determine the total number of hours spent.

(4) A payment for a discipline specific assessment, five (5) area assessment, annual or exit assessment, initial [primary] or intensive evaluation listed in subsection (2) of this section shall be based on a complete evaluation as a single unit of service. An individual provider shall not be reimbursed for participation on the intensive evaluation team.

(5) Payment for assistive technology devices shall be made in accordance with 902 KAR 30:130, Section 3.

(a) The total rental cost of an assistive technology device shall not exceed the purchase price of that device. The length of rental shall be based on the purchase price of the device and shall not exceed ten (10) months in length.

(b) The total purchase cost of an assistive technology device shall include the actual cost of the item being purchased, all related shipping charges, and an administrative fee not to exceed ten (10) percent.

(6) Payment for transportation shall be the lesser of the billed charge or:

(a) For a commercial transportation carrier, an amount derived by multiplying one (1) dollar by the actual number of loaded miles using the most direct route;

(b) For a private automobile carrier, an amount equal to twenty-five (25) cents per loaded mile transported; or

(c) For a noncommercial group carrier, an amount equal to fifty (50) cents per eligible child per mile transported.

(7) A payment for a group intervention service shall be thirty-two (32) dollars per child per hour of direct contact service for each

child in the group with a limit of three (3) eligible children per professional or paraprofessional who can practice without direct supervision.

Section 3. Limitations. (1) Service Assessments.

~~(a) [Payment shall be limited to no more than two (2) hours per child per discipline per assessment unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation.~~

~~(b)] Payment for a discipline specific assessment shall be limited to three (3) assessments per discipline per child, unless additional hours are necessary based on the reasons listed in subsection (b)](e)] and documented in accordance with 902 KAR 30:130, Section 1(7)](5)] from birth to the age of three (3) unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation.~~

~~(b)](e)]1. A service assessment payment shall not be made for the provision of routine early intervention services by a discipline in the general practice of that discipline.~~

2. Payment for a service assessment shall be restricted to the need for additional testing due to new concerns or significant change in the child's status.

3. Routine activity of assessing progress and outcomes shall be billed as early intervention. ~~[(d) Payment shall be limited to an assessment provided as a face-to-face contact with the child and parent, and shall not exceed two (2) hours for each event.~~

~~(e) Payment for a service assessment of up to two (2) hours for each event for the purpose of the annual and exit progress monitoring five (5) area assessment shall be made to the primary service provider as approved by the IFSP team.]~~

(2) For early intervention, unless prior authorized by the Department for Public Health in accordance with Section 4 of this administrative regulation, limitations for payment of services shall be as established in this subsection.

(a) For office, center, or home and community sites:

1. Payment shall be limited to no more than one (1) hour per day per child per discipline by a:

a. Professional meeting the qualifications established in 902 KAR 30:150; or

b. Paraprofessional meeting the qualifications established in 902 KAR 30:150.

2. Payment shall be limited to no more than twenty-four (24) hours for a single discipline and thirty-six (36) hours for more than one (1) discipline during a six (6) month period and for group shall be limited to an additional forty-eight (48) hours during a six (6) month period.

(b) For group:

1. Children shall not be eligible for both group and individual early intervention services by the same discipline concurrently on the Individualized Family Services Plan.

2. Group service shall be provided by enrolled First Steps providers in accordance with 902 KAR 30:150, Section 1(11). The ratio of staff to children in group early intervention shall be limited to a maximum of three (3) children per professional and paraprofessional per group.

(c) Payment for siblings seen at the same time shall be calculated by dividing the total time spent by the number of siblings to get the amount of time to bill per child.

(d) Payment for a service shall be limited to a service that is authorized by the ~~[entire]~~ IFSP team in accordance with 902 KAR 30:130, Section ~~3(3)~~ ~~[2(6) or (7)]~~.

~~(e)1. Except as provided in subparagraph 2. of this paragraph, payment shall be limited to a service provided as a face-to-face contact with the child and either the child's parent or caregiver.~~

2. Early intervention family services authorized by KRS 200.654(7) may be provided without the child present if the reason the child's presence is clinically contraindicated is documented in the session note.

(3) For respite, payment shall:

(a) Be limited to no more than eight (8) hours of respite per month, per eligible child;

(b) Not be allowed to accumulate beyond each month; and

(c) Be limited to families in crisis, or strong potential for crisis without the provision of respite.

(4) For collateral services, payment for collateral services shall be a billable service for First Steps providers, who are providing early intervention services for the eligible child through an IFSP and paid by the First Steps system.

(a) The length of an IFSP meeting shall be limited to no more than one (1) hour.

(b) Payment for attendance at one (1) Admissions and Release Committee (ARC) meeting held prior to a child's third birthday shall be limited to the service coordinator and primary service provider selected by the IFSP team.

(c) Participation at an initial IFSP meeting by an initial ~~[a primary level]~~ evaluator shall be limited to an evaluator who conducted the initial evaluation ~~[has provided feedback and interpretation of the evaluation to the family prior to the IFSP meeting]~~ in accordance with 902 KAR 30:120, Section ~~2(5)(a)](3)(d)]~~. Payment shall be at the collateral services rate for the discipline that the evaluator represents[.

~~(d) A face-to-face attendance at an IFSP meeting or a face-to-face or telephone consultation by a team member with a child's physician for developmentally-related needs shall be provided].~~

(5) For cotreatment, payment shall be limited to three (3) disciplines providing services concurrently.

(6) Unless prior authorized by the Department for Public Health due to a shortage of direct service providers, an initial ~~[a primary level]~~ evaluator shall not be eligible to provide early intervention to a child whom the evaluator evaluated and which resulted in the child becoming eligible.

Section 4. Prior Authorization Process. (1) Authorization for payment for early intervention services beyond the limits established in Section 3 of this administrative regulation shall be submitted to the cabinet or its designee, as determined by the Department for Public Health, and approved prior to the service being delivered and shall include the following:

(a) A service exception request completed in the First Steps data management system; and

(b) The Record Review Supporting Documentation~~[-which shall include three (3) sections:~~

1. The Payor of Last Resort;

2. Transfer of Skills; and

3. The Service Planning Activity Matrix].

(2) The record review team shall issue a written recommendation for the IFSP team to consider within ten (10) calendar days of receipt of the request.

(3) If the IFSP team is not in agreement with the recommendation of the record review team:

(a) A request for further review shall be submitted to the Department for Public Health; and

(b) A three (3) person team from the Department for Public Health, Division of Maternal and Child Health, including the division director, shall render a recommendation.

(4) If the IFSP team is not in agreement with the three (3) person team recommendation established in subsection (3)(b) of this section:

(a) The child's IFSP team shall be asked to reconvene for an IFSP meeting with a representative from the record review team and a representative from the three (3) member team; and

(b) If the IFSP team concludes at that IFSP meeting that the services are still needed, payment for the service shall be authorized for the duration of the current IFSP.

Section 5. System of Payment and Fees ~~[Sliding Fee]~~. (1) All families enrolling in the First Steps system shall be assessed for the family's ability to pay a participation fee for early intervention services in accordance with KRS 200.654(7)(f) to (m) and shall receive a copy of the Your Financial Responsibilities in First Steps brochure.

~~(2) A charge to the family shall not be [Families shall pay for services based on a sliding fee scale, except that a charge shall not be] made for the following functions:~~

~~(a) Child find;~~

~~(b) Evaluation and assessment;~~

~~(c) Service coordination; and~~

~~(d) Administrative and coordinative activities including devel-~~

opment, review, and evaluation of individualized family service plans, and the implementation of procedural safeguards.

(3) [(2)] Payment of fees shall be for the purpose of:

(a) Maximizing available sources of funding for early intervention services; and

(b) Giving families an opportunity to assist with the cost of services if there is a means to do so, in a family share approach.

(3) The family share payment shall:

(a) Be based on a sliding fee scale:

(b) Be explained to the family by the service coordinator; and

~~(c) [(b) Be an income-based monthly fee, and with the exception established in paragraph (d) of this subsection, shall]~~ Begin in the month of the IFSP, at the time early intervention services are authorized, and continue for the duration of participation in early intervention services.

(4) The ability to pay shall:

~~(a) Be based on the level [1, as determined by the 1. Level]~~ of the family gross income identified on the last Federal Internal Revenue Service statement or check stubs from the four (4) most recent consecutive pay periods, as reported by the family; and

~~(b) The level [2. Level]~~ of income matched with the level of poverty, utilizing the federal poverty guidelines as published annually by the Federal Department of Health and Human Services, based on the following scale:

1. ~~[a.]~~ Below 200 percent of poverty, there shall be no payment;

2. ~~[b.]~~ From 200 percent of poverty to 299 percent, the payment shall be twenty (20) dollars per month of participation;

3. ~~[c.]~~ From 300 percent of poverty to 399 percent, the payment shall be thirty (30) dollars per month of participation;

4. ~~[d.]~~ From 400 percent of poverty to 499 percent, the payment shall be forty (40) dollars per month of participation;

5. ~~[e.]~~ From 500 percent of poverty to 599 percent, the payment shall be fifty (50) dollars per month of participation; or

6. ~~[f.]~~ From 600 percent of poverty and over, the payment shall be \$100 per month of participation;

(5) The family share participation fee shall not:

(a) Exceed the cost of the actual monthly Part C service.

~~(b) [(c) Not apply to a child receiving Medicaid or Kentucky Children's Health Insurance Program (KCHIP) benefits;~~

~~(d) Not]~~ Apply to a family who receives only evaluation, assessment, service coordination services, or IFSP development in the initial calendar month of eligibility. The service coordinator shall notify the Department for Public Health First Steps Family Share Administrator immediately if the initial IFSP date is different than the month that early intervention services are started;

~~(c) [(e) Not]~~ Apply to a family that does not receive services except those described in paragraph (d) of this subsection for at least one (1) month if prior authorized by the Department for Public Health First Steps Family Share Administrator in accordance with paragraph (g)1 and 2 of this subsection. A request shall not be submitted for a retroactive period unless an extenuating circumstance occurs such as an unexpected hospitalization; and

~~(d) [(f) Not apply to a family that receives evaluation, assessment, service coordination, or IFSP development if the developmental evaluation or assessment did not reveal a developmental delay. The service coordinator shall notify the Department for Public Health First Steps Family Share Administrator immediately if this situation exists so that the family is not assessed a family share cost; and~~

~~(g) Not]~~ Prevent or delay a child from receiving services if the family shows to the satisfaction of the Department for Public Health an inability to pay, in accordance with the following:

1. The service coordinator shall submit to the Department for Public Health First Steps Family Share Administrator, on behalf of the family, a waiver request to have the amount of the family share payment reduced or eliminated for a period not to exceed three (3) calendar months. A request shall not be submitted for a retroactive period unless extenuating circumstances, such as an unexpected hospitalization, occurs; and

2. The family shall undergo a financial review by the Department for Public Health that may:

a.(i) Adjust the gross household income by subtracting extraordinary medical costs, equipment costs, exceptional child care

costs, and other costs of care associated with the child's other family members' disabilities; and

(ii) Result in a calculation of a new family share payment amount based on the family's adjusted income compared to the percentage of the poverty level established in paragraph (b)2 of this subsection. If a recalculation is completed, the Department for Public Health shall conduct a review at least quarterly; or

b. Suspend or reduce the family share payment, based on a verified financial crisis that would be exacerbated by their obligated family share payment. The Department for Public Health shall conduct a review at least quarterly.

(6) In accordance with 902 KAR 30:180 the family may contest the imposition of a fee or the determination of their ability to pay by filing:

(a) A request for mediation;

(b) A request for a due process hearing;

(c) An administrative complaint; or

(d) An appeal to the Part C Coordinator for final resolution.

~~(7) [(4)]~~ Income and insurance coverage shall be verified at six (6) month intervals, and more often if changes in household income will result in a change in the amount of the obligated family share payment.

~~(8) [(5)]~~ A family that refuses to have its income verified shall be assessed a family share payment of \$100 per month of participation.

~~(9) [(6)]~~ If multiple children in a family receive early intervention services, the family share payment shall be the same as if there were one (1) child receiving services.

~~(10)(a) [(7)]~~ If a family has the ability to pay the family share but refuses to do so for three (3) consecutive months, the family shall receive service coordination, IFSP development, procedural safeguards, and assessment services only until discharged from the program or the family share balance is paid in full, whichever occurs first.

(b) The service coordinator shall provide the family a financial notice of action at thirty (30) calendar days prior to the suspension of ongoing IFSP services.

#### Section 6. Use of Insurance. (1) Public Insurance.

(a) The state lead agency shall be the enrolled Medicaid provider for early intervention services. A contracted provider or agency shall not bill Medicaid directly for early intervention services provided in accordance with the IFSP.

(b) Written notification in accordance with 34 C.F.R. 303.520 (3)(i)-(iv) shall be provided to the child's parent or guardian before the use of public benefits or insurance to pay for early intervention services.

(c) A parent or guardian may not be required to sign up for or enroll in public benefits or insurance programs as a condition of receiving early intervention services.

#### (2) Private Insurance

(a) Parent or guardian consent shall be obtained:

1. For the use of private insurance to pay for the initial provision of an early intervention service on the IFSP; and

2. Each time consent for services is required due to an increase in the frequency, length, duration, or intensity in the provision of service in the child's IFSP.

(b) [(8)] A family who chooses to use private insurance for payment of a First Steps service shall not be responsible for payment of insurance deductibles or copayments related to this service.

(c) The fee paid to the early intervention provider by KEIS shall include any copay or deductible associated with the services, bringing the total to the maximum rate for KEIS allowed by Section 2 of this administrative regulation. Families shall be responsible for payment of their insurance premiums and may incur a decrease in the annual cap for certain services under their policy.

(d) A family who has the ability to pay and does not give consent for the use of private insurance shall receive only those services provided at no cost to the family as described in Section 5(2) of this administrative regulation.

(e) If a family is assessed as having an inability to pay and does not give consent for the use of private insurance, this lack of consent shall not prevent or delay a child from receiving services.

(f) If a family receives payment from insurance, these funds shall be surrendered to the early intervention provider for services rendered. Failure to surrender the payment shall result in the amount of the insurance payment being added to the Family Share balance due.

(g) A [(9) With the exception of a discipline identified in 902 KAR 30:130, Section 2(8)(g)2.i., j., or k., a] provider shall bill a third-party insurance[if any,] for an early intervention service prior to billing First Steps. Documentation regarding the billing, the third-party insurance representative's response, and payment, if any, shall be maintained in the child's record and submitted through the First Steps data management system.

Section 7. [6-] Incorporation by Reference. (1)(a) The "Record Review Supporting Documentation", July 2012 edition [November 2010], is incorporated by reference.

(b) The "Your Financial Responsibilities in First Steps" brochure, July 2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner  
AUDREY HAYNES, Secretary

APPROVED BY AGENCY: December 12, 2012

FILED WITH LRC: December 12, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2013, at 9:00 a.m. in Conference Suite 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 January 14, 2013, 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 regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business January 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756 ext 3973

(1) Provide a brief summary of 902 KAR 30:200:

(a) What this administrative regulation does: This administrative regulation establishes the rates to be paid to providers for the provision of approved services (i.e. Physical Therapy, Occupational Therapy), sets forth limitations for billable services, and establishes processes for requesting services beyond set parameters and for assessing and collecting family participation payments.

(b) The necessity of this administrative regulation: 902 KAR 30:200 is necessary because the First Steps program operates on a fee-for-service system requiring the establishment of rates for covered services.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.660 assigns the Cabinet for Health and Family Services the duty of appropriately administering all funds related to the implementation of the First Steps program. Further, KRS 200.660 directs the Cabinet for Health and Family Services to develop and implement a sliding fee scale in accordance with federal regulation, and contract with providers to provide First Steps services.

(d) How this administrative regulation currently assists in the effective administration of the statutes: This administrative regulation describes the rate structure used by the Cabinet for Health and

Family Services when contracting with service providers as well as the sliding fee scale.

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

(a) How the amendment will change the existing administrative regulation: The amendment to this administrative regulation removes the payment rate for those disciplines that have been removed from 902 KAR 30:150 and establishes the rate for those disciplines that were added to that same administrative regulation. It sets the rate for all assessments as a single flat rate. Cost limitations for both the rental and purchase of assistive technology devices have been added to this administrative regulation. The release of updated federal regulations expanded the required components for a state's system of payment and this regulation was amended to reflect these required changes.

(b) The necessity of the amendment to this administrative regulation: The revisions to this administrative regulation are necessary to establish business rules for providers and establish rates of payments for services rendered. Obsolete language is removed to reflect current program structure and provide clarity.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.660 assigns the Cabinet for Health and Family Services the duty of appropriately administering all funds related to the implementation of the First Steps program. Further, KRS 200.660 directs the Cabinet for Health and Family Services to develop and implement a sliding fee scale in accordance with federal regulation, and contract with providers to provide First Steps services. KRS 200.650(6) and KRS 200.652(3) require a statewide comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure appropriate compensation to First Steps service provider and will assure that the Cabinet for Health and Family Services is administering the sliding fee scale in a manner consistent with federal regulation and intent.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately fifteen hundred (1500) early intervention providers, including Point of Entry staff, will be affected by these regulations. Over six thousand (6000) eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers of the amended rates will need to adjust their claims to reflect the changes. Providers who are qualified to provide sign language and cued language services will need to enroll.

Families of children who qualify for Medicaid will have to give consent for the release of the child's protected health information before KEIS can submit a claim for reimbursement to Medicaid.

Families may contest the imposition of a family share cost participation fee. And those families who receive direct payment for services from their insurance policy will be required to surrender those payments to the early intervention provider.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Kentucky Early Intervention System currently costs approximately \$40 million dollars. The revisions to this administrative regulation do not cost the entities affected by the amended regulations any additional dollars.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinators by providing needed clarity so that they are more effective in their roles within the system.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No new costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation: Federal Part C funds and state general funds will be used to implement this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the 15 local Point of Entry, approx. 1500 direct service providers, families receiving early intervention services, as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1438, 1440, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.650-676

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 revenue generated by this administrative regulation for the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no new expenditures to implement this administrative regulation during the subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.500 through 303.521 outlines the federal policies and procedures related to financial matters. It states that First Steps must be the payor of last resort. It also provides provisions for charging a family participation fee. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.674 charges the Cabinet for Health and Family Services, Department for Public Health in the use of early intervention funds.

3. Minimum or uniform standards contained in the federal

mandate. By revising this administrative regulation, Kentucky is in full compliance with the federal requirements to ensure First Steps is the payor of last resort for early intervention services.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.



NEW ADMINISTRATIVE REGULATIONS

Education and Workforce Development Cabinet  
Kentucky Board of Education  
Department of Education  
(New Administrative Regulation)

**704 KAR 3:095. The use of response-to-intervention in Kindergarten through Grade 3.**

RELATES TO: KRS 157.200

STATUTORY AUTHORITY: KRS 156.160 (1)(g), 158.305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 (1)(g) gives the Kentucky Board of Education the authority to promulgate administrative regulations and KRS 158.305 requires the Kentucky Board of Education to promulgate administrative regulations for the district-wide use of a response to intervention system for students in Kindergarten through Grade 3. This administrative regulation establishes the requirements for a district-wide response to intervention system for students in Kindergarten through Grade 3.

Section 1. Definitions. (1) "Core instruction" means instruction, based on the state's academic standards as set forth in 704 KAR 3:303, that is provided to all students.

(2) "Differentiated instruction" means the tailoring of curriculum, teaching environments, and practices to create appropriately different learning experiences for students to meet each student's needs while recognizing each student's learning differences, varying interests, readiness levels, and level of responsiveness to the standard core curriculum.

(3) "Evidence-based" means classroom practices for which there is strong evidence of success.

(4) "Fidelity of implementation" means the accurate and consistent provision or delivery of instruction as it was designed.

(5) "Intensive intervention" means that, in addition to core instruction and targeted intervention instruction, a student is provided additional intervention services that are tailored to the student's individualized academic or behavioral needs.

(6) "Intervention" means an educational or behavioral instruction, practice, strategy, or curriculum that is provided to meet a student's academic and behavioral needs, in addition to core instruction.

(7) "Response-to-intervention" means a multi-level prevention system to maximize student achievement and social and behavioral competencies through an integration of assessment and intervention.

(8) "Targeted intervention" means the use of screening data to design instructional interventions provided, in addition to core instruction, when a student's universal screening and other data results indicate that the student has not mastered a benchmark skill or grade level expectation in mathematics, reading, writing, or behavior.

(9) "Universal screening" means screening that uses specific criteria to evaluate the learning and achievement of all students in academics and related behaviors, that may include learning differences, class attendance, tardiness, and truancy, to determine which students need closer monitoring or an intervention.

Section 2. Local districts shall implement a comprehensive response-to-intervention system for Kindergarten through Grade 3 that includes:

(1) Multi-tiered systems of support, including differentiated core academic and behavioral instruction and targeted, intensive academic and behavioral intervention, delivered by individuals most qualified to provide the intervention services, that maximize student achievement and reduces behavioral problems;

(2) Universal screening and diagnostic assessments to determine individual student needs and baseline performance;

(3) Interventions that:

(a) Are evidence-based;

(b) Vary in intensity and duration based on student need;

(c) Meet the needs of the individual student;

(d) Are implemented with fidelity;

(e) Are delivered by individuals most qualified to provide the intervention services; and

(f) Are monitored through a comparison of baseline data, collected prior to intervention, and ongoing progress data.

(4) Support for early intervention to address academic and behavioral issues; and

(5) Data-based documentation of:

(a) Assessments or measures of behavior;

(b) Progress during instruction;

(c) Evaluation, at regular intervals, for continuous progress; and

(d) Individual student reports shared with the parents of each student in Kindergarten through Grade 3 that summarize the student's skills in mathematics, reading, writing, the students' behavior, and any intervention plans and services being delivered.

Section 3. The response-to-intervention system for Kindergarten through Grade 3 shall coordinate with district-wide interventions required by KRS 148.792, 158.6453, 158.6459, 704 KAR 3:305, 3:530, 3:285, and 707 KAR 1:300, 1:310, and 1:320.

Section 4. Local districts shall submit the data required by KRS 158.305(10) to the department through the Kindergarten to Grade 3 program review required in 703 KAR 5:230.

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, Chair

APPROVED BY AGENCY: December 14, 2012

FILED WITH LRC: December 14, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 30, 2013, 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 January 31, 2013. 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 requirements for a district-wide response-to-intervention system for students in kindergarten through grade three (3).

(b) The necessity of this administrative regulation: HB 69 (2012) requires the Kentucky Board of Education to promulgate administrative regulations for district-wide use of a response-to-intervention system for students in kindergarten through grade three (3). Response-to-intervention optimizes a systematic and ongoing assessment of academic and behavioral needs and uses

the data in collaborative conversations with parents/guardians and educators to prepare students to be college and career ready.

(c) How this administrative regulation conforms to the content of the authorizing statute: HB 69 (2012) requires the Kentucky Board of Education to promulgate administrative regulations for district-wide reporting on the use of K-3 response-to-intervention implementation in reading by August 1, 2013, in mathematics by August 1, 2014, and behavior by August 1, 2015; and the regulation conforms to those requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation defines the required district-wide system of interventions. The administrative regulation also defines the components required in that system, such as multi-tiered systems of support, universal screening, interventions that meet the needs of students, and documentation of those interventions.

(2) If 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 that have K-3 students

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Districts will need to establish a system of tiered interventions for students in kindergarten through grade three who do not meet academic (reading, writing, and mathematics) and behavioral benchmarks.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Interventions can be developed and provided for students by established school personnel. A vendor product is not required or necessary to fulfill the requirements of the regulation. Schools may establish their own assessment system, but as schools are already required to have an elementary assessment, this regulation does not add any additional requirements. Depending upon the number of students identified for tiered services, schools may need additional staff if they cannot repurpose staff and would thereby incur additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As schools attend to the individual needs of each student, more students will attain and maintain grade level performance and will be more likely to meet proficiency and college and career readiness goals. Also as intervention occurs early with the appropriate intensity and duration, the number of students who are referred for special education evaluation and services will be reduced.

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

(a) Initially: Schools and districts are not required to use a specific vendor product or assessment and may use interventions and assessments that they develop. Resources for interventions are readily available and many are free. If products and services are purchased from a vendor, this could increase expenses for districts and schools. It is difficult to quantify the exact cost because schools will choose resources that most effectively meet the needs of their students.

(b) On a continuing basis: Once intervention resources and assessment resources are established, unless there is a consumable product such as a workbook or an ongoing maintenance fee for a product, there should not be a continuing cost. Also, as schools focus on differentiating core instruction to meet the needs

of diverse learners, the need for tier 2 and 3 interventions will decrease.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Schools may utilize Title I and general funds for intervention. If the school has a Read to Achieve Grant or Mathematics Achievement Fund grant, those funds are to be targeted to interventions. Also, 707 KAR 1:300 allows school districts to conduct coordinated early intervening services for students from kindergarten through 12th grade (with particular emphasis on students in kindergarten through grade three (3) who need additional academic and behavioral intervention) to be successful in the regular education environment prior to referral for special education. A school district shall not spend more than fifteen (15) percent of the money received under IDEA Part B to provide these coordinated early intervening services.

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

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

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and 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. HB 69 (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. Initially, schools and districts are not required to use a specific vendor product or assessment and may use interventions and assessments that they develop. Resources for interventions are readily available and many are free. If products and services are purchased from a vendor, this could increase expenses for districts and schools. It is difficult to quantify the exact cost because schools will choose resources that most effectively meet the needs of their students.

(a) How much 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 impact on revenues with this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no impact on revenues with this administrative regulation.

(c) How much will it cost to administer this program for the first year? Initially, schools and districts are not required to use a specific vendor product or assessment and may use interventions and assessments that they develop. Resources for interventions are readily available and many are free. If products and services are purchased from a vendor, this could increase expenses for districts and schools. It is difficult to quantify the exact cost because schools will choose resources that most effectively meet the needs of their students.

(d) How much will it cost to administer this program for subsequent years? Once intervention resources and assessment resources are established, unless there is a consumable product such as a workbook or an ongoing maintenance fee for a product, there should not be a continuing cost. Also, as schools focus on differentiating core instruction to meet the needs of diverse learners, the need for tier 2 and 3 interventions will decrease.

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

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Maternal and Child Health**  
**(New Administrative Regulation)**

**902 KAR 18:010. Definitions for 902 KAR Chapter 18.**

RELATES TO: KRS Chapter 13B, 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, 7 C.F.R. Part 278.6, 21 U.S.C. 802 sec. 102

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246, provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes definitions for the terms used in 902 KAR Chapter 18.

Section 1. Definitions. (1) "Above-50-Percent vendor" means a vendor that receives or is expected to receive more than fifty (50) percent of its annual food sales revenue from WIC benefits.

(2) "Alcohol" is defined in KRS 241.010(1).

(3) "Alcoholic beverage" is defined in KRS 241.010(2).

(4) "Approved Product Listing" or "APL" means an electronic list (file) identifying the food items approved by the State WIC Agency for purchase with WIC benefits by food category and sub-category.

(5) "Authorized Supplemental Food" means a supplemental food authorized by the state or a local agency for issuance to a particular participant.

(6) "Cash Value Benefit" means a fixed-dollar amount check, food instrument, electronic benefits transfer (eWIC) card or other document which is used by a participant to obtain authorized fruits and vegetables.

(7) "Cash Value Voucher" as defined by 7 C.F.R., Part 246.2, means a fixed-dollar amount check, voucher, electronic benefit transfer (EBT) card or other document which is used by a participant to obtain authorized fruits and vegetables.

(8) "Certifying Professional Authority" means a person authorized to determine eligibility and certify persons for the WIC Program.

(9) "Compliance Buy" means a covert, on-site investigation.

(10) "Contract price" means the price for a WIC food item negotiated between the state agency and the vendor.

(11) "Dual participation" means simultaneous participation in the WIC Program and in:

(a) One (1) or more WIC clinics; or

(b) The Commodity Supplemental Food Program.

(12) "Electronic WIC benefits" or "eWIC" means a Web-based technology that allows WIC participants to obtain food benefits by using a plastic debit-type card with a Personal Identification Number (PIN) at authorized participating WIC retailers.

(13) "FNS" means Food and Nutrition Services.

(14) "Food Instrument" as defined by 7 C.F.R., Part 246.1, means a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used by a participant to obtain supplemental foods.

(15) "High Risk Vendor" means a vendor having a high probability of noncompliance with federal and state regulations, policies, and procedures.

(16) "Integrated" means a commercial system that fully incorporates eWIC functionality into an existing cash register (ECR) system.

(17) "Inventory Audit" means an examination of food invoices or other proofs of purchase to determine if a vendor has purchased sufficient quantities of authorized supplemental food to provide to

participants the quantities specified on WIC benefits redeemed by the vendor during a given period of time.

(18) "Investigation" means a method used by the state agency to detect a WIC Program violation.

(19) "Local Agency" is defined as an applying or participating WIC agency.

(20) "Low variance" means the redemption of the same type of food item at the same price, or within a narrow price range.

(21) "Negotiated Price" means the price for a WIC food item negotiated between the state WIC Agency and the vendor.

(22) "Not to Exceed" or "NTE" means a FNS-approved cost containment methodology whereby WIC authorized vendors are subject to price limitations.

(23) "Participant" means:

(a) A pregnant, breastfeeding, or postpartum woman, or an infant or child, who is receiving supplemental food or WIC benefits;

(b) The breastfed infant of a breastfeeding woman who is receiving WIC Program benefits;

(c) The parent or caretaker of an infant or child receiving a WIC benefit; and

(d) The proxy for a person identified in paragraphs (a), (b), or (c) of this subsection.

(24) "Participant Violation" means an intentional, knowing act of a participant, as defined in this administrative regulation, that violates federal or state law governing the WIC Program.

(25) "Peer Groups" means categories into which vendors are assigned based upon sales volume and region.

(26) "Point of Sale" or "POS" means the system supporting WIC/eWIC food sales in a store checkout lane.

(27) "POS Device" means a physical electronic cash register or dedicated Point of Sale hardware (or "terminal") that is used for WIC processing.

(28) "Positive Buy" means a compliance buy, on-site review, or on-line WIC transaction review in which evidence of a sanctionable violation of the Vendor Agreement, program policies, and/or rules is obtained

(29) "Price Look Up" or "PLU" means a four (4) or five (5) digit identifier used to identify individual and bulk produce.

(30) "Proxy" means as a person designated by a female participant, or by a parent or caretaker of an infant or child participant, to obtain and transact a food instrument/cash value benefit to obtain a supplemental food or foods on behalf of a participant.

(31) "Routine monitoring" means an overt, on-site monitoring during which representatives of the WIC Program identify himself or herself to vendor personnel.

(32) "Rural" means any area not defined by subsection (42) of this section.

(33) "Shelf Price" means the price displayed on the food item, shelf, or display case where the food item is stored.

(34) "SNAP" means "Supplemental Nutrition Assistance Program", formally known as the Food Stamp Program.

(35) "Standard Bar Code" means a series of lines of varying width, printed, as on a container or product, that can be read by an optical scanner to determine product classification, price, etc.

(36) "Staple food items" means meat, poultry, fish, bread, breadstuff, cereals, vegetables, fruit, vegetable and fruit juices, and dairy products, excluding items such as coffee, tea, cocoa, carbonated and uncarbonated beverages, condiments, and spices.

(37) "State WIC Agency" means the Cabinet for Health and Family Services or its designated representative.

(38) "Systematic Review" means a review of electronic WIC transactions by the state WIC agency or its representatives to monitor systematic abuses at POS terminals.

(39) "Trafficking" means the redemption of WIC benefits for cash, for firearm, ammunition, an explosive, or controlled substance as defined in 21 U.S.C. 802.

(40) "Unauthorized Food" means foods not authorized by the state or local agency for issuance to a particular participant.

(41) "UPC" means a barcode consisting of twelve (12) digits used for tracking trade items in retail stores.

(42) "Urban" means the metropolitan area as defined by US Office of Management and Budget.

(43) "Vendor" means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating

one (1) or more stores to participate by providing authorized supplemental foods to participants under a retail food delivery system.

(44) "Vendor authorization" means the process by which the state WIC agency enters into an agreement or contract with a store that applies to be authorized as a vendor.

(45) "Vendor Overcharge" as defined by 7 C.F.R., Part 246.2, means intentionally or unintentionally charging the state agency more for authorized supplemental foods than is permitted under the vendor agreement.

(46) "Vendor Violation" means an intentional or unintentional act of a vendor's current owner, officers, agent, or employee, with or without the knowledge of management, that violates the vendor agreement or either the federal or state law governing the WIC Program.

(47) "WIC Agency" is a local health department or agency contracted with the state to deliver WIC services.

(48) "WIC Benefits" means a voucher, check, electronic benefits transfer card (EBT), coupon, or documents that is used by a participant to obtain supplemental foods.

(49) "WIC Eligible Medical Foods" means enteral products that are specifically formulated to provide nutritional support for individuals with a qualifying condition when the use of conventional foods is precluded, restricted or inadequate.

(50) "WIC Program" or "WIC" means the Special Supplemental Nutrition Program for Women, Infants, and Children authorized by Section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1786, and administered pursuant to 42 U.S.C. 1786 and 7 C.F.R. Part 246.

STEVE DAVIS, M.D., Acting Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 13, 2012

FILED WITH LRC: December 14, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2013 at 9:00 a.m. in Suite C. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2013. 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: Carlene Egbert 564-3827 x 3840

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for a new chapter of administrative regulations that establishes and implements the application and participation process for the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC) for women, infants, children, and vendors.

(b) The necessity of this administrative regulation: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the definitions for 902 KAR Chapter 18.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050 to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. This administrative regulation establishes the definitions for 902

#### KAR Chapter 18

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide the definitions used in Chapter 18 that implement the Kentucky Supplemental Nutrition Program for Woman, Infant and Child Program (WIC).

(2) If 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 regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: 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 Department for Public Health, Local Health Agencies (61), WIC sites (148) WIC Vendors (886) and WIC Participants (128,883).

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

(a) List 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 changes in the actions will need to be made from the Department of Public Health, Local Health Agencies, Local WIC Sites and WIC Participants. WIC Vendors will have to have internet access to meet the qualifications to be a WIC Vendor.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Public Health, Local Agencies, Local WIC sites, WIC Participants and Vendors will not experience an increase in cost to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation will provide better understanding of Chapter 18 as it relates to the Supplemental Nutrition Program for Woman, Infants and Children (WIC).

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

(a) Initially: There would be no additional cost to the Cabinet to implement and enforce this administrative regulation.

(b) On a continuing basis: On a continuing basis, additional funding is not required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The initial funding was from a grant from the USDA Food and Nutrition Services. There would be no additional cost to the Cabinet to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not appropriate in this administrative regulation since it applies equally to all those individuals or 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? This regulation will impact the Department of Public Health, Local Health Agencies, WIC Sites, WIC Vendors and WIC participants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 1. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the adminis-

trative regulation. KRS 194A.050 authorizes the Department for Public Health to promulgate, administer, and enforce those administrative regulations in accordance with C.F.R. 7, Chapter 11, Volume 4, Part 246.

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 new revenue will be generated for state or local government in the first year of implementing this regulation.

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

(c) How much will it cost to administer this program for the first year? There is no cost to the local or state governments to implement this regulation the first year.

(d) How much will it cost to administer this program for the subsequent years? There is no cost to the local or state governments to implement this regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health  
Division of Maternal and Child Health  
(New Administrative Regulation)

### 902 KAR 18:020. Eligibility, certification periods, and time frames for processing applicants.

RELATES TO: KRS Chapter 13B, 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802 sec. 102

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the application and participation process for participants of the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC) for women, infants, children.

Section 1. Eligibility. To be certified as eligible to participate in the WIC Program, a person shall:

(1) Be categorically eligible as follows:

(a) A pregnant woman;

(b) A postpartum woman, up to six (6) months after termination of pregnancy;

(c) A breastfeeding woman, up to the infant's first birthday;

(d) An infant, birth to one (1) year of age; or

(e) A child, one (1) to five (5) years of age;

(2) Provide proof of residence in the Commonwealth of Kentucky;

(3) Provide proof of identity;

(4) Provide proof of household income and meet the income criteria; and

(5) Meet one (1) of the following nutritional risk criteria:

(a) A detrimental or abnormal nutritional condition detectable by biochemical or anthropometric measurements, such as:

1. Anemia;

2. Underweight;

3. Overweight;

4. Abnormal pattern of weight gain in pregnant women;

5. Low weight gain in an infant; or

6. Stunting in an infant or child.

(b) A documented nutritionally related medical condition, such as:

1. Clinical signs of nutritional deficiency;

2. Metabolic disorder;

3. Pre-eclampsia in a pregnant woman;

4. Failure to thrive in an infant;

5. Chronic infection;

6. Alcohol or drug abuse or mental retardation in a woman;

7. Lead poisoning;

8. History in a pregnant woman of a high risk pregnancy or an associated factor such as:

a. Smoking;

b. Conception before sixteen (16) months postpartum;

c. Low birth weight, premature birth, or neonatal loss;

d. Adolescent pregnancy; or

e. Current multiple pregnancy;

9. Congenital malformation in an infant or child or an infant born to a woman with:

a. History of alcohol abuse;

b. History of drug abuse; or

c. Mental retardation;

(c) A dietary deficiency that impairs or endangers health, such as an inadequate dietary pattern as assessed by:

1. A twenty-four (24) hour dietary recall;

2. Dietary history; or

3. Food frequency checklist;

(d) A condition that predisposes a person to an inadequate nutritional pattern or nutritionally related medical condition, such as homelessness or migrancy; or

(e) An infant under six (6) months of age if, during her pregnancy, the infant's mother:

1. Was a WIC Program participant; or

2. Met risk criteria;

(6) A participant previously certified for the WIC Program shall be considered at nutritional risk in the next certification period if the certifying professional authority determines there is a possibility of regression in nutritional status without the supplemental foods.

Section 2. Certification Periods. WIC Program benefits shall be based upon certifications established in accordance with the following time frames:

(1) A pregnant woman shall be certified for the duration of her pregnancy and for up to six (6) weeks postpartum.

(2) A postpartum woman shall be certified for up to six (6) months postpartum.

(3) A breastfeeding woman shall be certified at intervals of approximately six (6) months, ending with the breastfed infant's first birthday.

(4) An infant shall be certified at intervals of approximately six (6) months, except an infant under six (6) months of age shall be certified for a period extending up to the first birthday if the quality and accessibility of health care services is not diminished.

(5) A child shall be certified at intervals of approximately six (6) months, ending with the end of the issuance month in which a child reaches the fifth birthday.

Section 3. Priority System. Vacancies in the WIC Program shall be filled as they occur unless maximum participation has been reached. At that time, vacancies shall be filled by a priority system based upon the nutritional risk of the patient.

Section 4. Time Frames for Processing Applicants. Pregnant and breastfeeding women, infants, and migrants shall be screened and notified of WIC Program eligibility or ineligibility within ten (10) days of application. All other applicants shall be screened and notified of WIC Program eligibility or ineligibility within twenty (20) days of application. WIC benefits shall be provided when participants are notified of certification.

Section 5. Nutrition Education. (1) Nutrition education shall be

made available to the participant and shall relate to the participant's nutritional needs, household situation, and cultural preferences.

(2) Tobacco, drug, and other harmful substance abuse information shall be provided to each participant.

(3) Breastfeeding information, including the benefits of breastfeeding shall be provided to each pregnant participant, unless contraindicated.

STEVE DAVIS, M.D., Acting Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 13, 2012

FILED WITH LRC: December 14, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2013 at 9:00 a.m. in Suite C. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2013. 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: Carlene Egbert 564-3827 x 3840

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines the requirements for the application and participation process for the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC) for women, infants, children.

(b) The necessity of this administrative regulation: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the application and participation process for the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC) for women, infants, children.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050 to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the eligibility criteria, periods of eligibility and processing time frames for women, infants and children for the Kentucky Supplemental Nutrition Program for Woman, Infant and Child Program (WIC).

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: 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: State WIC Agency, Local WIC Agencies, WIC Ven-

dors and WIC participants will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional changes in the actions will need to be made from any of the three (3) entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The affected entities will not experience an increase in cost to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide a more clear understanding of the criteria to qualify participants and the eligibility time frames for woman, Infant and children for the Kentucky Supplemental Nutrition Program for Woman, Infant and Child Program (WIC).

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

(a) Initially: There would be no additional cost to the Cabinet to implement and enforce this administrative regulation.

(b) On a continuing basis: On a continuing basis, there will be no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There would be no additional cost to the Cabinet to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not appropriate in this administrative regulation since it applies equally to all those individuals or 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? This regulation will impact State WIC Agency, Local Agencies, WIC Vendors, and WIC participants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 authorizes the Department for Public Health to promulgate, administer, and enforce those administrative regulations in accordance with KRS Chapter 13B necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds.

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 new revenue will be generated for state or local government in the first year of implementing this regulation.

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

(c) How much will it cost to administer this program for the first year? There is no cost to the local or state governments to implement this regulation the first year.

(d) How much will it cost to administer this program for the subsequent years? There is no cost to the local or state governments to implement this regulation for subsequent years.



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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Public Health**

**Division of Maternal and Child Health**

**(New Administrative Regulation)**

**902 KAR 18:030. Participant abuse.**

RELATES TO: KRS Chapter 13B, 194A.050, 194A.505, 194A.990, 7 C.F.R. Parts 246, 278.6, 21 U.S.C. 802 sec. 102

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246, provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the Participant Abuse of the Program for the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

Section 1. Participant Abuse of the Program. (1) The cabinet or a local agency shall issue a written warning for the following suspected acts for which a complaint is received concerning a participant:

- (a) Purchasing unauthorized foods;
- (b) Redeeming WIC benefits at an unauthorized store;
- (c) Attempting to sell or exchange supplemental food or WIC benefits with another individual, group, or vendor; or
- (d) Returning supplemental foods to a vendor for cash.

(2) The cabinet or a local agency shall take the following specified action for an intentional act of abuse by a participant that is documented:

(a) Redeeming WIC benefits that have previously been reported to the local agency as being lost or stolen and which have been replaced.

- 1. First offense: written warning.
- 2. Second and all subsequent offenses: claim issued for amount of WIC benefits redeemed.

(b) Purchasing unauthorized food.

- 1. First offense: written warning.
- 2. Second and all subsequent offenses: one (1) month suspension from the WIC Program.

(c) Redeeming WIC benefits at an unauthorized store.

- 1. First offense: written warning.
- 2. Second and all subsequent offenses: one (1) month suspension from the WIC Program.

(d) Threatening physical or verbal abuse of clinic or vendor staff.

- 1. First offense: written warning.
- 2. Second and all subsequent offenses: one (1) month suspension from the WIC Program.

(e) Physical abuse of clinic or vendor staff.

- 1. First offense: three (3) month suspension from the WIC Program.
- 2. Second and all subsequent offenses: three (3) month suspension from the WIC Program.

(f) Exchanging or selling supplemental food or WIC benefits with another individual, group, or vendor.

- 1. First offense: three (3) month suspension from the WIC Program.
- 2. Second and all subsequent offenses: three (3) month suspension from the WIC Program.

(g) Exchanging supplemental food or a WIC benefits for credit, nonfood items, or supplemental food in excess of WIC benefits prescribed.

1. First offense: three (3) month suspension from the WIC Program.

2. Second and all subsequent offenses: three (3) month suspension from the WIC Program.

(h) Dual participation in more than one (1) WIC Program or participation in both the WIC Program and the Commodities Supplemental Food Program.

1. First offense: written warning and immediate termination from one (1) of the WIC programs. The continuing WIC agency shall be chosen based upon the participant's residence or services.

2. Second and all subsequent offenses: one (1) year disqualification from the WIC Program and a claim issued for WIC benefits redeemed.

(i) Knowingly and deliberately making a false or misleading statement, or misrepresenting, concealing, or withholding a fact in order to obtain program benefits.

1. First offense: three (3) month disqualification from the WIC Program and a claim issued for improperly issued benefits.

2. Second and all subsequent offenses: one (1) year disqualification from the WIC Program and a claim issued for improperly issued benefits.

(j) Intent to sell supplemental foods.

1. First offense: Three (3) month suspension from the WIC Program.

2. Second and all subsequent offenses: Three (3) month suspension from the WIC Program.

(3) Mandatory disqualification. Except as provided in subsections (4) and (5) of this section, a participant is disqualified from the WIC Program for one (1) year if the state WIC or local WIC agency assesses:

(a) A claim of \$100 or more;

(b) A second or subsequent claim of any dollar amount.

(4) A mandatory disqualification may not be imposed if, within thirty (30) days of receipt of the claim letter demanding repayment:

(a) Full restitution is made;

(b) A repayment schedule is agreed on; or

(c) The participant is an infant, child, or under age eighteen (18), the state WIC or local WIC agency approves the designation of a proxy.

(5) A participant may be permitted to reapply to participate in the WIC Program before the end of a mandatory disqualification period if:

(a) Full restitution is made;

(b) A repayment schedule is agreed upon; or

(c) The participant is an infant, child, or under age eighteen (18), the state WIC or local WIC agency approves the designation of a proxy.

(6) The amount of a claim shall be determined by the value of the WIC benefits redeemed. If the claim is not paid, the participant shall be denied application to the WIC Program for the number of months of benefits which were used to calculate the claim amount.

(7) A participant with a pattern of abuse of the WIC Program shall be referred to the Office of the Inspector General for prosecution under KRS 194A.505.

(8) Activities prohibited by KRS 194A.505 apply to participants, vendors, and agency personnel. Penalties in KRS 194A.990 apply to participants, vendors, and agency personnel who have violated KRS 194A.505.

STEVE DAVIS, M.D., Acting Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 13, 2012

FILED WITH LRC: December 14, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2013 at 9:00 a.m. in Suite C. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written

request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2013. 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: Carlene Egbert 564-3827 x 3840

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation addresses the procedures to follow if participant abuse has occurred or has been suspected.

(b) The necessity of this administrative regulation: KRS 194A.505 outlines prohibited activities that apply to participants, in addition to others. Penalties in KRS 194A.990 may be imposed against persons determined to have violated KRS 194A.505 by committing fraud against an assistance program. This administrative regulation addresses the procedures to follow if participant abuse has occurred or is suspected.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050 to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the violations and applicable sanctions for Kentucky Supplemental Nutrition Program for Woman, Infant and Child Program (WIC).

(2) If 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 regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: 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 Department for Public Health, Local Health Agencies (61), WIC sites (148) WIC Vendors (886) and WIC Participants (128,883).

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

(a) List 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 changes in the actions will need to be made from the Department of Public Health, Local Health Agencies, Local WIC Sites, Vendors and WIC Participants..

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Public Health, Local Agencies, Local WIC sites, Vendors and WIC participants will not experience an increase in cost to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation will provide better understanding and guidance as to the procedures to follow if a possible abuse or suspected abuse of the Supplemental Nutrition Program for Woman, Infants and Children (WIC) occurs.

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

(a) Initially: There would be no additional cost to the Cabinet to implement and enforce this administrative regulation.

(b) On a continuing basis: On a continuing basis, additional

funding is not required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The initial funding was from a grant from the USDA Food and Nutrition Services. There would be no additional cost to the Cabinet to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not appropriate in this administrative regulation since it applies equally to all those individuals or 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? This regulation will impact the Department of Public Health, Local Health Agencies, WIC Sites, WIC Vendors and WIC participants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 authorizes the Department for Public Health to promulgate, administer, and enforce those administrative regulations in accordance with C.F.R. 7, Chapter 11, Volume 4, Part 246.

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 new revenue will be generated for state or local government in the first year of implementing this regulation.

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

(c) How much will it cost to administer this program for the first year? There is no cost to the local or state governments to implement this regulation the first year.

(d) How much will it cost to administer this program for the subsequent years? There is no cost to the local or state governments to implement this regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Maternal and Child Health

(New Administrative Regulation)

#### 902 KAR 18:060. Vendor violations and sanctions.

RELATES TO: KRS Chapter 13B, 194A.050, 194A.505, 194A.990, 7 C.F.R. Parts 246, 278.6, 21 U.S.C. 802 sec. 102

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246, provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the cabinet for Health and Family Services to promulgate administrative regula-



tions as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the Vendor Violations and Sanctions in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

Section 1. Vendor Violations and Sanctions. (1) In addition to any criminal penalty imposed pursuant to KRS 194A.990, the cabinet shall impose one (1) or more of the following civil sanctions for designated violations committed by a vendor, his employee or agent:

(a)1. Vendor violation: Failure to meet the authorization criteria in section KAR 18:050.

2. Pattern of incidence and length of disqualification:

a. First occurrence: a sixty (60) day disqualification from the WIC Program shall be issued.

b. Second occurrence: a ninety (90) day disqualification from the WIC Program shall be issued.

c. Third and subsequent occurrences: 120 day disqualification from the WIC Program shall be issued.

(b)1. Vendor violation: failure to pay a claim within thirty (30) days of receipt of initial State WIC Agency notification letter. Before issuance of a sanction, the State WIC Agency shall:

a. Mail a letter to the vendor requesting payment by a specified date;

b. If payment is not received, contact the vendor by either email or telephone, reminding vendor of payment due.

c. If payment is not received, send a second letter by certified mail, return receipt requested, of past due claim.

2. Pattern of incidence and length of disqualification.

a. First occurrence: a six (6) month disqualification from the WIC Program shall be issued.

b. Second occurrence and subsequent occurrences: a one (1) year disqualification from the WIC Program shall be issued.

(c)1. Vendor violation: Failure to return the WIC vendor authorization stamp and XAC device (if applicable) within twenty (20) days of receipt of disqualification or termination letter. Before issuance of a sanction, the state agency shall contact the vendor by telephone to request the return of the stamp and XAC device. Integrated systems will be disconnected on effective date of disqualification or termination.

2. Pattern of incidence and length of disqualification: six (6) months shall be added to the previously established disqualification period.

(d)1. Vendor violation: Store personnel requesting the PIN.

2. Pattern of incidence and length of disqualification: two (2) positive buys out of three (3) shall result in a one (1) year disqualification from the WIC Program.

(e)1. Vendor violation: Using the integrated or WIC XAC device Cash Value Benefits (CVB) functionality to provide nonproduce food item(s).

2. Pattern of incidence and length of disqualification: two (2) positive buys out of three (3) shall result in a one (1) year disqualification from the WIC Program.

(f)1. Vendor violation: providing free merchandise exclusively to participants as an incentive to redeem WIC benefits.

2. Pattern of incidence and length of disqualification: one (1) positive buy out of three (3) shall result in a six (6) month disqualification from the WIC Program.

(g)1. Public notice by a WIC Vendor of providing free merchandise exclusive to participants as an incentive to redeem WIC benefits.

2. Pattern of incidence and length of disqualification: one (1) occurrence shall result in a six (6) month disqualification from the WIC Program.

(h)1. Vendor violation: convicted of trafficking in WIC benefits or selling a firearm, ammunition, an explosive, or controlled substance, as defined in 21 U.S.C. 802 section 102, in exchange for a food instrument.

2. Pattern of incidence and length of disqualification: one (1) positive buy shall result in a permanent disqualification from the WIC Program.

(i)1. Vendor violation: Trafficking in WIC benefits or selling a firearm, ammunition, an explosive, or controlled substance, as defined in 21 U.S.C. 802

section 102, in exchange for a food instrument.

2. Pattern of incidence and length of disqualification: one (1) positive buy shall result in a six (6) year disqualification.

(j)1. Vendor violation: sale of alcohol or alcoholic beverage or tobacco product in exchange for a food instrument.

2. Pattern of incidence and length of disqualification: one (1) positive compliance buy shall result in a three (3) year disqualification.

(k) 1. Vendor violation: claiming reimbursement for the sale of an amount of a specific supplemental food item, which exceeds the vendor's documented inventory of that supplemental food item for a specific period of time.

2. Pattern of incidence and length of disqualification:

a. An inventory audit for a thirty (30) day period which results in more WIC sales than the documented inventory, shall result in a three (3) year disqualification; or

b. An inventory audit for a ninety (90) day period, which results more WIC sales than the documented inventory, shall result in a three (3) year disqualification.

(l)1. Vendor violation: charging a participant more for supplemental food than:

a. A non-WIC customer is charged; or

b. The current shelf price.

2. Pattern of incidence and length of disqualification:

a. Two (2) positive compliance buys out of three (3) shall result in a three (3) year disqualification from the WIC Program if:

(i) The vendor has exhibited a prior pattern of overcharging during the prior federal fiscal year based upon routine monitoring visits which have resulted in two (2) letters for price discrepancies.

(ii) The state agency shall require a vendor who has received two (2) letters for price discrepancies during the federal fiscal year to receive training provided by the state agency.

b. Three (3) positive buys out of three (3) shall result in a three (3) year disqualification for a vendor who does not meet the conditions in clause a. of this subparagraph.

(m)1. Vendor violation: receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or unauthorized person.

2. Pattern of incidence and length of disqualification: two (2) positive compliance buys out of three (3) shall result in a three (3) year disqualification.

(n)1. Vendor violation: charging for supplemental food not received by the participant, such as charging for one (1) food item or more listed on the WIC benefits but not purchased by the WIC participant.

2. Pattern of incidence and length of disqualification: three (3) positive compliance buys out of three (3) shall result in a three (3) year disqualification.

(o)1. Vendor violation:

a. Providing credit, an IOU, a rain check, a due bill, or a store credit; or

b. Providing a nonfood item other than cash, alcohol, tobacco, firearms, ammunition, explosives or controlled substances, as defined in 21 U.S.C. 802 section 102, in exchange for WIC benefits.

2. Pattern of incidence and length of disqualification: two (2) positive compliance buys out of three (3) shall result in a three (3) year disqualification.

(p)1. Vendor violation: providing an unauthorized food item or items in exchange for a food instrument.

2. Pattern of incidence and length of disqualification: three (3) positive compliance buys out of four (4) shall result in a one (1) year disqualification.

(q)1. Vendor violation: charging for supplemental food provided in excess of those listed on the food instrument.

2. Pattern of incidence and length of disqualification: three (3) positive compliance buys out of four (4) shall result in a one (1) year disqualification.

(r) A vendor who has been disqualified from the "SNAP" shall be disqualified from the WIC Program for the same length of time as the "SNAP" disqualification.

(s)1. A vendor who has been assessed a civil money penalty by "SNAP", as provided under 7 C.F.R. 278.6, shall be disqualified

from the WIC Program for the same length of time for which the vendor would have been disqualified from "SNAP" unless the WIC Program determines that disqualification would result in inadequate participant access, in which case a penalty shall not be assessed.

2. The vendor is entitled to a KRS Chapter 13B hearing based upon the sanction in 12.1(s).

(2)(a) Except for violations identified in subsection 1(f) through (k), (l)(2)a. and b., (r) and (s) of this section, the state agency shall notify a vendor in writing if an investigation reveals a potential initial violation. The vendor shall be notified before another violation is documented unless the state agency determines that notifying the vendor would compromise an investigation.

(b) The notification determination shall be made on a case by case basis.

(c) A notification of a potential initial violation shall not be issued if:

1. The vendor is identified as a HIRISK vendor according to the WIC Vendor Manual; and

2. One (1) or more of the same type violation occurred within the same Federal fiscal year of prior Federal fiscal year and the vendor has received prior notification; and

3. Sending a notification letter would divulge the identity of the investigator.

(3) If multiple vendor violations are found during an investigation, the length of the disqualification shall be determined by the most serious violation.

(4) If a vendor who has previously received two (2) or more of the mandatory sanctions designated in subsection (1)(f) through (p) of this section receives another sanction for a violation designated in subsection (1)(f) through (p) of this section, the third and all subsequent sanctions shall be doubled. A civil monetary penalty shall not be assessed for a third or subsequent sanction.

STEVE DAVIS, M.D., Acting Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 13, 2012

FILED WITH LRC: December 14, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2013 at 9:00 a.m. in Suite C. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2013. 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: Carlene Egbert 564-3827 x 3840

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the vendor violations and sanctions in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(b) The necessity of this administrative regulation: KRS 194A.050(1) authorizes the cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the vendor violations and sanctions in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(c) How this administrative regulation conforms to the content

of the authorizing statutes: The cabinet has responsibility under KRS 194A.050 to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. This administrative regulation establishes the vendor violations and sanctions in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will outline vendor violations and the applicable penalties for those violations.

(2) If 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 regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: 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 Department for Public Health, Local Health Agencies (61), WIC sites (148) WIC Vendors (886) and WIC Participants (128,883).

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

(a) List 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 changes in the actions will need to be made from the Department of Public Health, Local Health Agencies, Local WIC Sites Vendors and WIC Participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Public Health, Local Agencies, Local WIC site, Vendors and WIC Participants will not experience an increase in cost to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will outline vendor violations and the applicable penalties for those violations. The violations and penalties have been revised to incorporate the new WIC electronic benefit delivery system (EBT).

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

(a) Initially: There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

(b) On a continuing basis: On a continuing basis, additional funding is not required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The initial funding was from a grant from the USDA Food and Nutrition Services. There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not appropriate in this administrative regulation since it applies equally to all those individuals or 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? This regulation will impact the Department of Public Health, Local Health Agencies, WIC Sites, WIC Vendors and WIC participants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 authorizes the Department for Public Health to promulgate, administer, and enforce those administrative regulations in accordance with C.F.R. 7, Chapter 11, Volume 4, Part 246.

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 new revenue will be generated for state or local government in the first year of implementing this regulation.

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

(c) How much will it cost to administer this program for the first year? There is no cost to the local or state governments to implement this regulation the first year.

(d) How much will it cost to administer this program for the subsequent years? There is no cost to the local or state governments to implement this regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Public Health

##### Division of Maternal and Child Health (New Administrative Regulation)

#### 902 KAR 18:070. Participant access determination and civil money penalty.

RELATES TO: KRS Chapter 13B, 194A.050, 194A.505, 194A.990, 7 C.F.R. Parts 246, 278.6, 21 U.S.C. 802 sec. 102

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246, provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the participant access determination and civil money penalty in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

Section 1. Participant Access Determination and Civil Money Penalty. (1) Except for a violation specified in administrative regulation 902 KAR 18:060, Section 1(1)(i), prior to disqualifying a vendor for a violation specified in administrative regulation 902 KAR 18:060, the WIC Program vendor manager shall determine if disqualification of the vendor will result in inadequate participant access.

(2) The determination and documentation of adequate participant access shall be made using the following criteria:

(a) The availability of other authorized vendors within a two (2) mile radius in an urban area or seven (7) mile radius in a rural area;

(b) Geographical or physical barriers;

(c) Redemptions; and

(d) Accessibility to public transportation.

(3) If inadequate participant access is determined pursuant to

subsection (4) of this section, a civil monetary penalty shall be assessed for a violation listed in administrative regulation 902 KAR 18:060. The civil money penalty shall be calculated in accordance with the procedures outlined in the Vendor Manual.

(4) The WIC Program shall negotiate an installment plan for the collection of a civil monetary penalty.

(5) A vendor that fails to pay, partially pays, or fails to timely pay a civil monetary penalty within the required time frame, shall be disqualified for the length of time corresponding to the most serious violation.

STEVE DAVIS, M.D., Acting Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 13, 2012

FILED WITH LRC: December 14, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2013 at 9:00 a.m. in Suite C. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2013. 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: Carlene Egbert 564-3827 x 3840

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the participant access determination and civil money penalty in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(b) The necessity of this administrative regulation: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the participant access determination and civil money penalty in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050 to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. This administrative regulation establishes the participant access determination and civil money penalty process in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a process to determine if removing a vendor who has violated the WIC Program, will create a hardship for participants. It also outlines the process to determine the resulting civil money penalty.

(2) If 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 regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: 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 Department for Public Health, Local Health Agencies (61), WIC sites (148) WIC Vendors (886) and WIC Participants (128,883).

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

(a) List 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 changes in the actions will need to be made from the Department of Public Health, Local Health Agencies, Local WIC Sites, Vendors and WIC Participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Public Health, Local Health Agencies, Local WIC sites, Vendors and WIC Participants will not experience an increase in cost to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will help to ensure that removing a vendor who has violated the program requirements will be assessed a penalty even if there is a participant hardship.

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

(a) Initially: There would be no additional cost to the Cabinet to implement and enforce this administrative regulation.

(b) On a continuing basis: On a continuing basis, additional funding is not required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The initial funding was from a grant from the USDA Food and Nutrition Services. There would be no additional cost to the Cabinet to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not appropriate in this administrative regulation since it applies equally to all those individuals or 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? This regulation will impact the Department of Public Health, Local Health Agencies, WIC Sites, WIC Vendors and WIC participants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 authorizes the Department for Public Health to promulgate, administer, and enforce those administrative regulations in accordance with C.F.R. 7, Chapter 11, Volume 4, Part 246.

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 new revenue will be generated for state or local government in the first year of implementing this regulation.

(b) How much revenue will this administrative regulation generate for the state and local government (including cities, counties, fire departments, or school districts) for subsequent years? No new revenue will be generated for state or local government in the sub-

sequent years of implementing this regulation.

(c) How much will it cost to administer this program for the first year? There is no cost to the local or state governments to implement this regulation the first year.

(d) How much will it cost to administer this program for the subsequent years? There is no cost to the local or state governments to implement this regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Public Health

##### Division of Maternal and Child Health

##### (New Administrative Regulation)

#### 902 KAR 18:080. Local agency and vendor hearing process and administrative appeal process.

RELATES TO: KRS Chapter 13B, 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802 sec. 102

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246, provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the local agency's and vendor's rights to a hearing in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

Section 1. Local Agency Right to a Hearing. A local agency may request a hearing in accordance with Section 3 of this administrative regulation for the following adverse actions:

(a) Denial of a local agency's application; or

(b) Disqualification of a local agency.

(2) In accordance with 7 C.F.R. 246.18, expiration of the local agency agreement is not subject to appeal.

Section 2. Vendor Right to a Hearing. (1) A vendor may request a hearing in accordance with Section 3 of this administrative regulation for the following adverse actions:

(a) Denial of application to participate in the program;

(b) Disqualification; or

(c) Other adverse action which affects participation during the agreement performance period.

(2) In accordance with 7 C.F.R. 246.18, the following actions are not subject to appeal:

(a) Expiration or nonrenewal of an agreement with a vendor;

(b) The WIC Program's determination of participant access; or

(c) Disqualification from the WIC Program as a result of disqualification from SNAP.

(3) A vendor aggrieved by a qualifying adverse action shall request a hearing in accordance with Section 3 of this administrative regulation.

Section 3. Administrative Appeal. (1) A person appealing a local agency hearing officer's decision, or a vendor or local agency aggrieved by a decision of the cabinet to impose a sanction authorized by law, may file a written request for a hearing with the cabinet within fifteen (15) days after receipt of notice of the adverse action. The hearing shall be conducted in accordance with KRS Chapter 13B.

(2) Within fifteen (15) days of a request for a hearing, the cabinet shall issue a notice of hearing.

(3) A decision assessing the validity of the violation and sanction imposed shall be based upon the record of the hearing and the

relevant statutory and regulatory provisions governing the WIC Program.

(4) The final order of the cabinet shall be forwarded to the appellant:

(a) Within ninety (90) days from the date of receipt of the written request for hearing; and

(b) Unless the appellant waives this date in writing.

STEVE DAVIS, M.D., Acting Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 13, 2012

FILED WITH LRC: December 14, 2012 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on January 22, 2013 at 9:00 a.m. in Suite C. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2013. 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: Carlene Egbert 564-3827 x 3840

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a local agency and a vendor's right to a hearing and the administrative appeals process in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(b) The necessity of this administrative regulation: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the local agency's and vendor's right to a hearing and the administrative appeals process in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050 to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. This administrative regulation establishes the Local Agency's Right to a Hearing in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the procedures to follow for local agency's and vendor's rights to a hearing and the administrative appeals process in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(2) If 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 regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: 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 Department for Public Health, Local Health Agencies (61), WIC sites (148) WIC Vendors (886) and WIC Participants (128,883).

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

(a) List 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 changes in the actions will need to be made from the Department of Public Health, Local Health Agencies, Local WIC Sites, Vendors and WIC Participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Public Health, local agencies, local WIC sites, vendors and WIC participants will not experience an increase in cost to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation outlines procedures to follow in regards to the Local Agency's Right to a Hearing in regards for local agency's and vendor's right to a hearing and the administrative appeals process in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

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

(a) Initially: There would be no additional cost to the Cabinet to implement and enforce this administrative regulation.

(b) On a continuing basis: On a continuing basis, additional funding is not required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The initial funding was from a grant from the USDA Food and Nutrition Services. There would be no additional cost to the Cabinet to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not appropriate in this administrative regulation since it applies equally to all those individuals or 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? This regulation will impact the Department of Public Health, Local Health Agencies, WIC Sites, WIC Vendors and WIC participants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 authorizes the Department for Public Health to promulgate, administer, and enforce those administrative regulations in accordance with C.F.R. 7, Chapter 11, Volume 4, Part 246.

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(a) How much 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 for state or local government in the first year of implementing this regulation.

(b) How much revenue will this administrative regulation generate for the state and local government (including cities, counties, fire departments, or school districts) for subsequent years? No new revenue will be generated for state or local government in the sub-

sequent years of implementing this regulation.

(c) How much will it cost to administer this program for the first year? There is no cost to the local or state governments to implement this regulation the first year.

(d) How much will it cost to administer this program for the subsequent years? There is no cost to the local or state governments to implement this regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## VOLUME 39, NUMBER 7 – JANUARY 1, 2013

### ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE Minutes of December 17, 2012

#### Call to Order and Roll Call

The December meeting of the Administrative Regulation Review Subcommittee was held on Monday, December 17, 2012, at 10:00 a.m., in Room 149 of the Capitol Annex. Senator Joe Bowen, Co-chair, called the meeting to order, the roll call was taken. The minutes of the November 2012 meeting were approved.

#### Present were:

**Members:** Senators Joe Bowen, David Givens, Joey Pendleton, Alice Forgy Kerr, and Representatives Johnny Bell, Robert Damron, and Jimmie Lee.

**LRC Staff:** Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Karen Howard, Betsy Cupp, and Laura Napier.

**Guests:** Representatives Stan Lee and Jim Gooch; Travis Powell, Sarah Levy, Council on Postsecondary Education; Tamara Biggs, KY Teachers' Retirement System; DeVon Hankins, Greg Harke-nrider, Doug Hendrix, Finance Cabinet; Gary Morris, Department of Revenue; Michael Burleson, Board of Pharmacy; Connie Calvert, William Reynolds, Board of Optometric Examiners; Adam K. Rich, Board of Dentistry; Nathan Goldman, Paula Schenk, Board of Nursing; Jim Grawe, Tom Underwood, Board of Podiatry; William H. Martin, Zeb Weese, Heritage Land Conservation Fund Board; Barbara Pauley, Energy and Environment Cabinet; Amber Arnett, Justice and Public Safety Cabinet; Amy Barker, Brenn Combs, James L. Erwin, LaDonna Thompson, Department of Corrections; Frank Goins, Department of Insurance; Randy White, Kentucky State Penitentiary; Ann D'Angelo, Michael Neal, Matt Osborne, Transportation Cabinet; Kevin Brown, Terry Holliday, Amy Peabody, David Wickersham, Department of Education; Patty Dempsey, The Arc of Kentucky; Beth Harrison, Kentucky TASH; Lucy Heskins, D'Arcy Robb, Kentucky P & A, Commonwealth Council on Developmental Disabilities; Wayne Young, Kentucky Assoc. of School Administrators; Sarah Richardson, Patrick Shirley, KATLC/OVR; Russ Coy, D.J. Wasson, Blanche Minor, Cecilia Webber, Department of Insurance; Roger Banks, Dawn Bellis, William Swope, Housing, Building & Construction; Courtney Bourne, Ryan Halloran, Office of Occupations & Professions; Stephanie Brammer-Barnes, Stephanie Hold, Mary Reinle Begley, CHFS-OIG; Dr. Stephen Hall, Claudia Johnson, DBHDID, Div. of Intellectual Disabilities; Stuart Owen, Department of Medicaid Services; Tim Arnold, Department of Public Advocacy; Katie & Will Bentley, parents; Josh Crabtree, Children's Law Center; Allie Riggsby, KY Statewide Youth Council; Wilson Sears, KY Assoc. of School Superintendents; Deborah Spalding, P & A, Office of Learning (KDE); Shannon Stiglets, KY School Boards Assoc.; Paul Walsburger; Mike Waford, KY Center for Instructional Discipline; Brian Brezasky, Sarah S. Nicholson, KY Hospital Assoc.; Mary L. Chandler, John Daniels, Central KY Wellness Center; Terry Braunson, Wendell Foster's Campus for Developmental Disabilities; James Cheely, parent & president of The Arc of KY; William Dolan, Protection and Advocacy; Cathy Jo Edwards, Tina Jackson, self-advocates; Elizabeth Theisen-Jewell, Opportunity for Work & Learning; Harold L. Kleinert, Human Developmental Institute; Grant Logsdon, self-advocate; F. Patrick Reed, KACES; Sheila Schuster, KY Psychological Assoc.; Mark Scureman, for Elizabeth Scureman; Robert Smith, for Jennifer Smith; Ronald A. Spalding, Andrew Venetianer, R.E.A.C.H. of Louisville; Betsy Dunnigan, and Kevin Mudd, DBHDID.

The Administrative Regulation Review Subcommittee met on Monday, December 17, 2012, and submits this report:

#### Administrative Regulations Reviewed by the Subcommittee:

##### COUNCIL ON POSTSECONDARY EDUCATION: Nonpublic Colleges

13 KAR 1:020. Private college licensing. Sarah Levy, director of licensing, and Travis Powell, general counsel, represented the council.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, 4, 6, 8, 10, 14, and 16 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

##### FINANCE AND ADMINISTRATION CABINET: Kentucky Teachers' Retirement System: General Rules

102 KAR 1:225. General compliance with federal tax laws. Tamela Biggs, staff attorney, represented the system.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 3 to correct citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

##### Department of Revenue: Office of Processing and Enforcement: Forms

103 KAR 3:060E. Kentucky Tax Amnesty Application. Doug Hendrix, staff attorney, and Gary Morris, policy advisor, represented the office.

##### GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board

201 KAR 2:020 & E. Examination. Michael Burleson, executive director, represented the board.

In response to a question by Senator Givens, Mr. Burleson stated that these administrative regulations were primarily being amended for compliance with House Bill 1 from the 2012 Special Session of the General Assembly.

In response to a question by Representative Damron, Mr. Burleson stated that notification of these changes was sent to all licensees and that pharmacy schools were encouraged to notify graduating students so that those students could apply earlier in light of application processing changes. The board did not receive public comments during the public comment period.

201 KAR 2:030 & E. License transfer.

A motion was made and seconded to approve the following amendments: to amend Section 2 to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:040. Registration of pharmacist interns.

In response to questions by Senator Givens, Mr. Burleson stated that the amendment to this administrative regulation was recommended by a working administrative regulation committee, and revised the credit hour requirements. He stated that, in special circumstances, an intern could receive up to 400 hours of credit based on approval of a research project, which included a required 500-word essay approved by the board president.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

In response to questions by Senator Givens, Mr. Burleson stated that this administrative regulation was amended to comply with new statutory requirements. New fees were established regarding the data bank and home medical equipment. The application fees were annual, as required by the authorizing statute.

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

A motion was made and seconded to approve the following amendments: to amend Sections 5 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

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

In response to a question by Senator Givens, Mr. Burleson stated that this administrative regulation was amended to comply with new statutory requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **Board of Optometric Examiners: Board**

201 KAR 5:010 & E. Application for licensure; endorsement. Connie Calvert, executive director, and Dr. William Reynolds, president, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

201 KAR 5:130 & E. Controlled substances.

### **Board of Dentistry: Board**

201 KAR 8:520. Fees and fines. Dr. Adam Rich, president, represented the board.

In response to questions by Representative Damron, Dr. Rich stated that the board received comments during the public comment period but most concerns were related to opposition to House Bill 1 from the 2012 Special Session of the General Assembly. Commenters stated concerns for dentists without computer and internet access to use the KASPER system and opposition to the initial physical examination required before prescribing drugs tracked by the KASPER system. The board was working to resolve all concerns.

In response to a question by Co-Chair Bowen, Dr. Rich stated that the board experienced noncompliance with some out-of-state dentists who failed to report violations in other states while maintaining Kentucky licensure. Dentists wishing to maintain Kentucky licensure were required to comply with the board's requirements just as Kentucky-practicing dentists. The fine was an attention getter to make sure dentists were aware that compliance with reporting out-of-state violations was vital to maintaining Kentucky licensure.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend Section 4 to delete provisions that were duplicative of 201 KAR 8:540; and (3) to amend Sections 4 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 8:532 & E. Licensure of dentists.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AU-

THORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 1, 2, 4 through 12, and 16 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 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.

### **Board of Nursing: Board**

201 KAR 20:056 & E. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization. Nathan Goldman, general counsel, and Paula Schenk, executive director, represented the board.

In response to questions by Representative Damron, Mr. Goldman stated that the board received a lot of positive feedback from licensees during the public comment period. The board worked closely with licensees to develop these administrative regulations.

Representative Damron thanked the board for working hard to write appropriate administrative regulations.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:057 & E. Scope and standards of practice of advanced practice registered nurses.

In response to a question by Representative Damron, Mr. Goldman stated that the board worked closely with licensees to develop the discretionary language regarding drug screening.

A motion was made and seconded to approve the following amendments: (1) to amend Section 9(8) to clarify that a prescribing APRN may obtain a baseline drug screen if the APRN considers it clinically appropriate or if the APRN believes that it is appropriate to see if the patient is actually taking the controlled substance; (2) to amend Section 9(12) to delete provisions for noncompliance, which are not authorized by statute; and (3) to amend Section 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:161 & E. Investigation and disposition of complaints.

201 KAR 20:215 & E. Continuing competency requirements.

### **Board of Podiatry: Board**

201 KAR 25:011 & E. Approved schools; examination application; fees. Jim Grawe, assistant attorney general, and Tom Underwood, executive director, represented the board.

In response to questions by Representative Damron, Mr. Grawe stated that all licensees were notified of the proposed changes to these administrative regulations. The board did not receive negative comments from licensees during the public comment period. Mr. Underwood stated that the board developed a practical approach to regulatory implementation of House Bill 1 from the 2012 Special Session of the General Assembly.

In response to a question by Senator Givens, Mr. Grawe stated that the list of drugs of concern was developed by experts for the specific area of podiatry, and the list differed somewhat from similar lists from other specific professions. Mr. Underwood stated that podiatrists have a narrower scope of practice than some other specific professions; therefore, the list of drugs differed somewhat.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without



objection, and with agreement of the agency, the amendments were approved.

201 KAR 25:021 & E. Annual renewal of licenses, fees.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 25:031 & E. Continuing education.

201 KAR 25:051 & E. Procedure for complaints and hearings involving licensees: temporary suspension.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 25:090 & E. Prescribing and dispensing controlled substances.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Technical and Administrative Support: General Administrative Procedures**

418 KAR 1:010. Definitions for 418 KAR Chapter 1. William H. Martin, president, Kentucky Heritage Land Conservation Fund Board; Barbara Pauley, attorney; and Zeb Weese, biologist consultant, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to delete irrelevant citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

418 KAR 1:020. Administrative procedures of the board.

418 KAR 1:031. Repeal of 418 KAR 1:030.

418 KAR 1:040. Grant applications.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct statutory citations; (2) to amend Section 1 to specify required forms; and (3) to amend Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

418 KAR 1:050. Procedures for acquisition of land.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add relevant citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

418 KAR 1:060. Management.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2, 3, 10, and 14 to specify the required forms; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 10 and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

418 KAR 1:070. Remedies.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to clarify provisions; and (2) to amend Sections 1, 2, and 3 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 6:020. Corrections policies and procedures. Amber Arnett, staff attorney, and Amy Barker, assistant general counsel, 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 clarify provisions and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with the agreement of the agency, the amendments were approved.

**Capital Punishment**

501 KAR 16:290. Preliminary and post-execution procedures concerning condemned person. Amber Arnett, staff attorney, and Amy Barker, assistant general counsel, represented the department. Tim Arnold, Post-trial Division Director, Department of Public Advocacy, appeared in opposition to these administrative regulations.

Mr. Arnold stated that the Department of Public Advocacy (DPA) was opposed to these administrative regulations because a specific provision for the location and communication availability of defense counsel was omitted. Mr. Arnold reviewed some past executions and noted at least one (1) instance in which an execution was conducted without defense counsel availability and communication access. It was important during an execution for the defense counsel of the condemned person to have access to the condemned person and to communication in case of events such as a last minute stay of execution or reconsideration in the case of a voluntary execution. DPA recommended amending these administrative regulations to include these provisions.

In response to a question by Co-Chair Bell, Mr. Arnold stated that it was appropriate to put provisions for the availability and communication access for the condemned person's defense counsel into these administrative regulations because these administrative regulations not only provided requirements for execution drugs, but also established execution procedures. Because these administrative regulations were silent regarding defense counsel availability and communication access, requirements could be interpreted as allowing or prohibiting defense counsel availability and communication access. Ms. Barker stated that the Department of Corrections omitted these provisions because the department needed flexibility regarding where the defense counsel should be located and what office supplies would be available.

Senator Pendleton stated that he was opposed to the death penalty by lethal injection. It was a difficult issue, but he was opposed to capital punishment, which prohibited the offender from being forced to confront his or her actions and the result on society. Additionally, in some cases, there were reports after an execution of evidence such as DNA evidence that later exonerated the executed person. Senator Pendleton requested to be recorded as voting in opposition to these administrative regulations.

Co-Chair Bowen suggested that this amendment seemed ancillary to these administrative regulations and should be inserted into a different administrative regulation by a simple amendment.

In response to a question by Representative Lee, Ms. Barker stated that the condemned person's defense counsel should be provided with a nearby location and access to communication based on internal policy. It was unlikely that a warden would refuse access and communication. Mr. Arnold stated that case law provided some assurances, but such a serious matter as an execution required specific provisions.

In response to a question by Representative Damron, Ms. Barker stated that the issue of the condemned person's defense counsel availability and communication access was addressed in the Statement of Consideration but that the Department of Correc-

tions opted not to amend these administrative regulations in response to those public comments.

In response to a question by Co-Chair Bell, Ms. Barker stated that hundreds of public comments were received during the public comment period. Ms. Arnett stated that the Department of Corrections needed flexibility regarding the mechanics of access for the condemned person's defense counsel. She noted that the condemned person had the option to choose his or her defense counsel to be the execution witness; therefore, the defense counsel would be accessible during the execution.

In response to a question by Co-Chair Bowen, Ms. Arnett stated that other states used the one (1) drug execution system. Sometimes access to the one (1) drug was difficult; however, Kentucky opted for the one (1) drug system because that system was not cruel and unusual. If the one (1) drug was unavailable, Kentucky had a two (2) drug backup system. There was not usually an availability problem regarding the two (2) drug system.

501 KAR 16:310. Pre-execution medical actions.

501 KAR 16:330. Lethal injection protocols.

**TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Driver Improvement**

601 KAR 13:110. Driver education programs. Ann D'Angelo, assistant general counsel; Michael Neal, administrative branch manager; and Matt Osborne, advisor, represented the division.

In response to a question by Co-Chair Bowen, Ms. D'Angelo stated that the vendor was established through a bid process authorized by KRS Chapter 45A.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Learning Support Services**

704 KAR 7:160. Use of restraint and seclusion in public schools. Kevin Brown, associate commissioner and general counsel; Amy Peabody, assistant general counsel; and David Wickersham, assistant general counsel, represented the department. Katie Bentley and William Bentley, citizens; Josh Crabtree, representative, Children's Law Center; Patty Dempsey, representative, the Arc of Kentucky; Beth Harrison, co-chair, representative, Kentucky TASH; Lucy Heskins, staff attorney, Kentucky Protection and Advocacy; Allie Rigsby, youth leader, Kentucky Statewide Youth Council; D'Arcy Robb, public policy advisor, Kentucky Protection and Advocacy and the Commonwealth Council on Developmental Disabilities; Wilson Sears, executive director, Kentucky Association of School Superintendents; Deborah Spalding, assistant professor, Campbellsville University, and retired director of special education, Marion County; Shannon Stiglets, director, Kentucky School Boards Association; and Wayne Young, executive director, Kentucky Association of School Administrators, appeared in support of this administrative regulation. Representative Jim Gooch, Jr., Kentucky legislator, and Paul Walsburger, parent of a son with disabilities, appeared in opposition to this administrative regulation.

Ms. Dempsey stated that families were concerned about the restraint and seclusion issue. The Arc of Kentucky supported this administrative regulation.

Mr. Crabtree stated that the Children's Law Center supported this administrative regulation. He recounted examples of inappropriate application of restraint and seclusion, including a child repeatedly locked in a closet for over six (6) weeks, an autistic child who had cloth placed in his mouth to keep him quiet, and a six (6) year old who was locked in a closet unsupervised for long enough to remove dry wall and knock his teeth out. He stated that this administrative regulation would be helpful in preventing those situations from occurring again.

Ms. Bentley, speaking for herself and her son, Will, recounted an incident in which her son, as a preschooler, was locked in a

closet and restrained without her knowledge. He was nonverbal at the time and could not notify his parent of what had occurred. He was traumatized by the experience and wanted the Subcommittee to be aware that his teacher had harmed him.

Ms. Harrison stated that Kentucky TASH supported this administrative regulation to protect the vulnerable student.

Ms. Heskins stated that Kentucky Protection and Advocacy supported this administrative regulation. In 2009, U.S. Education Secretary Ernie Duncan reported on the abuse and misuse of restraint and seclusion in schools. There were over 100 reports of this abuse in Kentucky. This administrative regulation did not prohibit the breaking up of altercations, but specified when restraint and seclusions were appropriate. This administrative regulation prohibited the use of supine restraints and prone restraints. These restraints were implicated in some deaths. This administrative regulation required that families be informed if staff performed restraint or seclusion on the student. It also required training for all school staff, with additional training for the core response team.

Ms. Robb stated that Kentucky Protection and Advocacy and the Commonwealth Council on Developmental Disabilities supported this administrative regulation. There were "real-world" examples of maintaining a stable learning environment while still reducing restraint and seclusion.

Ms. Spalding stated that, prior to this administrative regulation, there was a lack of specific procedures for restraint and seclusion. Trainers and leaders were needed with parental involvement to maintain good results.

Mr. Rigsby stated that the Kentucky Statewide Youth Council supported this administrative regulation, which empowered teachers. Each school determined a leader to monitor the use of restraint and seclusion. As a child, Mr. Rigsby was secluded for three weeks in a broom closet during school hours for refusing to complete math work. His parents were not notified. This administrative regulation reduced restraint and seclusion and required family notification.

Mr. Walsburger, parent of a son with disabilities, stated that his son was restrained and secluded at five (5) years old. The child was traumatized and angered, which led to worse behavior. His son was secluded as a flight risk for refusing to come back to the classroom from recess, even though the child was in a full leg cast. At times when restraint and seclusion were removed, his son did better in school. Likewise, his son's behavior worsened when restraint and seclusion were reinstituted. His son is in seventh grade now and is an A student. Restraint and seclusion should not be used under any circumstances.

Mr. Young stated that school administrators recognized the need for and supported this administrative regulation.

Mr. Sears stated that agreement had been reached to ensure safe schools for Kentucky children.

Ms. Stiglets, director stated that agreement had been reached on this administrative regulation. She thanked the department for working to reach consensus.

In response to a question by Senator Givens, Mr. Young stated that requirements pertaining to when restraint or seclusion is contraindicated were specific enough for the present. If more specificity was needed in the future, that could be amended once more information was known. Currently, the provision was intended to prevent third party intervention. Senator Givens encouraged the department to add specificity when enough information was available.

Representative Gooch noted that he was not a member of the Administrative Regulation Review Subcommittee and that his remarks did not necessarily reflect on those of this Subcommittee. He stated that bad behavior from students or even from adults who abuse restraint and seclusion methods was unacceptable. Classifying some students who are "exempt" from behavioral standards may be the result of Section 3 of this administrative regulation. It was inappropriate to teach children that they are entitled to different behavior standards. Representative Gooch believed this administrative regulation was going in a bad direction and may be a disservice to child development. Mr. Sears stated that this administrative regulation supported positive reinforcement and dealing with behaviors in ways other than restraint and seclusion whenever possible.

Co-Chair Bell stated that seclusion was a terrible practice. There had been some accidental deaths nationwide due to unsupervised seclusion. Isolation had a negative psychological and sociological effect. Co-Chair Bell encouraged the department to move away from seclusion as a means of behavior modification and classroom order maintenance. If seclusion was used, it needed to be well supervised. Mr. Sears stated that there had been a few instances of extreme seclusion, but most of its use was a mild form, such as a student sitting in a cloakroom for a few minutes if talking too much and causing a disruption in the classroom. This administrative regulation required that the use of seclusion be supervised.

In response to a statement by Co-Chair Bell, Ms. Stiglet stated that this administrative regulation required use of the least extreme use of restraint or seclusion to modify behavior. This administrative regulation also required parental notification and supervision in cases of seclusion. Additionally, the seclusion area had to have all dangerous items removed.

Representative Lee stated that seclusion was a useful method of behavior modification. For example, an area with calm lighting may adjust a student's mood.

Senator Pendleton stated that superintendents in his district appreciated the compromises and work the department did to get this administrative regulation properly amended.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220, including to state that this administrative regulation does not prohibit the lawful exercise of law enforcement duties by sworn law enforcement officers; (2) to amend Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to amend Sections 1, 3, and 4 to delete all instances of the modifier, "serious," in the phrase "imminent danger of physical harm to self or others"; and (4) to amend Section 3 to: (a) clarify that physical restraint may be used to protect property as permitted pursuant to KRS Chapter 503; and (b) specify that school personnel shall not impose physical restraint on a student if it is known that physical restraint is contraindicated based on the student's disability, health care needs, or medical or psychiatric condition. Without objection, and with agreement of the agency, the amendments were approved.

#### **Kentucky Assistive Technology Loan Corporation: Corporation**

789 KAR 1:010. General eligibility criteria for assistive technology loans. Sarah Richardson, administrative specialist, and Patrick Shirley, administrative specialist, represented the corporation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add relevant citations; (2) to amend Section 1 to delete an unnecessary definition; (3) to amend Section 3 to clarify provisions; and (4) to amend Sections 3, 4, 5, 6, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **PUBLIC PROTECTION CABINET: Department of Insurance: Property and Casualty Division: Kinds of Insurance; Limits of Risk; Reinsurance**

806 KAR 5:051. Repeal of 806 KAR 5:050. DJ Wasson, administrative coordinator, represented the division.

#### **Financial Standards and Examination Division: Investments**

806 KAR 7:110. Derivative instruments.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; (2) to amend Section 1 to cite to statutory definitions, as required by KRS 13A.222(4)(d); and (3) to amend Sections 2, 3, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Department of Housing, Buildings and Construction: Division of HVAC: Heating, Ventilation, and Air Conditioning Licensing Requirements**

815 KAR 8:060. Requirements for approval of continuing education courses and providers. Dawn Bellis, general counsel, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, and 5 to clarify provisions; and (2) to amend the RELATES TO paragraph and Sections 1, 2, 3, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Office of Occupations and Professions: Secondary Metals Recyclers**

830 KAR 1:010. Forms for Application, Certificate of Registration and Fees. Courtney Bourne, executive director, and Ryan Halloran, assistant attorney general, represented the office.

In response to a question by Co-Chair Bowen, Mr. Halloran stated that the office did not receive comments during the public comment period. The office worked with industry representatives to develop this administrative regulation. Industry seemed supportive of this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to specify that the application fee is \$100; (2) to amend the RELATES TO paragraph to include additional relevant citations; and (3) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 1 and 2; and the material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Division of Community Alternatives: Medicaid Services**

907 KAR 1:145. Supports for community living services for an individual with an intellectual or developmental disability. Dr. Stephen Hall, commissioner; Claudia Johnson, division director; and Stuart Owen, regulation coordinator, represented the department. Tina Jackson, advocate; Dr. Harold Kleinert, director, Human Development Institute; F. Patrick Reed, CEO, KACES; Robert Smith, advocate; and Andrew Venetianir, representative, R.E.A.C.H. of Louisville, appeared in support of these administrative regulations. Terry Braunson, CEO, Wendell Foster's Campus for Developmental Disabilities; James Cheely, parent and president, the Arc of Kentucky; William Dolan, attorney, Kentucky Protection and Advocacy; Cathy Jo Edwards, advocate; Grant Logsdon, advocate; Sheila Schuster, licensed psychologist, Kentucky Psychological Association; and Mark Scureman, parent, appeared in opposition to these administrative regulations.

Representative Lee stated that the cabinet had put an incredible amount of work into the SCL administrative regulations. The administrative regulations were based on a waiver from the Centers for Medicare and Medicaid Services. The changes showed the importance of supportive employment supports and workshops and were developed in the best interest of recipients.

Dr. Kleinert presented a brief PowerPoint presentation regarding the National Core Indicators Data for Kentucky. The survey data demonstrated that Kentucky performed well in client safety; however, Kentucky needed to improve in other areas, such as community engagement, physical activity, and access to employment. He stated that the waiver helped fund jobs for lasting employment. The waiver did not provide community inclusion but helped to connect clients to access so that the client could develop community ties individually.

Mr. Reed stated that KACES was initially opposed to these administrative regulations; however, the division worked with stakeholders to improve requirements and avoid negative unintended consequences. The division added specificity to vague requirements, and KACES was satisfied with the amended versions of these administrative regulations.

Ms. Jackson stated that the Council for Developmental Disabilities supported these administrative regulations. The waiver offered new services and opportunities for enhanced community

inclusion. The council was comfortable with the day training changes, and the reimbursement rate was commensurate with other states.

Mr. Smith stated that he appeared as an advocate for his daughter with disabilities. He noted that the division was helpful in working with stakeholders and followed up on everything the division agreed to amend. He appreciated that the option to remain in an institution was not deleted, and his daughter and his family had a good quality of life that would not exist without this program.

Mr. Venetianer stated that he represented R.E.A.C.H. of Louisville, Kaleidoscope Adult Health Services, and was part of the Arc of Kentucky tag team. Mr. Venetianer was concerned about what would happen to adult day programs and other programs. He was worried that other programs would lose funding to fund new programs authorized by these administrative regulations. Representative Lee stated that adult day programs were important and would continue to be funded. These administrative regulations were to provide new programs in addition to, not in lieu of, existing programs. Mr. Venetianer stated that he was satisfied with the proposal in light of the answers to his questions.

Dr. Schuster stated that the Kentucky Psychological Association was not opposed to these administrative regulations; however, she was concerned that psychological services were being singled out and drastically cut. These services were being cut at a point when the client was preparing for the stressors associated with entering employment and community living. Rates were being cut twenty-four (24) percent, which was in addition to the fact that travel and other time was not being reimbursed.

Ms. Logsdon assisted her son with his testimony. Mr. Logsdon stated that he had disabilities but lived in his own apartment. He did not go to an adult day program. He was in the process of building his own home, which would be completely disability accessible. Mr. Logsdon applauded the efforts to expand community access; however, he was concerned about the definition of eligible clients. He preferred that the definition be expanded to include developmental disabilities, independent of intellectual disabilities. SCL waiver clients lived in a perpetual state of anxiety regarding ongoing qualification for services. If a client unexpectedly no longer qualified, for example due to testing at or above a seventy (70) IQ, family members often had to cease employment to care for the individual. He asked what would happen if the caregiver died. Ms. Johnson responded that the definition had not changed. Level of care services should not change unless a client's qualification changed.

Mr. Braunson stated that he supported ninety-nine (99) percent of the provisions in these administrative regulations; however, he did have some specific concerns. The concerns were not financial but ethical in nature. He disagreed with "conflict-free case management." Long-term relationships existed with clients and administrators beyond just relationships with the case managers. Clients may be harmed, and these administrative regulations were not necessarily the best practices. Options, intended to be expanded, may actually be reduced. Mr. Braunson stated his belief that the division had "overinterpreted" federal guidelines and definitions. These administrative regulations failed to produce professional case managers and ignored the rights of individuals with disabilities. Co-Chair Bowen stated that the division's response to the issues pertaining to case management was that the same individuals who deliver services could not also be the ones to review and evaluate services. Ms. Johnson stated that the division had developed training for case managers.

Mr. Dolan stated that it was difficult to defend and appeal an SCL waiver denial because these administrative regulations provided for too much interpretation on the part of the division. The division was equipped with expansive resources if an SCL waiver was denied; however, clients often had minimal resources with which to defend themselves or appeal. Dr. Kleinert stated that these administrative regulations did not amend provisions pertaining to keeping or losing eligibility status; however, these administrative regulations also did not alleviate anxiety about losing services if eligibility was determined to change. Kentucky Protection and Advocacy supported expanding the definition for eligibility. Representative Lee stated that the point regarding anxiety over losing services was valid, but funding was limited. There were many on the waiver waiting list who qualified based on both deve-

lopmental and intellectual disability criteria. If these administrative regulations were expanded to include more clients, it would be an empty gesture because funding could not support the expanded number of clients. Additionally, there were federal guidelines that must be complied with to ensure continued federal matching funds.

Mr. Cheely stated that he was the father of a twenty-four (24) year-old son with disabilities and president of the Arc of Kentucky. The definition for eligibility was vague and created anxiety about ongoing access to care. Training programs were required, but the waiver program did not fund the cost of the training. Prospective client employees were required to cover the cost of background checks, although that was not the case for most employees outside the waiver program. Mr. Cheely applauded the goal of adequate wage for adequate work, but had concerns that it may not always be achievable. These administrative regulations provided for too much interpretation, which already varied within the division itself.

Ms. Edwards stated that she was concerned that services would be cut for some currently eligible clients. Some clients that currently received continuous care may be reduced to forty (40) hours of care per week. Many parents had not made preparation for such changes and expected their children to always be waiver eligible. She asked what would occur if a parent in such a case died and then the client was no longer waiver eligible.

Mr. Scureman stated that his daughter had intellectual disabilities. He was opposed to these administrative regulations and noted that these administrative regulations did not fulfill the needs of all waiver clients. Some of the requirements seemed to be unfunded mandates. He was worried that new programs would absorb the funding for successful existing programs. He was worried that adult day programs may be lost, and stated that some program administrators were worried about cabinet retribution if negative comments were submitted.

Ms. Johnson stated that the waiver program began many years ago with the goal of moving clients from institutionalized facilities into communities. To qualify for the waiver program, a client had to meet specific developmental and intellectual criteria.

Mr. Owen stated that, if the definition for eligibility was amended to expand eligibility, it would represent a fundamental change in the existing waiver program and would require approval from CMS.

Co-Chair Bell expressed concern that these administrative regulations may obscure a cost-saving motive on the part of the division. He did not feel that the agency representatives fully answered questions from commenters.

Mr. Hall emphasized that these administrative regulations did not change the definition for eligibility or the criteria on which those determinations were made. These administrative regulations were not the result of cost-saving measures.

In response to a question by Senator Pendleton, Representative Lee stated that clients would not have services removed as a result of these administrative regulations.

Senator Pendleton strongly encouraged the 2013 Regular Session of the General Assembly to consider mental health issues and to ensure funding for services for the treatment of mental illness.

Co-Chair Bowen stated that there were still many unanswered questions regarding these administrative regulations. He encouraged the division to continue to work to amend, fine tune, clarify, and improve these administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Section 1 to align the definitions between this administrative regulation and 907 KAR 12:010; (3) to amend Section 2 to clarify when an extension may be received based on a demonstration of good cause; and (4) to amend Sections 1, 2, 4, 5, 9, 10, and 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.

907 KAR 1:155. Payments for supports for community living services for an individual with an intellectual or developmental disability.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1, 2, 4, 6, 7, 8, 10, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection and with agreement of the agency, the amendments were approved.

**Division of Community Alternatives: Supports for Community Living Waiver**

907 KAR 12:010. New supports for community living waiver service and coverage policies.

Representative Lee explained the amendments he proposed. This administrative regulation required that a client have a relationship with a case manager for longer than one (1) year in order to retain that case manager. Representative Lee's amendments deleted the specific time parameter of "longer than one (1) year." Additionally, the amendments expanded the training period to one (1) year for existing service providers. The amendments also provided that technology assisted residential services were not restricted only to a provider owned or leased location.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Section 1 to align the definitions between this administrative regulation and 907 KAR 1:145; (3) to amend Section 2 to clarify when an extension may be received based on a demonstration of good cause; (4) to amend Section 3 to specify that an SCL provider, employee, or volunteer may use or possess a medically necessary and legally prescribed controlled substance; (5) to amend Section 5 to clarify that if a participant does not wish to continue receiving the service, the service shall be terminated; (6) to amend Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; (7) to amend Section 4 to remove the requirement that the relationship with a case manager be at least one (1) year in length; (8) to amend Section 5 to specify that: (a) employees providing a participant directed service on the effective date of this administrative regulation shall complete the required training within one (1) year; and (b) new providers of those services shall complete the training within six (6) months of the date of hire; (9) to amend Section 4(20) to require that technology assisted residential services shall be furnished: (a) in the participant's residence, rather than a provider-owned or leased residence; and (b) to three (3) or fewer participants who reside, rather than previously resided, in the residence with twenty-four (24) hour staff support; and (10) to amend the material incorporated by reference to reflect these other amendments. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 12:020. Reimbursement for new supports for community living waiver services.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 through 6, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Mental Health and Mental Retardation Services: Division of Administration and Financial Management: Institutional Care**

908 KAR 3:050. Per diem rates. Betsy Dunnigan, deputy commissioner, and Kevin Mudd, division director, represented the department.

In response to a question by Senator Givens, Ms. Dunnigan stated that funding for financial discrepancies would be balanced

with General Fund dollars. If patients had private assets, some of the balance would be paid by private funds.

A motion was made and seconded at the November ARRS meeting to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Other Business:** Resolutions honoring Senator Joey Pendleton and Representative Danny Ford were read and approved. The Subcommittee meeting adjourned in honor of these two (2) statesmen and with thanks for their many years of service. A moment of silence was observed on behalf of the community of Sandy Hook, Connecticut.

**The following administrative regulations were deferred to the January 7, 2013, meeting of the Subcommittee:**

**GENERAL GOVERNMENT CABINET: Board of Medical Licensure: Board**

201 KAR 9:001 & E. Definitions for terms used in 201 KAR Chapter 9.

201 KAR 9:081 & E. Disciplinary proceedings.

201 KAR 9:200 & E. National Practitioner Data Bank reports.

201 KAR 9:210 & E. Criminal background checks required for all new applicants.

201 KAR 9:220 & E. Restriction upon dispensing of Schedule II controlled substances and Schedule III controlled substances containing Hydrocodone.

201 KAR 9:230 & E. Required registration in the KASPER system; legal requirements for prescribing controlled substances in the Commonwealth of Kentucky; enforcement.

201 KAR 9:240 & E. Emergency orders and hearings; appeals and other proceedings.

201 KAR 9:250 & E. Registration and oversight of pain management facilities.

201 KAR 9:260 & E. Professional standards for prescribing and dispensing controlled substances.

201 KAR 9:310 & E. Continuing medical education.

**Kentucky Applied Behavior Analysis Licensing Board: Board**

201 KAR 43:050. Requirements for supervision.

**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.

**Water Quality Standards**

401 KAR 10:001. Definitions for 401 KAR Chapter 10.

401 KAR 10:026. Designation of uses of surface waters.

401 KAR 10:030. Antidegradation policy implementation methodology.

401 KAR 10:031. Surface water standards.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Health Care: Health Services and Facilities**

902 KAR 20:420 & E. Pain management facilities. Mary Begley, inspector general; Stephanie Brammer-Barnes, policy analyst; and Stephanie Hold, director, represented the office. Mary Chandler, patient and citizen; John Daniels, owner, Central Kentucky Wellness Center; and Derek Humfleet, attorney, appeared in opposition to this administrative regulation and 902 KAR 55:110.

Senator Pendleton expressed thanks to the office for resolving some of the issues pertaining to these administrative regulations. He requested that the division be vigilant in maintaining the KASPER system, which was an important tool for fighting drug abuse in the Commonwealth.

Representative Damron also thanked the office and emphasized the excellent job the office had performed in educating providers and addressing problems quickly as they arose.

Mr. Daniels stated that he had some concerns with specific parts of these administrative regulations. These administrative regulations helped compliant pain management facilities; however, there was disparity between requirements for pain management facilities owned by physicians and those not owned by physicians. Staffing requirements were likely to overburden pain management facilities trying to comply with these requirements because there were few prescribers who met the stringent certification standards. Many facilities may have to close, which would leave legitimate patients without care.

Senator Kerr stated that the lack of parity hinted that deferral would be a good idea. These administrative regulations could be compared and discussed along with those administrative regulations for the Kentucky Board of Medical Licensure in January 2013. Mr. Humfleet stated that pain management facilities were regulated by both the Kentucky Board of Medical Licensure and the Cabinet for Health and Family Services. Ms. Begley stated that the authorizing statute required nonphysician-owned facilities to be regulated by the cabinet.

In response to a question by Co-Chair Bowen, Mr. Daniels stated that Tennessee allowed pain management facilities to be nonphysician owned. Indiana did not have pain management statutes yet and was reviewing allowing joint ownership of facilities. Ohio did not seem to authorize nonphysician-owned pain management facilities.

Senator Pendleton recommended deferral of these administrative regulations so that they could be considered along with the Kentucky Board of Medical Licensure administrative regulations. He stated that it was wrong to degrade our senior citizens by forcing them to take and pay for unnecessary drug testing. Pain management facilities should not be singled out for special treatment.

Representative Damron stated that the media and some medical communities have obscured what is actually required by House Bill 1 of the 2012 Special Session of the General Assembly. The initial administrative regulations from the Kentucky Board of Medical Licensure may have been overburdensome and maybe House Bill 1 of the 2012 Special Session of the General Assembly needed amendment; however, these administrative regulations as amended after comments required the minimum stringency necessary to comply with the authorizing statutes as they now existed.

In response to questions by Representative Damron, Ms. Begley stated that the office did not have specific information on how many pain management facilities would be impacted by these administrative regulations, but the office was currently researching this issue. Ms. Begley noted that, regardless of deferral or research information, the office was required to continue enforcing House Bill 1 of the 2012 Special Session of the General Assembly. She estimated that eleven (11) or twelve (12) pain management facilities would be impacted by these administrative regulations. The division had included a grace period for pain management facilities to continue operating until the division had more information and was able to better proceed.

Representative Lee stated that he would also like to have these administrative regulations deferred to the January 2013 meeting of the Subcommittee. He was concerned that many physicians would stop prescribing necessary pain medicine out of fear or misunderstanding of these administrative regulations. He agreed

that House Bill 1 of the 2012 Special Session of the General Assembly needed further amendment. Additionally, he called for parity with administrative regulations from the Kentucky Board of Medical Licensure. It was crucial to balance protecting people from drug addiction with treating patients with legitimate needs.

In response to a question by Representative Lee, Ms. Begley stated that, if the division suspected inappropriate prescribing, the concern was directed to the specific regulating board for investigation and enforcement.

In response to a question by Co-Chair Bowen, Ms. Begley stated that a "nonphysician-owned pain management facility" was one that was wholly, 100 percent, owned by a nonphysician, as required by the authorizing statute.

Senator Givens stated that these administrative regulations indirectly impacted prescribing issues because they worked in concert with requirements from the specific boards. There were legal concerns with certain parts of House Bill 1 of the 2012 Special Session of the General Assembly. Additionally, interpretation and enforcement may be diverging from the authorizing statute, especially regarding certification issues. Ms. Begley responded that the office expanded on the requirements in the authorizing statute only to the extent that the office provided a grace period for continuing operation of pain management facilities. Mr. Humfleet stated that the authorizing statute required residency and certification.

Co-Chair Bell formally requested deferral of these administrative regulations as amended to the January 2013 Subcommittee meeting. Ms. Begley agreed. These administrative regulations as amended were deferred to the January 2013 meeting of the Subcommittee.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 12 to: (a) comply with the drafting and formatting requirements of KRS Chapter 13A; and (b) delete provisions that restated statutory provisions. Without objection, and with agreement of the agency, the amendments were approved.

**Division of Audits and Investigations: Controlled Substances**

902 KAR 55:110 & E. Monitoring system for prescription controlled substances.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 7, 8, 10, and 11 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 10 to clarify that a practitioner or pharmacist who obtains KASPER data or a report and who in good faith believes that a person, including a patient, has violated the law in attempting to obtain a prescription for a controlled substance is authorized to report the suspected improper or illegal use of a controlled substance to law enforcement or the appropriate licensing board. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Community Based Services: Division of Child Care: Day Care**

922 KAR 2:090. Child-care center licensure.

922 KAR 2:100. Certification of family child-care homes.

922 KAR 2:110. Child-care center provider requirements.

922 KAR 2:190. Civil penalties.

**The Subcommittee adjourned at 5 p.m. until January 7, 2013.**

**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.

NONE

## CUMULATIVE SUPPLEMENT

### Locator Index - Effective Dates

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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

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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

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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*.

### Subject Index

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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.



# VOLUME 39, NUMBER 7 – JANUARY 1, 2013

## 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 Administrative Register but had not yet gone into effect when the 12 bound Volumes were published.

### SYMBOL KEY:

- \* Statement of Consideration not filed by deadline
- \*\* Withdrawn, not in effect within 1 year of publication
- \*\*\* Withdrawn before being printed in Register
- \*\*\*\* Emergency expired after 180 days
- (r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

### EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

|                    |      |                |
|--------------------|------|----------------|
| 103 KAR 31:170E    | 1934 | 5-11-12        |
| Replaced           |      | (See 39 Ky.R.) |
| 405 KAR 10:011E(r) | 1935 | 5-4-12         |
| Expired            |      | 10-31-12       |
| 405 KAR 10:015E    | 1937 | 5-4-12         |
| Replaced           |      | (See 39 Ky.R.) |
| 921 KAR 2:015E     | 1429 | 12-29-11       |
| Replaced           | 1969 | 6-20-12        |

### ORDINARY ADMINISTRATIVE REGULATIONS:

|                |      |                |
|----------------|------|----------------|
| 11 KAR 3:100   |      |                |
| Amended        | 1977 | (See 39 Ky.R.) |
| 101 KAR 2:102  |      |                |
| Amended        | 1171 | 7-6-12         |
| 101 KAR 2:140  |      |                |
| Amended        | 1176 |                |
| As Amended     | 1944 | 7-6-12         |
| 101 KAR 3:015  |      |                |
| Amended        | 1178 | 7-6-12         |
| 103 KAR 8:010  |      |                |
| Amended        | 73   |                |
| As Amended     | 1297 |                |
| Withdrawn      |      | 10-31-12       |
| 103 KAR 31:170 | 2107 | (See 39 Ky.R.) |
| 106 KAR 2:030  | 2108 | (See 39 Ky.R.) |
| 201 KAR 8:562  |      |                |
| Amended        | 1870 | (See 39 Ky.R.) |
| 201 KAR 13:040 |      |                |
| Amended        | 1875 | (See 39 Ky.R.) |
| 201 KAR 18:220 |      |                |
| Amended        | 1991 | 8-31-12        |
| 201 KAR 20:450 |      |                |
| Amended        | 1994 | (See 39 Ky.R.) |
| 201 KAR 20:490 |      |                |
| Amended        | 1764 |                |
| As Amended     | 1945 | 6-20-12        |
| 201 KAR 20:510 |      |                |
| Amended        | 1997 | 8-15-12        |
| 201 KAR 23:015 |      |                |
| Amended        | 1767 |                |
| As Amended     | 1947 | 6-20-12        |
| 201 KAR 30:050 |      |                |
| Amended        | 1768 |                |
| As Amended     | 1947 | 7-6-12         |
| 201 KAR 32:035 |      |                |
| Amended        | 1877 | (See 39 Ky.R.) |
| 202 KAR 7:601  |      |                |
| Amended        | 1770 | (See 39 Ky.R.) |
| 301 KAR 1:201  |      |                |
| Amended        | 1783 | 6-7-12         |
| 301 KAR 1:410  |      |                |
| Amended        | 1788 |                |
| Amended        | 1974 | (See 39 Ky.R.) |

|                  |      |                |
|------------------|------|----------------|
| 301 KAR 2:041    |      |                |
| Amended          | 1879 | (See 39 Ky.R.) |
| 301 KAR 2:049    |      |                |
| Amended          | 1883 | (See 39 Ky.R.) |
| 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         |
| 304 KAR 1:040    |      |                |
| Amended          | 2002 | (See 39 Ky.R.) |
| 304 KAR 1:080    | 2110 | (See 39 Ky.R.) |
| 405 KAR 10:015   | 2111 | (See 39 Ky.R.) |
| 405 KAR 10:030   |      |                |
| Amended          | 2004 | (See 39 Ky.R.) |
| 405 KAR 16:020   |      |                |
| Amended          | 2007 | (See 39 Ky.R.) |
| 501 KAR 6:020    |      |                |
| Amended          | 1905 | (See 39 Ky.R.) |
| 501 KAR 6:050    |      |                |
| Amended          | 2011 | (See 39 Ky.R.) |
| 501 KAR 6:090    |      |                |
| Repealed         | 1808 | 7-6-12         |
| 501 KAR 6:091(r) | 1808 | 7-6-12         |
| 501 KAR 6:110    |      |                |
| Amended          | 2013 | 8-31-12        |
| 501 KAR 6:200    |      |                |
| Amended          | 1791 |                |
| As Amended       | 1951 | 7-6-12         |
| 501 KAR 6:240    |      |                |
| Amended          | 1793 |                |
| As Amended       | 1953 | 7-6-12         |
| 501 KAR 6:260    | 1916 | (See 39 Ky.R.) |
| 501 KAR 6:280    | 1918 | (See 39 Ky.R.) |
| 503 KAR 1:110    |      |                |
| Amended          | 1795 |                |
| As Amended       | 1953 | 7-6-12         |
| 503 KAR 3:070    |      |                |
| Amended          | 1665 |                |
| As Amended       | 1956 | 7-6-12         |
| 601 KAR 1:018    |      |                |
| Amended          | 1487 |                |
| As Amended       | 1957 | 7-6-12         |
| 601 KAR 1:019    | 1399 |                |
| As Amended       | 1962 | 7-6-12         |
| 702 KAR 1:160    |      |                |
| Amended          | 1799 | (See 39 Ky.R.) |
| 703 KAR 5:002(r) | 1401 | (See 39 Ky.R.) |
| 703 KAR 5:070    |      |                |
| Amended          | 1907 | (See 39 Ky.R.) |
| 703 KAR 5:140    |      |                |
| Amended          | 1391 | (See 39 Ky.R.) |
| 703 KAR 5:220    | 707  |                |
| 703 KAR 5:225    | 1919 | (See 39 Ky.R.) |
| 703 KAR 5:240    | 1407 | (See 39 Ky.R.) |
| 704 KAR 3:340    |      |                |
| Amended          | 1909 | (See 39 Ky.R.) |
| 704 KAR 5:070    | 1410 | (See 39 Ky.R.) |
| 803 KAR 2:300    |      |                |
| Amended          | 2016 | 8-31-12        |
| 803 KAR 2:307    |      |                |
| Amended          | 2018 | 8-31-12        |

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|               |      |                |                |      |                |
|---------------|------|----------------|----------------|------|----------------|
| 803 KAR 2:309 |      |                | Amended        | 2077 | (See 39 Ky.R.) |
| Amended       | 2021 | 8-31-12        | 811 KAR 2:093  | 2119 | 8-31-12        |
| 803 KAR 2:313 |      |                | 811 KAR 2:096  |      |                |
| Amended       | 2023 | (See 39 Ky.R.) | Amended        | 2084 | (See 39 Ky.R.) |
| 803 KAR 2:316 |      |                | 811 KAR 2:100  |      |                |
| Amended       | 2025 | 8-31-12        | Amended        | 2093 | (See 39 Ky.R.) |
| 803 KAR 2:317 |      |                | 815 KAR 6:010  |      |                |
| Amended       | 2027 | 8-31-12        | Amended        | 1498 |                |
| 803 KAR 2:319 |      |                | Amended        | 1866 |                |
| Amended       | 2029 | 8-31-12        | As Amended     | 1966 | 7-6-12         |
| 803 KAR 2:320 |      |                | 815 KAR 6:070  | 1521 |                |
| Amended       | 2031 | (See 39 Ky.R.) | As Amended     | 1968 |                |
| 803 KAR 2:403 |      |                | Withdrawn      |      | 6-8-12         |
| Amended       | 2037 | 8-31-12        | 815 KAR 20:100 |      |                |
| 803 KAR 2:405 |      |                | Amended        | 2099 | 8-31-12        |
| Amended       | 2040 | (See 39 Ky.R.) | 900 KAR 7:030  |      |                |
| 803 KAR 2:407 |      |                | Amended        | 2102 | 8-31-12        |
| Amended       | 2042 | (See 39 Ky.R.) | 900 KAR 9:010  | 2121 | (See 39 Ky.R.) |
| 803 KAR 2:425 |      |                | 921 KAR 2:015  |      |                |
| Amended       | 2044 | (See 39 Ky.R.) | Amended        | 1501 |                |
| 803 KAR 2:500 |      |                | As Amended     | 1969 | 6-20-12        |
| Amended       | 2046 | 8-31-12        | 921 KAR 3:035  |      |                |
| 804 KAR 4:370 |      |                | Amended        | 1804 | 6-20-12        |
| Amended       | 2049 | 8-31-12        |                |      |                |
| 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 | 8-31-12        |                |      |                |
| 811 KAR 1:090 |      |                |                |      |                |
| Amended       | 2068 | (See 39 Ky.R.) |                |      |                |
| 811 KAR 1:093 | 2118 | 8-30-12        |                |      |                |
| 811 KAR 1:095 |      |                |                |      |                |

## 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.)

|                 |     |                |
|-----------------|-----|----------------|
| 101 KAR 2:210   | 729 | 9-14-12        |
| 103 KAR 3:060E  | 942 | 9-27-12        |
| 103 KAR 5:220   | 730 | 9-4-12         |
| 103 KAR 31:170E |     | (See 38 Ky.R.) |
| Replaced        | 458 | 10-5-12        |
| 105 KAR 1:400E  | 4   | 5-30-12        |
| Replaced        | 750 | 10-24-12       |
| 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 5:010E  | 388 | 7-20-12        |
| 201 KAR 5:030E  | 390 | 7-20-12        |
| 201 KAR 5:130E  | 392 | 7-20-12        |
| 201 KAR 8:532E  | 394 | 7-20-12        |
| 201 KAR 8:540E  | 398 | 7-25-12        |
| 201 KAR 9:001E  | 401 | 7-20-12        |
| 201 KAR 9:081E  | 402 | 7-20-12        |
| 201 KAR 9:200E  | 406 | 7-20-12        |
| 201 KAR 9:210E  | 408 | 7-20-12        |
| 201 KAR 9:220E  | 409 | 7-20-12        |
| 201 KAR 9:230E  | 410 | 7-20-12        |
| 201 KAR 9:240E  | 411 | 7-20-12        |
| 201 KAR 9:250E  | 414 | 7-20-12        |
| 201 KAR 9:260E  | 418 | 7-20-12        |
| 201 KAR 9:310E  | 423 | 7-20-12        |
| 201 KAR 20:056E | 426 | 7-20-12        |
| 201 KAR 20:057E | 429 | 7-20-12        |
| 201 KAR 20:161E | 431 | 7-20-12        |

|                 |      |                |
|-----------------|------|----------------|
| 201 KAR 20:215E | 434  | 7-20-12        |
| 201 KAR 25:011E | 436  | 7-20-12        |
| 201 KAR 25:021E | 438  | 7-20-12        |
| 201 KAR 25:031E | 439  | 7-20-12        |
| 201 KAR 25:051E | 441  | 7-20-12        |
| 201 KAR 25:090E | 444  | 7-20-12        |
| 301 KAR 2:221E  | 1099 | 10-31-12       |
| 301 KAR 2:222E  | 1101 | 10-31-12       |
| 301 KAR 2:224E  | 1105 | 10-31-12       |
| 301 KAR 2:225E  | 773  | 8-27-12        |
| 405 KAR 10:015E |      | (See 38 Ky.R.) |
| Replaced        | 467  | 9-6-12         |
| 502 KAR 10:120E | 8    | 5-31-12        |
| Replaced        | 478  | 10-2-12        |
| 900 KAR 6:075E  | 736  | 8-23-12        |
| 902 KAR 20:420E | 446  | 7-20-12        |
| 902 KAR 55:110E | 452  | 7-20-12        |
| 906 KAR 1:160E  | 182  | 7-13-12        |
| Replaced        | 335  | 10-17-12       |
| 907 KAR 9:005E  | 739  | 9-4-12         |
| 907 KAR 9:010E  | 746  | 9-4-12         |
| 907 KAR 14:005E | 184  | 6-22-12        |

### ORDINARY ADMINISTRATIVE REGULATIONS:

|              |      |                |
|--------------|------|----------------|
| 11 KAR 3:100 |      | (See 38 Ky.R.) |
| As Amended   | 187  | 8-31-12        |
| 11 KAR 8:030 |      |                |
| Amended      | 1271 |                |
| 13 KAR 1:020 |      |                |
| Amended      | 1043 |                |
| As Amended   | 1365 |                |
| 16 KAR 2:120 |      |                |
| Amended      | 66   |                |
| As Amended   | 456  | 9-10-12        |
| 16 KAR 3:010 |      |                |
| Amended      | 497  |                |
| As Amended   | 944  | 11-19-12       |

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|----------------------|----------------------|-------------------|----------------------|----------------------|-------------------|
| 16 KAR 6:010         |                      |                   | 201 KAR 8:532        |                      |                   |
| Amended              | 1274                 |                   | Amended              | 514                  |                   |
| 16 KAR 6:030         |                      |                   | As Amended           | 1378                 |                   |
| Amended              | 499                  |                   | 201 KAR 8:540        |                      |                   |
| As Amended           | 945                  | 11-19-12          | Amended              | 519                  |                   |
| 16 KAR 8:030         |                      |                   | As Amended           | 1381                 |                   |
| Amended              | 1279                 |                   | 201 KAR 8:562        |                      | (See 38 Ky.R.)    |
| 40 KAR 2:330         | 350                  |                   | As Amended           | 199                  | 8-15-12           |
| Amended              | 780                  |                   | 201 KAR 9:001        | 658                  |                   |
| As Amended           | 946                  | 12-7-12           | Amended              | 1172                 |                   |
| 101 KAR 2:210        |                      |                   | 201 KAR 9:081        |                      |                   |
| Amended              | 813                  |                   | Amended              | 521                  |                   |
| 102 KAR 1:225        |                      |                   | 201 KAR 9:200        | 660                  |                   |
| Amended              | 1050                 |                   | 201 KAR 9:210        | 661                  |                   |
| As Amended           | 1371                 |                   | 201 KAR 9:220        | 661                  |                   |
| 102 KAR 1:310        |                      |                   | 201 KAR 9:230        | 663                  |                   |
| Amended              | 1282                 |                   | 201 KAR 9:240        | 664                  |                   |
| 102 KAR 1:340        | 1342                 |                   | 201 KAR 9:250        | 667                  |                   |
| 103 KAR 5:220        | 916                  |                   | Amended              | 1173                 |                   |
| Amended              | 1461                 |                   | 201 KAR 9:260        | 671                  |                   |
| 103 KAR 31:170       |                      | (See 38 Ky.R.)    | Amended              | 1177                 |                   |
| As Amended           | 458                  | 10-5-12           | 201 KAR 9:310        |                      |                   |
| 105 KAR 1:140        |                      |                   | Amended              | 526                  |                   |
| Amended              | 1484                 |                   | 201 KAR 13:040       |                      | (See 38 Ky.R.)    |
| 105 KAR 1:400        |                      |                   | As Amended           | 11                   | 8-6-12            |
| Amended              | 68                   |                   | 201 KAR 14:105       |                      |                   |
| As Amended           | 750                  | 10-24-12          | Amended              | 821                  |                   |
| 105 KAR 1:420        |                      |                   | As Amended           | 1112                 |                   |
| Amended              | 72                   |                   | 201 KAR 17:090       |                      |                   |
| As Amended           | 753                  | 10-24-12          | Amended              | 823                  |                   |
| 105 KAR 1:430        |                      |                   | 201 KAR 17:110       | 918                  |                   |
| Amended              | 74                   |                   | Amended              | 1463                 |                   |
| As Amended           | 753                  | 10-24-12          | 201 KAR 18:040       |                      |                   |
| 106 KAR 2:030        |                      | (See 38 Ky.R.)    | Amended              | 528                  |                   |
| As Amended           | 199                  | 8-21-12           | As Amended           | 948                  | 12-7-12           |
| 200 KAR 14:011       |                      |                   | 201 KAR 18:192       |                      |                   |
| Amended              | 814                  |                   | Amended              | 530                  |                   |
| As Amended           | 1108                 |                   | As Amended           | 948                  | 12-7-12           |
| 200 KAR 14:081       |                      |                   | 201 KAR 20:056       |                      |                   |
| Amended              | 817                  |                   | Amended              | 533                  |                   |
| As Amended           | 1110                 |                   | As Amended           | 1383                 |                   |
| 200 KAR 14:091       |                      |                   | 201 KAR 20:057       |                      |                   |
| Amended              | 820                  |                   | Amended              | 535                  |                   |
| As Amended           | 1111                 |                   | Amended              | 1185                 |                   |
| 201 KAR 2:020        |                      |                   | Amended              |                      |                   |
| Amended              | 501                  |                   | As Amended           | 1385                 |                   |
| 201 KAR 2:030        |                      |                   | 201 KAR 20:161       |                      |                   |
| Amended              | 502                  |                   | Amended              | 538                  |                   |
| As Amended           | 1371                 |                   | 201 KAR 20:215       |                      |                   |
| 201 KAR 2:040        |                      |                   | Amended              | 540                  |                   |
| Amended              | 1051                 |                   | 201 KAR 20:230       |                      |                   |
| As Amended           | 1372                 |                   | Amended              | 257                  | 10-17-12          |
| 201 KAR 2:050        |                      |                   | 201 KAR 20:370       |                      |                   |
| Amended              | 504                  |                   | Amended              | 258                  | 10-17-12          |
| 201 KAR 2:061        |                      |                   | 201 KAR 20:411       |                      |                   |
| Amended              | 506                  |                   | Amended              | 259                  | 10-17-12          |
| As Amended           | 1374                 |                   | 201 KAR 20:450       |                      | (See 38 Ky.R.)    |
| 201 KAR 2:205        |                      |                   | As Amended           | 203                  | 8-15-12           |
| Amended              | 508                  |                   | 201 KAR 22:001       |                      |                   |
| 201 KAR 2:340        | 172                  |                   | Amended              | 76                   |                   |
| As Amended           | 458                  | 9-19-12           | Withdrawn            |                      | 8-16-12           |
| 201 KAR 2:350        | 655                  |                   | Amended              | 826                  |                   |
| As Amended           | 1375                 |                   | 201 KAR 22:040       |                      |                   |
| 201 KAR 5:010        |                      |                   | Amended              | 77                   | 9-19-12           |
| Amended              | 509                  |                   | 201 KAR 22:045       |                      |                   |
| As Amended           | 1376                 |                   | Amended              | 79                   |                   |
| 201 KAR 5:030        |                      |                   | As Amended           | 459                  | 9-19-12           |
| Amended              | 511                  |                   | 201 KAR 22:053       |                      |                   |
| 201 KAR 5:130        | 656                  |                   | Amended              | 81                   |                   |
| 201 KAR 8:520        |                      |                   | Withdrawn            |                      | 8-16-12           |
| Amended              | 512                  |                   | Amended              | 827                  |                   |
| As Amended           | 1377                 |                   | As Amended           | 1113                 |                   |

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| 201 KAR 25:011       |                      |                   | Amended              | 834                  |                   |
| Amended              | 543                  |                   | 301 KAR 1:410        |                      | (See 38 Ky.R.)    |
| As Amended           | 1388                 |                   | As Amended           | 13                   | 7-12-12           |
| 201 KAR 25:021       |                      |                   | 301 KAR 2:030        |                      |                   |
| Amended              | 545                  |                   | Amended              | 551                  |                   |
| As Amended           | 1389                 |                   | As Amended           | 965                  |                   |
| 201 KAR 25:031       |                      |                   | Withdrawn            |                      | 10-31-12          |
| Amended              | 546                  |                   | 301 KAR 2:041        |                      | (See 38 Ky.R.)    |
| 201 KAR 25:051       |                      |                   | As Amended           | 205                  | 8-2-12            |
| Amended              | 548                  |                   | 301 KAR 2:049        |                      | (See 38 Ky.R.)    |
| As Amended           | 1389                 |                   | As Amended           | 15                   | 7-12-12           |
| 201 KAR 25:090       |                      |                   | 301 KAR 2:081        |                      | (See 38 Ky.R.)    |
| As Amended           | 676                  |                   | As Amended           | 18                   | 7-12-12           |
| 201 KAR 30:030       |                      |                   | 301 KAR 2:082        |                      | (See 38 Ky.R.)    |
| Amended              | 83                   |                   | As Amended           | 23                   | 7-12-12           |
| As Amended           | 460                  | 10-5-12           | 301 KAR 2:084        |                      | (See 38 Ky.R.)    |
| Amended              | 1486                 |                   | As Amended           | 27                   | 7-12-12           |
| 201 KAR 30:050       |                      |                   | 301 KAR 2:142        |                      |                   |
| Amended              | 1488                 |                   | Amended              | 1298                 |                   |
| 201 KAR 30:070       |                      |                   | 301 KAR 2:185        |                      |                   |
| Amended              | 1490                 |                   | Amended              | 1299                 |                   |
| 201 KAR 30:110       |                      |                   | 301 KAR 2:221        |                      |                   |
| Amended              | 1492                 |                   | Amended              | 1302                 |                   |
| 201 KAR 30:125       |                      |                   | 301 KAR 2:222        |                      |                   |
| Amended              | 86                   | 10-5-12           | Amended              | 1304                 |                   |
| 201 KAR 30:180       |                      |                   | 301 KAR 2:224        |                      |                   |
| Amended              | 87                   |                   | Amended              | 1308                 |                   |
| As Amended           | 461                  | 10-5-12           | 301 KAR 2:225        |                      |                   |
| 201 KAR 30:190       |                      |                   | Amended              | 838                  |                   |
| Amended              | 90                   |                   | 301 KAR 2:300        |                      | (See 38 Ky.R.)    |
| As Amended           | 463                  | 10-5-12           | Amended              | 53                   | 8-2-12            |
| Amended              | 1493                 |                   | 301 KAR 3:012        |                      |                   |
| 201 KAR 32:035       |                      | (See 38 Ky.R.)    | Amended              | 554                  |                   |
| As Amended           | 12                   | 8-6-12            | As Amended           | 967                  | 12-7-12           |
| 201 KAR 33:015       |                      |                   | 301 KAR 3:022        |                      | (See 38 Ky.R.)    |
| Amended              | 1284                 |                   | Amended              | 56                   | (See 38 Ky.R.)    |
| 201 KAR 42:020       |                      |                   | As Amended           | 208                  | 8-2-12            |
| Amended              | 1285                 |                   | 301 KAR 4:070        |                      |                   |
| 201 KAR 42:035       |                      |                   | Amended              | ***                  | 8-17-12           |
| Amended              | 1287                 |                   | Amended              | 841                  |                   |
| 201 KAR 42:040       |                      |                   | 302 KAR 16:091       |                      |                   |
| Amended              | 1288                 |                   | Amended              | 94                   | 9-14-12           |
| 201 KAR 42:070       |                      |                   | 302 KAR 27:050       |                      |                   |
| Amended              | 1289                 |                   | Amended              | 95                   |                   |
| 201 KAR 42:080       |                      |                   | Withdrawn            |                      | 8-9-12            |
| Amended              | 1291                 |                   | 302 KAR 28:020       |                      |                   |
| 201 KAR 43:050       | 1079                 |                   | Amended              | 100                  |                   |
| 201 KAR 44:090       | 353                  |                   | Withdrawn            |                      | 8-9-12            |
| As Amended           | 950                  |                   | 302 KAR 28:050       |                      |                   |
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## SYMBOL KEY:

\* Statement of Consideration not filed by deadline

\*\* Withdrawn, not in effect within 1 year of publication

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(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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