

# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 39, NUMBER 10  
MONDAY, APRIL 1, 2013

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, March 15, 2013.

<b>ARRS – April 9, 2013 TENTATIVE AGENDA.....</b>	<b>1977</b>
<b>REGULATION REVIEW PROCEDURE .....</b>	<b>1980</b>

#### **REPRINTS:**

Board of Emergency Medical Services .....	1981
---	------

#### **EMERGENCIES**

Department for Medicaid Services .....	1987
--	------

#### **AS AMENDED**

Kentucky Teachers' Retirement System .....	1995
Board of Medical Licensure .....	1997
Board of Nursing.....	2011
Board of Interpreters for the Deaf and Hard of Hearing .....	2012
Department of Fish and Wildlife Resources .....	2014
Department of Education .....	2023
Department of Housing, Buildings and Construction .....	2026
Office of Inspector General .....	2027
Department for Medicaid Services .....	2036

#### **AMENDED AFTER COMMENTS**

None

#### **PROPOSED AMENDMENTS**

Board of Nursing.....	2046
Board of Emergency Medical Services .....	2050
Department of Fish and Wildlife Resources .....	2061
Kentucky Law Enforcement Council .....	2066
Department of Education .....	2073
Department for Medicaid Services .....	2084

#### **NEW ADMINISTRATIVE REGULATIONS**

Board of Emergency Medical Services .....	2092
Division of Water.....	2094
Department of Education.....	2098

<b>ARRS Report .....</b>	<b>2105</b>
<b>OTHER COMMITTEE REPORTS .....</b>	<b>2107</b>

#### **CUMULATIVE SUPPLEMENT**

Locator Index - Effective Dates .....	J - 2
KRS Index.....	J - 11
Technical Amendments.....	J - 23
Subject Index .....	J - 24

#### **MEETING NOTICE: ARRS**

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet April 9, 2013 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 1977-1979 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, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

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

(ISSN 0096-1493)

© 2013 Legislative Research Commission, All Rights Reserved

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.

#### **KENTUCKY LEGISLATIVE RESEARCH COMMISSION**

##### **Chairmen**

Senator Robert Stivers  
Senate President

Representative Gregory D. Stumbo  
House Speaker

##### **Senate and House Members**

Senator Katie Kratz Stine  
President Pro Tempore

Representative Larry Clark  
Speaker Pro Tempore

Senator Damon Thayer  
Majority Floor Leader

Representative Rocky Adkins  
Majority Floor Leader

Senator R.J. Palmer II  
Minority Floor Leader

Representative Jeffrey Hoover  
Minority Floor Leader

Senator Daniel Seum  
Majority Caucus Chairman

Representative Sannie Overly  
Majority Caucus Chairman

Senator Johnny Ray Turner  
Minority Caucus Chairman

Representative Bob DeWeese  
Minority Caucus Chairman

Senator Brandon Smith  
Majority Whip

Representative Tommy Thompson  
Majority Whip

Senator Jerry P. Rhoads  
Minority Whip

Representative John Carney  
Minority Whip

Robert Sherman, Director  
Joe Cox, Printing and Publications Officer

#### **ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

##### **Members**

Senator Ernie Harris, Co-Chair  
Representative Johnny Bell, Co-Chair  
Senator Joe Bowen  
Senator Perry B. Clark  
Senator Sara Beth Gregory  
Representative Robert Damron  
Representative Jimmie Lee  
Representative Tommy Turner

##### **Staff**

Dave Nicholas  
Donna Little  
Emily Caudill  
Sarah Amburgey  
Emily Harkenrider  
Karen Howard  
Betsy Cupp  
Laura Napier

**VOLUME 39, NUMBER 10 – APRIL 1, 2013**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA, APRIL 9, 2013, at 1:00 p.m., Room 149 Capitol Annex**

**GOVERNOR'S OFFICE  
Kentucky Department of Veterans' Affairs  
Office of Kentucky Veterans' Centers**

**State Veterans' Nursing Homes**

- 17 KAR 3:010. Calculation of resident charges at state veterans' nursing homes.
- 17 KAR 3:040. Admission to state veterans' nursing homes.

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Teachers' Retirement System**

**General Rules**

- 102 KAR 1:070. Application for retirement.
- 102 KAR 1:320. Qualified domestic relations orders.
- 102 KAR 1:350. Full actuarial cost purchase.

**Department of Revenue**

**Forms**

- 103 KAR 3:010. General Administrative Forms Manual.
- 103 KAR 3:030. Property and Severance Forms Manual.
- 103 KAR 3:040 & E. Income Tax Forms Manual. ("E" expires 7/14/2013)

**GENERAL GOVERNMENT CABINET  
Board of Physical Therapy**

**Board**

- 201 KAR 22:020. Eligibility and credentialing procedure.
- 201 KAR 22:035. A credential holder's change of name, employment, or address.
- 201 KAR 22:045. Continued competency requirements and procedures.

**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 43:030. Fees.
- 201 KAR 43:060. Complaint and disciplinary process.
- 201 KAR 43:070. Supervisees.
- 201 KAR 43:080. Renewals.

**TOURISM, ARTS AND HERITAGE CABINET  
Kentucky Historical Society**

**Society**

- 300 KAR 5:010. Museum unclaimed property. (Not Amended After Comments)

**Department of Fish and Wildlife Resources**

**Fish**

- 301 KAR 1:410. Taking of fish by nontraditional fishing methods.

**Water Patrol**

- 301 KAR 6:020. Boating safety equipment.

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

**Water Quality Standards**

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

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

**Kentucky Crime Commission**

- 500 KAR 5:006. Repeal of 500 KAR 5:005 and 500 KAR 5:015.

**Office of the Secretary**

- 501 KAR 6:070. Kentucky Correctional Institution for Women.

**Department of Juvenile Justice**

**Child Welfare**

- 505 KAR 1:160. Department of Juvenile Justice Policies and Procedures: treatment program for juvenile sexual offenders.

**TRANSPORTATION CABINET  
Department of Vehicle Regulation**

**Motor Vehicle Tax**

- 601 KAR 9:135. Apportioned registration.

**VOLUME 39, NUMBER 10 – APRIL 1, 2013**

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

**School Administration and Finance**

702 KAR 3:130. Internal accounting. (Amended After Comments) (Deferred from March)

**PUBLIC PROTECTION CABINET**  
**Department of Alcoholic Beverage Control**

**Quotas**

804 KAR 9:040. Retail liquor package license quota.

804 KAR 9:050. Retail liquor drink license quota.

**Department of Housing, Buildings and Construction**  
**Division of Building Codes Enforcement**

**Elevator Safety**

815 KAR 4:027. Reporting incidents involving personal injury or death.

**Kentucky Building Code**

815 KAR 7:120. Kentucky Building Code. (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. (Amended After Comments) (Deferred from March)

**Kentucky Early Intervention System**

902 KAR 30:001. Definitions for 902 KAR Chapter 30. (Deferred from February)

**Department for Medicaid Services**  
**Commissioner's Office**

**Medicaid Services**

907 KAR 1:711E. Repeal of 907 KAR 1:705 and 907 KAR 1:710. ("E" expires 7/18/2013) (Deferred from March)

**REMOVED FROM APRIL 2013 AGENDA**

**GENERAL GOVERNMENT CABINET**  
**Board of Pharmacy**

**Board**

201 KAR 2:074. Pharmacy services in hospitals or other organized health care facilities. (*Comments Received; SOC ext.*)

**Board of Prosthetics, Orthotics and Pedorthics**

**Board**

201 KAR 44:090. Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter on or after January 1, 2013. (*Comments Received; SOC ext.*)

201 KAR 44:120. Post residency registration. (*Comments Received; SOC ext.*)

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

**Water Quality Standards**

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Maternal and Child Health**

**WIC Program**

902 KAR 18:010. Definitions for 902 KAR Chapter 18. (*Comments Received; SOC ext.*)

902 KAR 18:020. Eligibility, certification periods, and time frames for processing applicants. (*Comments Received; SOC ext.*)

902 KAR 18:030. Participant abuse. (*Comments Received; SOC ext.*)

902 KAR 18:060. Vendor violations and sanctions. (*Comments Received; SOC ext.*)

902 KAR 18:070. Participant access determination and civil money penalty. (*Comments Received; SOC ext.*)

902 KAR 18:080. Local agency and vendor hearing process and administrative appeal process. (*Comments Received; SOC ext.*)

**Kentucky Early Intervention System**

902 KAR 30:110. Point of entry and service coordination. (*Comments Received; SOC ext.*)

902 KAR 30:120. Evaluation and eligibility. (*Comments Received; SOC ext.*)

902 KAR 30:130. Assessment, service planning, and assistive technology. (*Comments Received; SOC ext.*)

902 KAR 30:150. Personnel qualifications. (*Comments Received; SOC ext.*)

902 KAR 30:160. Covered services. (*Comments Received; SOC ext.*)

902 KAR 30:180. Procedural safeguards. (*Comments Received; SOC ext.*)

902 KAR 30:200. Coverage and payment for services. (*Comments Received; SOC ext.*)

**Department for Medicaid Services**  
**Commissioner's Office**

**Managed Care**

907 KAR 17:005 & E. Definitions for 907 KAR Chapter 17. ("E" expires 7/18/2013) (*Comments Received; SOC ext.*)

907 KAR 17:010 & E. Managed care organization requirements and policies relating to enrollees. ("E" expires 7/18/2013) (*Comments Received; SOC ext.*)

907 KAR 17:015 & E. Managed care organization requirements and policies relating to providers. ("E" expires 7/18/2013) (*Comments Received; SOC ext.*)

## **VOLUME 39, NUMBER 10 – APRIL 1, 2013**

907 KAR 17:020 & E. Managed care organization service and service coverage requirements and policies. ("E" expires 7/18/2013) (*Comments Received; SOC ext*)

907 KAR 17:025 & E. Managed care organization requirements and policies related to utilization management and quality. ("E" expires 7/18/2013) (*Comments Received; SOC ext*)

907 KAR 17:030 & E. Managed care organization operational and related requirements and policies. ("E" expires 7/18/2013) (*Comments Received; SOC ext*)

### **Department for Community Based Services**

#### **Division of Family Support**

#### **K-TAP, Kentucky Works, Welfare to Work, State Supplementation**

921 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability. ("E" expires 7/18/2013) (*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.

COMPILER'S NOTE: 202 KAR 7:601 was amended during the October 17, 2012, meeting of the Interim Joint Committee on Health and Welfare. The amendment to the minimum pass rate in Section 5(16) of this administrative regulation was reported to the compiler's office incorrectly. The correct minimum pass rate is reflected in this reprint and went into effect on October 17, 2012.

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

**202 KAR 7:601. Training, education, and continuing education.**

RELATES TO: KRS 271, 311A.050, 311A.110, 311A.115, 311A.120, 311A.130, 362, 365

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.060, 311A.110, 311A.115, 311A.120, 311A.125, 311A.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.110, 311A.115, 311A.120, and 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation establishes requirements for an organization to be approved by the Board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and also establishes standards for the certification and recertification of EMS educators.

Section 1. Education Committee. (1) The board shall create and recognize a standing committee on EMS Education.

(2) The Education Committee shall consist of seven (7) voting members representative of EMS Educators in the state of Kentucky. At least one (1) voting member of the Education Committee shall also be a member of the Kentucky Board of Emergency Medical Services.

(3) The Education Committee shall schedule on an annual basis at least six (6) regular meetings of the committee.

(4) The purpose and charge of the Education Committee shall be to:

(a) Assist the board in developing a strategic plan for EMS education in the state of Kentucky;

(b) Act as a resource for EMS educators and EMS-TEIs in the Commonwealth; and

(c) Assume the lead role in formulating, drafting, and sending to the board for approval and subsequent promulgation of all administrative regulations that set the standards and requirements for EMS education in Kentucky.

Section 2. EMS-TEI Certification. (1) Only an entity certified by the board as an EMS-TEI shall be authorized to conduct training and education programs that lead to certification or licensure by the Kentucky Board of Emergency Medical Services (KBEMS).

(2) An applicant for certification as an EMS-TEI in Kentucky may be certified at the following levels:

(a) EMS-TEI 1, which includes EMR;

(b) EMS-TEI 2, which includes EMR and EMT;

(c) EMS-TEI 3, which includes EMR, EMT, and AEMT;

(d) EMS-TEI 4, which include EMR, EMT, AEMT, and EMT-P;

or

(e) EMS-TEI CE, which includes continuing education only.

(3) An applicant may seek one (1) or multiple levels of certification during the two (2) year certification term.

(4) An applicant for a level of EMS-TEI certification shall meet all requirements of that level.

(5) An applicant for certification at a level of EMS-TEI shall submit a completed Training and Educational Institution (TEI), KBEMS-E14, with the Kentucky Board of Emergency Medical Services (KBEMS)

(6) An applicant shall submit fees as required by 202 KAR 7:030 with the Training and Education Institution (TEI), KBEMS-E14.

Section 3. Initial Certification Requirements for EMS-TEIs. (1)

If an applicant is organized as a business entity and is required pursuant to KRS Chapters 271, 362, and 365 to file with Kentucky's Secretary of State, the applicant for EMS-TEI certification shall provide proof of registration with the Kentucky Secretary of State that the EMS-TEI is legally able to conduct business in the state.

(2) An applicant shall provide the board with an organizational chart indicating, at a minimum:

(a) The names and addresses of the owner, operator, chief administrative officer, and other personnel necessary for operation of the entity as an EMS-TEI;

(b) The names and addresses of the EMS-TEI's designated agent for receiving service;

(c) The name and address of the EMS-TEI's medical director; proof that the medical director is qualified pursuant to 202 KAR 7:801; and a document executed between the owner of the EMS-TEI and the medical director outlining the relationship, duties, and requirements of a medical director for an EMS-TEI; and

(d) The name and address of the EMS-TEI's program coordinator.

(3) Beginning January 1, 2013, if the EMS-TEI will be offering courses leading to certification or licensure for EMS personnel in Kentucky that is dependent on EMS-TEI accreditation, the applicant for EMS-TEI shall submit proof of accreditation.

Section 4. Certification Periods and Inspections. (1) An EMS-TEI shall display the current certificate issued through the Kentucky Board of Emergency Medical Services in a prominent place in the EMS-TEI's business.

(2) Certification of an EMS-TEI shall be valid for a period of two (2) years unless limited by disciplinary action.

(3) Prior to expiration of the two (2) year certification period, an EMS-TEI may apply for recertification for a subsequent two (2) year period.

(4) Upon application for recertification, an applicant shall re-submit an Training and Educational Institution (TEI), KBEMS-E14.

(5) An EMS-TEI seeking recertification shall pay all applicable fees upon application. Failure to pay fees or subsequent rejection of a payment method shall result in denial of the Training and Educational Institution (TEI), KBEMS-E14.

(6) A newly certified EMS-TEI shall undergo an inspection prior to offering the EMS-TEI's first class. Failure to submit to the inspection shall result in immediate revocation of the certification.

(7) Each inspection shall ensure that the EMS-TEI has met all applicable requirements in Section 5 of this administrative regulation. If the board's inspection finds that the EMS-TEI has failed to meet a requirement, the EMS-TEI shall correct all deficiencies prior to offering a class.

(8) The board shall inspect an EMS-TEI upon submission of the EMS-TEI's notice of intent to upgrade the level of courses offered.

(9) The board may inspect an EMS-TEI upon submission of the Training and Educational Institution (TEI), KBEMS-E14, to renew certification as an EMS-TEI.

(10) The board shall conduct the inspection of an EMS-TEI no more than ninety (90) days following KBEMS' receipt of notice of intent to upgrade.

(11) Approval of notice of intent to upgrade shall not extend the two (2) year EMS-TEI certification period.

Section 5. EMS-TEI Operating Requirements. (1) Each EMS-TEI shall maintain files for a period of seven (7) years beyond the end date of each EMS Course program that contain the following documentation:

(a) For courses requiring accreditation, all documents necessary for the EMS-TEI to have met the accrediting agency's standards, policies, and guidelines;

(b) The student attendance sign-in sheets for each course

taught, including:

1. Lectures;
2. Practical skills lessons; and
3. Clinical and field rotations;
- (c) A master copy of each set of written examinations administered and answer keys for the exams;
- (d) A master copy of practical skills examination forms;
- (e) A master copy of each course syllabus;
- (f) Current, written affiliation agreements executed between hospitals or EMS agencies and the EMS-TEI;
- (g) Health records for students as may be required by the EMS-TEI or as expressly required in written affiliation agreements and determined necessary for students to complete clinical assignments, field-internships, or summative field evaluations;
- (h) Records of all disciplinary actions taken against a student, if applicable. Records shall include notification to students of the complaint; responses, if applicable, made by or on behalf of the student; and actions taken as a result of a complaint or other documented incident, grievance, or deficiency;
- (i) For students requiring remediation, documentation of specific activities or procedures requiring remediation and actions taken in response to deficiencies, including how the specific remediation was accomplished and if the success or failure of remediation;
- (j) A master file of the objectives and competencies to be achieved by students during each educational program; and
- (k) Documentation of another requirement that the EMS-TEI has established as part of the offered courses.
- (2) Failure of an EMS-TEI to maintain records required by the board shall result in disciplinary action against an EMS-TEI.
- (3) KBEMS shall require an EMS-TEI to submit a copy of the EMS-TEI's annual accreditation report if accreditation is necessary for licensure or certification of the students taking the EMS-TEI's offered course.
- (4) EMS-TEIs shall conduct an annual review and revision of all courses and programs to ensure the EMS-TEI has complied with necessary updates to courses, programs, and accepted educational standards.
- (5) An EMS-TEI shall document in writing the required annual review and updates resulting from the annual assessment.
- (6) Documentation of the annual review shall be in writing, signed by the owner or program coordinator, and maintained in the course or program file.
- (7) An EMS-TEI shall assure that all physical resources required by the curriculum, including classrooms, skill practice areas, notices of where to purchase or access textbooks, instructional aides, equipment, and supplies shall be:
  - (a) Available at each class session where skills are taught or practiced;
  - (b) Adequate in number to allow for practice by students enrolled; and
  - (c) In good working order and well-maintained.
- (8) An EMS-TEI shall maintain and protect the privacy of all records pertaining to the health and safety of patients, students, and faculty members that are obtained or developed through or as a result of participation in training and educational activities with the EMS-TEIs.
- (9) The EMS-TEI shall be responsible for knowing and following all federal and state laws and requirements established in 202 KAR Chapter 7 relevant to safeguarding privacy of records, including educational and health records.
- (10) The EMS-TEI shall develop and make available to all prospective students a clearly-defined admissions policy and procedure.
- (11) An EMS-TEI's admission policy shall include specific requirements for students to gain admission, maintain enrollment, and all academic requirements necessary to successfully complete the offered course or program. Admissions policies and procedures shall include at a minimum:
  - (a) Tuition rates and fees associated with the training and education program;
  - (b) Fees and other costs associated with remediation;
  - (c) A descriptive synopsis of the curriculum for each type of course taught;

- (d) Course educational objectives;
- (e) Classroom lecture and skills practice schedules;
- (f) Clinical or field rotation locations with tentative beginning and ending dates;
- (g) Participation requirements for each clinical or field rotation site; and
- (h) Citations to and language of prohibited actions pursuant to KRS Chapter 311A.050 that provide grounds for sanctions against or denial of individuals making application for certification or licensure by the board.
- (12) EMS-TEIs shall establish written policies that provide for:
  - (a) The creation and use of course or program advertising that accurately portrays the course or program content as offered by the EMS-TEI;
  - (b) A uniform process for filing, investigating, and resolving complaints or grievances by applicants, students, preceptor sites, patients, members of the general public, or faculty members;
  - (c) A procedure for a student to withdraw from a course and a clear statement of refund policies and the steps necessary for a student to obtain a refund of tuition or fees already paid;
  - (d) Faculty to develop examinations for each course offered;
  - (e) The establishment of and adherence to examination procedures and policies;
  - (f) The requirements for a student to take and pass examinations in courses the EMS-TEI offers; and
  - (g) Notification to all students and prospective students of their right to ask for and obtain the pass – fail rates of past students who have taken the National Registry Exam or other board approved certification test. The pass – fail rate shall be calculated for courses given within the last two (2) years.
- (13) An EMS-TEI shall assure each student, while participating in a clinical or field rotation, is clearly identified as a student and by first and last name. Identification shall be accomplished by use of:
  - (a) A nameplate;
  - (b) A uniform; or
  - (c) Other publicly apparent means.
- (14) EMS-TEIs shall include a chief administrative officer (CAO) or designee who shall:
  - (a) Administer and oversee the EMS-TEI;
  - (b) Assure the quality and credentials of the program coordinator, EMS educators, EMS educator adjuncts, and students accepted into the EMS-TEI's programs or courses;
  - (c) Assure the security of examination results and materials;
  - (d) Monitor the activities of the EMS-TEI's faculty and students; and
  - (e) Maintain records and documents and submit reports.
- (15) If applicable, an EMS-TEI shall have a Paramedic Course Coordinator for paramedic training and education courses. The Paramedic Course Coordinator shall maintain a Level III EMS Educator status in the Commonwealth of Kentucky.
- (16) A certified EMS-TEI shall maintain an ongoing level of competence, evidenced by a minimum pass rate of ~~fifty(50)~~ **sixty(60)** percent based upon a measurement of students who have taken the board-approved exam for the first time within the twenty-four (24) months immediately preceding the EMS-TEI's renewal date.
- (17) An EMS-TEI's competency shall also be demonstrated by compliance with KRS Chapter 311A and 202 KAR Chapter 7 and the EMS-TEI's process for remediating students who take but fail to pass the board-approved test.
- (18) If an EMS-TEI fails to meet an ongoing level of competence determined according to this section, the EMS-TEI shall be subject to a plan of correction mediated through the office of the board.
- (19) An EMS-TEI that cannot maintain an ongoing level of competence may be subject to discipline pursuant to KRS 311A.

Section 6. Disciplinary Action. (1) As certified entities under the board's jurisdiction, all EMS-TEIs shall be subject to the disciplinary procedures and sanctions established in KRS 311A.

(2) Discipline of an EMS-TEI as a certified entity shall not prevent the board from taking disciplinary action against a certified or licensed individual associated with the EMS-TEI at any



level of certification or licensure applicable.

Section 7. Reporting Requirements for EMS-TEI. (1) An EMS-TEI shall submit to KBEMS the documents required by subsection (2) of this section for all EMS courses that lead to licensure or certification by the board.

(2) An EMS-TEI shall submit the following documents to the board office:

- (a) Course Notification form; and
- (b) Educational Institution Course Roster.

(3) Upon submission of all documents required by subsection (2) of this section for courses that lead to licensure or certification, the office of the board shall assign a number or other identifier to the course.

(4) An EMS-TEI shall notify the board office thirty (30) days prior to the start of a course. Failure to notify KBEMS shall violate this section of this administrative regulation and may subject the EMS-TEI to disciplinary action under KRS 311A.

(5) A class shall not commence until the EMS-TEI has obtained an identification code and notified the board as required in this section.

(6) A course that does not meet all requirements of this administrative regulation shall not lead to certification or licensure for the EMS students enrolled in the course.

Section 8. Requirements For All Training and Education Courses. (1) All EMS training and education courses that lead to certification or licensure by KBEMS shall:

- (a) Comply with this administrative regulation;
- (b) Not commence until the EMS-TEI has filed all documents required pursuant to Section 7(2) of this administrative regulation;
- (c) Not begin until the EMS-TEI has paid all fees required pursuant to 202 KAR 7:030;
- (d) Use the National Emergency Medical Services Education Standards – Instructional Guidelines;
- (e) Teach students the EMS Scope of Practice Model;
- (f) Meet the course administrative and faculty requirements in this administrative regulation and as established by the board approved accrediting agency; and
- (g) Use lead instructors certified by KBEMS as EMS educators who are minimally certified or licensed at the level of the offered course.

(2) The EMS-TEI may use adjunct faculty for initial certification or licensure courses if the adjunct faculty:

- (a) Meets one (1) of the requirements established in Section 13 of this administrative regulation; and
- (b) Teach for no more than five (5) percent of the classroom education time for each EMS course without the supervision of the program coordinator or certified instructor present and available in the classroom.

(3) The EMS-TEI shall have additional skills educators for classroom sessions where skills are practiced. These sessions shall not proceed without the presence of:

- (a) A certified educator for the first ten (10) students; and
- (b) An additional educator or adjunct faculty for each one (1) to ten (10) additional students. Additional adjunct faculty used shall not be required to be certified as an EMS educator but shall be certified by the board as an EMS provider at or above the level for the course being taught and shall meet at least one (1) requirement established in Section 13 of this administrative regulation.

(4) The EMS-TEI shall have a medical director qualified pursuant to 202 KAR 7:801, who shall:

- (a) Be employed by or under written contract with the EMS-TEI to serve as the medical director of the program;
- (b) Be routinely available to the EMS-TEI to provide consultation regarding issues related to the training and education program;
- (c) Participate in the approval of the didactic clinical and evaluation material and student progress review;
- (d) Meets the accrediting agency standards, policies and guidelines;
- (e) Provide medical consultation and guidance to the course faculty; and

(f) Certifies the skills of all of the EMS-TEI's students who are enrolled in courses leading to certification or licensure.

(5) An EMS-TEI shall maintain a written contractual affiliation agreement or memorandum of agreement with each clinical rotation site that outlines, at a minimum, the responsibilities of each entity and reporting requirements for students involved in clinical and field training and education.

(6) An EMS-TEI shall provide faculty from the EMS-TEI training and education program, clinical coordinators, or designees under contract with the EMS-TEI to oversee student activity while in the clinical setting.

Section 9. Emergency Medical Responder Training and Education Course Requirements. Each Emergency Medical Responder (EMR) training and education course shall follow:

(1) All training and education requirements established in KRS Chapter 311A and 202 KAR 7:201; and

(2) The National Emergency Medical Services Education Standards – Instructional Guidelines for duration of course and individual class segments.

Section 10. Emergency Medical Technician Training and Education Course Requirements. (1) Each Emergency Medical Technician (EMT) training and education course shall:

- (a) Include all training and education requirements established in KRS Chapter 311A and 202 KAR 7:301; and
- (b) The National Emergency Medical Services Education Standards – Instructional Guidelines for duration of course and individual class segments.

(2) To be eligible for certification as EMTs, each student shall complete a clinical or field rotation that meets the requirements for EMT education as determined by this administrative regulation and the EMS Scope of Practice for an EMT student as approved by the accrediting agency's minimum requirements.

(3) The minimum requirements of clinical or field rotations for EMTs shall include minimally:

- (a) A clinical or field rotation consisting of at least twenty-four (24) hours conducted in a hospital emergency department, public health department, urgent treatment center, physician's office, licensed ambulance service, or other health care facility;
  - (b) Interviews and assessments of a minimum of ten (10) patients with at least five (5) interviews and assessments conducted in a pre-hospital ambulance service setting; and
  - (c) Recording patient history and completing assessment on a prehospital care report form for each of the ten (10) patients required in paragraph (b) of this subsection.
- (4) If a student fails to achieve a goal established for the EMT education program, the EMS-TEI CAO Officer or program director shall require the student to repeat the failed portion of a clinical or field rotation experience.

(5) If a student is required to repeat a portion of a clinical or field rotation experience, the CAO or program director shall have a written procedure for remediation that ensures the student shall be provided with adequate due process protections that include at a minimum:

- (a) Notification of allegations or academic issues;
  - (b) A right for the student to be heard on the subject of the allegations or academic issues; and
  - (c) A right for the student to appeal the decision of the EMS-TEI about the allegations or academic issues.
- (6) If additional time is required, the notification to the student shall be signed and dated by the student.

Section 11. Advanced-Emergency Medical Technician Training and Education Programs. (1) Advanced-Emergency Medical Technician (A-EMT) training and education course requirements. Each A-EMT training and education course shall:

- (a) Include all training and education as required pursuant to KRS Chapter 311A; and
- (b) Follow the National Emergency Medical Services Education Standards – Instructional Guidelines.

(2) To be eligible for certification as A-EMTs, a student shall complete a clinical or field rotation that meets the requirements for A-EMT education as determined by this administrative regulation

and the EMS Scope of Practice for an A-EMT.

(3) The minimum requirements of clinical and field rotations for A-EMTs shall include:

(a) Clinicals or field rotations that occur in a hospital emergency department, public health department, urgent treatment center, physician's office, licensed advanced life support ambulance service, or other advanced health care facility;

(b) Interviews and assessments of a minimum of thirty-five (35) patients, including at least fifteen (15) interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and

(c) Record of patient history and assessment on a prehospital care report form for each of the thirty-five (35) patients required in paragraph (b) of this subsection.

(4) If a student fails to achieve a goal established for the A-EMT education program, the EMS-TEI chief administrative officer or program director shall require the student to repeat the failed portion of a clinical or field rotation experience.

(5) If a student is required to repeat a portion of a clinical or field rotation experience, the CAO or program director shall have a written procedure for remediation that ensures the student shall be provided with adequate due process protections that include at a minimum:

(a) Notification of allegations or academic issues;

(b) A right for the student to be heard on the subject of the allegations or academic issues; and

(c) A right for the student to appeal the decision of the EMS-TEI about the allegations or academic issues.

(6) If the EMS-TEI requires the student to complete additional ride-time, the EMS-TEI shall give the student written notification for the student to sign and date.

Section 12. Paramedic Training and Education Programs. Paramedic training and education course requirements. (1) Each Paramedic training and education course shall:

(a) Include all training and education as required by this administrative regulation, KRS Chapter 311A, and any other Kentucky statutes that place mandates upon paramedic students; and

(b) The National Emergency Medical Services Education Standards – Instructional Guidelines.

(2) To be eligible for licensure as a paramedic, a student shall complete a clinical or field rotation that meets the requirements for paramedic education as determined by this administrative regulation and the EMS Scope of Practice for a Paramedic.

(3) The minimum requirements of clinical or field rotations for paramedics shall include:

(a) Clinicals or field rotations that shall be conducted in a hospital emergency department, public health department, urgent treatment center, physician's office, licensed advanced life support ambulance service, or other advanced health care facility;

(b) Interviews and assessments of a minimum of seventy-five (75) patients, including at least fifty (50) interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and

(c) Record of patient history and assessment on a prehospital care report form for each of the seventy-five (75) patients required in subsection (3)(b) of this section.

(4) If a student fails to achieve a goal established for the EMS education program, the EMS-TEI chief administrative officer or program director shall require the student to repeat the failed portion of a clinical or field rotation experience.

(5) If a student is required to repeat a portion of a clinical or field rotation experience, the CAO or program director shall have a written procedure for remediation that ensures the student shall be provided with adequate due process protections that include at a minimum:

(a) Notification of allegations or academic issues;

(b) A right for the student to be heard on the subject of the allegations or academic issues; and

(c) A right for the student to appeal the decision of the EMS-TEI about the allegations or academic issues.

(6) If additional time is required to be completed for remediation, the EMS-TEI shall provide written notification of the additional time required and shall obtain a dated signature from the stu-

dent.

Section 13. Continuing Education. (1) Training and education courses provided to individuals outside the roster of a licensed service and that fulfill the continuing education requirements necessary to recertify or renew a certification or licensure shall be provided by:

(a) An entity certified by KBEMS as an EMS-TEI;

(b) An agency or department having contractual agreements with a KBEMS certified EMS-TEI that is in good standing and not subject to disciplinary action;

(c) A KBEMS approved symposia, state, national, or international school;

(d) A KBEMS approved or nationally accredited on-line or distance education provider but which shall not provide more than fifty (50) percent of the total continuing education hours to fulfill the CE requirements for renewal pursuant to KRS Chapter 311A or 202 KAR Chapter 7; or

(e) A course that has been accredited by the board-approved accrediting agency for continuing education.

(2) Continuing education courses shall:

(a) Contain material relevant to the job specifications and professional development of EMS personnel; and

(b) Be conducted at an EMS level appropriate for the discipline of the participants.

Section 14. Continuing Education Instructor Requirements.

(1) The following persons shall be qualified to conduct continuing education courses for persons certified or licensed by KBEMS:

(a) A paramedic licensed by the board or licensed or certified in another state;

(b) A physician licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(c) A registered nurse licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(d) An EMS Educator certified in Kentucky; or

(e) An individual who is at least one (1) of the following:

1. Certified by a state or federal agency to teach or perform subject matter relevant to the National Emergency Medical Services Education Standards-Instructional Guidelines and EMS Scope of Practice for a prehospital discipline;

2. Certified by a nationally-recognized entity to provide EMS related training and education;

3. A presenter at a National or State Symposium accredited by an agency or other KBEMS approved entity; or

4. A presenter approved by an EMS medical director as uniquely qualified by experience or education; or

5. A presenter approved as being uniquely qualified by an emergency response agency's chief administrative officer.

(2) The EMS-TEI or other approved contractual department or agency providing continuing education shall be required to:

(a) Maintain a roster, objectives, and outline for every continuing education course taught on file for a period of seven (7) years beyond the end date of each EMS Course; and

(b) Maintain all documentation to have met the accreditation agency standards, policies, and guidelines established in this administrative regulation.

(3) If requested by the board, the EMS-TEI shall submit to KBEMS the required documents for EMS continuing education courses taught within the preceding seven (7) years that lead to re-certification or re-licensure by the KBEMS, including:

(a) Contractual agreements;

(b) The continuing education educator's curriculum vitae;

(c) A completed Educational Institution Course Roster; and

(d) Objectives and outline for each continuing education course.

Section 15. Pilot Programs. (1) A licensed EMS provider agency may apply to KBEMS for authorization to perform a pilot program.

(2) A pilot program shall involve specialized training and education as well as associated procedures not otherwise provided for in 202 KAR Chapter 7.

(3) A licensed EMS provider agency seeking authorization for

a pilot program shall submit a written request to the board.

(4) An authorized entity approved by the board to conduct a pilot program shall agree in writing:

(a) To submit periodic reports related to the progress of the pilot program; and

(b) To abide by the board-established requirements for the pilot program.

(5) An individual otherwise certified or licensed by the board who successfully completes an approved pilot program shall perform the procedures relevant to the training and education received in the pilot program subject to protocols established by the medical director for the pilot program.

(6) The board may establish pilot program limitations on:

(a) The geographic area or service location where the procedure may be performed; and

(b) The performance of the procedure subject to a:

1. Specific and defined event;

2. Disaster; or

3. Designated directive.

(7) The board may authorize the use of physicians or other medical professionals to supervise and monitor the training and education of students involved in a pilot program.

(8) The board may restrict or limit actions that involve the performance of an invasive procedure or the administration of medication subject to:

(a) Required physician or medical director oversight; or

(b) The use of protocols that have been submitted to the board for review and approved by the state medical advisor and the board.

Section 16. EMS Educators. (1) An EMS Educator may be certified at the following levels:

(a) Level I – EMR Educator, which certifies the individual to teach EMR courses or EMR continuing education;

(b) Level II – EMT Educator, which certifies the individual to teach EMT and EMR courses or EMT and EMR continuing education; or

(c) Level III – Advanced Educator, which certifies the individual to teach EMR, EMT, A-EMT, and paramedic courses or continuing education.

(d) Level IIIR - Registered nurses and physicians who are not currently certified as an EMT, A-EMT, or paramedic shall only be certified as Level III instructors who teach A-EMTs or paramedics.

(2) Depending on the level of certification sought, a applicant for certification as a Kentucky EMS educator shall:

(a) Already hold a certificate or license in Kentucky as an Emergency Medical Responder (EMR), an Emergency Medical Technician (EMT), an Advanced Emergency Medical Technician (A-EMT), or a paramedic;

(b) Not be issued a certificate as an EMS educator for a level of instruction higher than their EMS provider certification or license;

(c) Have successfully completed:

1. The National Association of EMS Educators Emergency Medical Services Education Standards – Instructional Guidelines for educating EMS educators course;

2. A KBEMS-approved EMS educator course that meets the objectives of the National Highway Traffic Safety Administration (NHTSA) and is designed to represent a common core for teaching knowledge and skills to assist the education of adult learners; or

3. A Bachelor's Degree or higher in education;

(d) Have been certified or licensed for a minimum of four (4) years as an EMS provider at the same level or at a higher level for which the applicant seeks to become an EMS educator;

(e) Provide documentation that two (2) years of the four (4) years' experience required in this section is experience providing care with an EMS organization that complies with the requirements of KRS Chapter 311A or 202 KAR Chapter 7.

(f) Provide documentation the applicant has assisted with a course that meets the following requirements:

1. The board has approved the course as leading to certification or licensure;

2. Assistance with the course has been under the supervision

of a certified EMS educator who attests using the board-approved Certified Educator form that the educator has served as a course coordinator or lead educator for at least three (3) separate courses and who has not been subject to disciplinary action or reprimand by the board pursuant to KRS Chapter 311A within the past thirty-six (36) months; and

3. The course in which the applicant will assist is at the same level of EMS educator the applicant is seeking;

(g) Provide evidence of completion of a board sponsored orientation program;

(h) Submit a completed EMS Responder Application and pay all established fees;

(3) If applying to become a Level I or II Educator:

(a) Be certified minimally as an EMT to teach EMTs or EMRs and minimally certified as an EMR to teach only EMRs;

(b) Submit documented proof that the applicant:

1. Completed a minimum of five (5) presentations meeting the objectives of the National Emergency Medical Services Education Standards-Instructional Guidelines and EMS Scope of Practice Model National education for EMT or EMR as applicable for level of certification;

2. Demonstrated skills from at least five (5) subjects meeting the objectives of the National Emergency Medical Services Education Standards-Instructional Guidelines and EMS Scope of Practice Model National education for EMT EMT or EMR as applicable for level of certification;

3. Completed all presentations and all skills demonstrations on different topics for a total of ten (10) separate topics; and

4. Attended a minimum of fifty (50) percent of clock hours of the course; and

(4) If applying to become a Level III Educator:

(a) Be certified as a paramedic or higher; and

(b) Present documented proof of instruction in a minimum of fifty (50) classroom clock hours in a minimum of five (5) different subject areas that shall include instruction in pharmacology, cardiac emergencies, and traumatic injuries, meeting the objectives of the National Emergency Medical Services Education Standards-Instructional Guidelines and EMS Scope of Practice Model for paramedic education.

(5) The expiration date of an EMS educator certification shall correspond to those established in KRS Chapter 311A and 202 KAR Chapter 7.

(6) Documented proof of the educator's experience shall be submitted on the Educator Practical Requirements form.

Section 17. Renewal of EMS Educator Certification. (1) An EMS educator shall be eligible to renew the EMS educator certification if the applicant for renewal:

(a) Has maintained state certification or licensure as a provider at a level equal to or greater than the level at which they are certified as an EMS educator;

(b) Has submitted to the board written evidence of completion of all training and education as required by KRS Chapter 311A;

(c) During the preceding two (2) years, has been actively engaged in instruction and obtained a minimum of fifty-two (52) contact hours that include at least eight (8) hours contact hours on topics related to methods of instruction (MOI). The eight (8) relevant to MOI:

1. May include a board-approved and required educator update; and

2. The chief administrative officer of the EMS-TEI employing the instructor shall provide proof of the courses or contact hours if requested to do so in an audit by the board;

(d) Is not subject to discipline pursuant to KRS Chapter 311A;

(e) Has paid fees required by 202 KAR 7:030; and

(f) Has submitted to the board a completed and signed EMS Responder Application.

(2) The EMS educator shall maintain all training and education documentation outlined in this administrative regulation for four (4) years from the date of completion.

(3) The KBEMS office may audit an EMS educator's continuing education and continuing education records.

Section 18. EMS Educator reinstatement. (1) An EMS Educa-

tor whose certification has lapsed for a period not exceeding five (5) years may reinstate his certificate. To reinstate a certificate, the EMS educator shall submit:

- (a) A completed EMS Responder Application;
- (b) Evidence of at least sixteen (16) hours of training in methodology of instruction (MOI);
- (c) Written evidence of completion of a board-sponsored EMS Educator orientation course; and
- (d) Payment of the reinstatement fee as established in 202 KAR 7:030.

(2) An EMS Educator whose certification has lapsed for a period exceeding five (5) years shall seek certification as an initial applicant.

Section 19. Transition for Currently Certified Educators. An educator certified after October 2012 shall be transitioned as follows:

- (1) Level I EMS instructors shall be certified as Level I educators;
- (2) Level II Instructors shall be certified as Level II Educators;
- (3) Currently certified Level III Instructors shall be certified as Level III educators;
- (4) Level I and Level II shall be certified as Level I and Level II educators; and
- (5) Level III instructors currently licensed as paramedics shall be certified as Level I, Level II, and Level III educators; and
- (6) Level III instructors currently licensed as RNs or physicians shall be certified as Level III educators.

Section 20. EMS Educator Reciprocity. A person certified as an EMS instructor in another state or US territory shall be eligible for Kentucky EMS instructor certification upon demonstrating:

- (1) Evidence of certification or licensure as an EMS provider for a minimum of four (4) years at the same level or at a higher level for which they are applying to be a Kentucky EMS educator;
- (2) Proof of four (4) years' educational experience in another state or territory;
- (3) Submission of a completed EMS Responder Application;
- (4) Evidence of at least sixteen (16) board-approved hours of training in methodology of instruction (MOI);
- (5) Written evidence of completion of a board-sponsored EMS Educator orientation course; and
- (6) Payment of the educator fee as established in 202 KAR 7:030.

Section 21. EMS Educator Temporary Certification. (1) An EMS educator applicant holding EMS educator certification or licensure from another state or US territory may be granted a temporary certification in Kentucky upon submission of the EMS Responder Application.

(2) A temporary card shall not be valid for more than one (1) year.

(3) At the end of one (1) year, an applicant for reciprocity who has not completed the requirements established in Section 18 of this administrative regulation shall not be eligible for an extension or renewal of the temporary certification period.

(4) An Applicant failing to meet the time limit for obtaining certification through reciprocity shall seek certification as a Kentucky EMS Educator by completing all requirements for initial certification.

Section 22. EMS Evaluator. (1) An applicant for certification as an EMS evaluator shall:

- (a) 1. Be currently certified as a Level I, Level II, or Level III EMS educator; or
- 2. Hold current unrestricted licensure in a state as a physician;
- (b) Have completed a board-approved evaluator training pro-

gram;

- (c) Have a minimum of two (2) years' patient care experience prior to serving as an evaluator;
- (d) Submit a completed EMS Responder Application; and
- (e) Have paid all fees required by 202 KAR 7:030.

(2) The certification period of an EMS evaluator shall be contemporaneous with the expiration date of a certificate or license issued by the board, the KBN or KBML, or the state that issues his or her license.

(3) An EMS evaluator shall be certified as:

- (a) Level I, which qualifies the evaluator to assess EMR candidates for certification;
- (b) Level II, which certifies the evaluator to assess EMT and EMR candidates for certification; or
- (c) Level III, which certifies the individual to evaluate paramedic, EMT, AEMT, and EMR candidates for certification or licensure. A licensed physician or registered nurse who is not also a licensed or certified EMS provider shall evaluate paramedics only. A person certified as an A-EMT may evaluate A-EMTs, EMTs, and EMRs.

(4) An Individual shall not be endorsed as an EMS evaluator at a level greater than the level at which certified or licensed as an EMS educator.

Section 23. Renewal of EMS Evaluator Endorsement. A person who holds an endorsement as an EMS evaluator shall be eligible to renew the EMS evaluator endorsement if the individual:

- (1) Maintains current state certification or licensure as a provider;
- (2) During the certification period, participates in a minimum of two (2) separate evaluations on two (2) separate dates or attends a board-sponsored evaluator class;
- (3) Is not subject to discipline pursuant to KRS Chapter 311A;
- (4) Submits to the board a completed EMS Responder Application; and
- (5) Pays all fees required by 202 KAR 7:030.

Section 24. Educator and Evaluator Oversight. KBEMS may conduct scheduled or, if part of an official investigation, unscheduled visits to an EMS educator's classroom or to an EMS evaluation site to verify compliance with KRS Chapter 311A and 202 KAR Chapter 7, instructional quality, and evaluative standards required in this administrative regulation.

Section 25. Incorporation by reference. (1) The following material is incorporated by reference:

- (a) "Training and Educational Institution (TEI)", KBEMS-E14, July 2012;
- (b) "Course Notification", KBEMS-E22, September 2012;
- (c) "Educational Institution Course Roster", KBEMS-E23, September 2012;
- (d) "National Emergency Medical Services Education Standards – Instructional Guidelines", National Highway Traffic Association, DOT HS 811 077A, January 2009;
- (e) "EMS Scope of Practice Model", National Highway Traffic Association, DOT HS 810 657, February 2007;
- (f) "EMS Responder Application", KBEMS-E1, September 2012;
- (g) "Certified Educator", KBEMS-E24, September 2012; and
- (h) "Educator Practical Requirements", KBEMS-E20, July 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Community and Technical College, Office for the Kentucky Board of Emergency Medical Services, 300 North Main Street, Versailles, Kentucky 40383, Monday through Friday, 8:30 a.m. to 4:30 p.m. (30 Ky.R. 167; Am. 935; 1233; 1495; eff. 11-19-2003; 38 Ky.R. 1770; 39 Ky.R. 40; 754; 952; eff. 10-17-2012.)

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY  
907 KAR 1:055E

This emergency administrative regulation is being promulgated to eliminate Medicaid payments to primary care centers in amounts that exceed those approved by the Centers for Medicare and Medicaid Services (CMS) and for which CMS will provide no federal matching funds. This action must be taken on an emergency basis to prevent a loss of federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor  
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Provider Operations  
(Emergency Amendment)

**907 KAR 1:055E. Payments for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural health clinic services.**

RELATES TO: KRS 205.560, 216B.010, 216B.105, 216B.130, 216B.990, 42 C.F.R. 413, 438.60, 491, Subpart A, 440.130, 440.230, 447.3251, 45 C.F.R. 74.27, 48 C.F.R. Part 31, 42 U.S.C. 1396a, b, d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1), 216B.042, 42 U.S.C. 1396a[–EO–2004–726]

EFFECTIVE: March 1, 2013

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) 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. 42 U.S.C. 1396a(aa) establishes requirements for federally-qualified health centers and rural health clinics]. This administrative regulation establishes the Department for Medicaid Services' reimbursement policies [provisions for reimbursement] for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural health clinic services.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Allowable costs" means costs that are incurred by a federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center [or clinic] that are reasonable in amount and proper and necessary for the efficient delivery of services.

(3) [(2)] "Audit" means an examination, which may be full or limited in scope, of a federally-qualified health center's, federally-qualified health center look-alike's, rural health clinic's, or primary care center's:

(a) [clinic's or center's] Financial transactions, accounts, and reports; and

(b) [as well as its] Compliance with applicable Medicare and Medicaid regulations, manual instructions, and directives. [(3) "Center" means a federally-qualified health center or a primary care center.]

(4) "Change in scope of service" means a change in the type, intensity, duration, or amount of service.

(5) "Clinical psychologist" is defined by 42 C.F.R. 410.71(d) ["Clinic" means a rural health clinic].

(6) "Department" means the Department for Medicaid Services or its designated agent.

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

(8) "Federally-qualified health center" or "FQHC" is defined in 42 C.F.R. 405.2401.

(9) "Federally-qualified health center look-alike" or "FQHC look-alike" means an entity that is currently approved by the United States Department of Health and Human Services, Health Resources and Services Administration to be a federally-qualified health center look-alike.

(10) [(8)] "Health care provider" means:

- (a) A licensed physician;
- (b) A licensed osteopathic physician;
- (c) A licensed podiatrist;
- (d) A licensed optometrist;
- (e) A licensed and certified advanced practice registered nurse [practitioner];

(f) A licensed dentist or oral surgeon;

(g) A [certified] physician assistant; [or]

(h) [For an FQHC:

4.] A licensed clinical social worker;

(i) A [or]

2. A licensed clinical psychologist; or

(j) For an FQHC or FQHC look-alike:

1. A resident in the presence of a teaching physician; or

2. A resident without the presence of a teaching physician if:

a. The services are furnished in an FQHC or FQHC look-alike in which the time spent by the resident in performing patient care is included in determining any intermediary payment to a hospital in accordance with 42 C.F.R. 413.75 through 413.83;

b. The resident furnishing the service without the presence of a teaching physician has completed more than six (6) months of an approved residency program;

c. The teaching physician:

(i) Does not direct the care of more than four (4) residents at any given time; and

(ii) Directs care from a proximity that constitutes immediate availability; and

d. The teaching physician:

(i) Has no other responsibilities at the time;

(ii) Has management responsibility for any recipient seen by the resident;

(iii) Ensures that the services furnished are appropriate;

(iv) Reviews with the resident during or immediately after each visit by a recipient, the recipient's medical history, physical examination, diagnosis, and record of tests or therapies; and

(v) Documents the extent of the teaching physician's participation in the review and direction of the services furnished to each recipient.

(11) [(9)] "Interim rate" means a reimbursement amount [fee] established by the department to pay an [a] FQHC, FQHC look-alike, RHC, or a PCC [primary care center] for covered services prior to the establishment of a PPS rate.

(12) "Licensed clinical social worker" means an individual who is currently licensed in accordance with KRS 335.100.

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

(14) "Medical Group Management Association Physician Compensation and Production Survey Report" means a report developed and owned by the Medical Group Management Association which:

(a) Highlights the critical relationship between physician salaries and productivity;

(b) Is used to align physician salaries and benefits with provider production; and

(c) Contains:

1. Performance ratios illustrating the relationship between compensation and production; and

2. Comprehensive and summary data tables that cover many

specialties.

(15)[(40)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(16)[(44)] "Medicare Economic Index" or "MEI" means the economic index referred to in 42 U.S.C. 1395u(b)(3)(L).

(17) "Parent facility" means a federally-qualified health center, federally-qualified health center look-alike, or primary care center that is:

(a) Licensed and operating with a unique Kentucky Medicaid program provider number;

(b) Operating under the same management as a satellite facility; and

(c) The original facility which existed prior to the existence of a satellite facility.

(18)[(42)] "PCC" or "primary care center" means an entity that is currently licensed as a PCC in accordance with [that has met the licensure requirements established in] 902 KAR 20:058.

(19)[(43)] "Percentage increase in the MEI" is defined in 42 U.S.C. 1395u(i)(3).

(20) "Physician assistant" is defined by KRS 311.840(3).

(21)[(44)] "PPS" means prospective payment system.

(22)[(45)] "Rate year" means, for the purposes of the MEI, the twelve (12) month period beginning July 1 of each year for which a rate is established for an FQHC, FQHC look-alike, RHC, or a PCC[a center or clinic] under the prospective payment system.

(23)[(46)] "Reasonable cost" means a cost as determined by the:

(a) Applicable Medicare cost reimbursement principles established[set forth] in 42 C.F.R. Part 413, 45 C.F.R. 74.27, and 48 C.F.R. Part 31; and

(b) Medical Group Management Association Physician Compensation and Production Survey Report for the applicable year and region.

(24) "Recipient" is defined by KRS 205.8451(9).

(25)[(47)] "RHC" or "rural health clinic" is defined in 42 C.F.R. 405.2401(b).

(26) "Satellite facility" means a federally-qualified health center, federally-qualified health center look-alike, or primary care center that:

(a) Is at a different location than the parent facility; and

(b) Operates under the same management as the parent facility.

(27) "Telehealth" means two (2)-way, real time interactive communication between a patient and a physician or practitioner located at a distant site for the purpose of improving a patient's health through the use of interactive telecommunication equipment that includes, at a minimum, audio and video equipment.

(28)[(48)] "Visit" means a face-to-face encounter or encounter which occurs via telehealth between a recipient or enrollee[patient] and a health care provider during which an[a] FQHC, FQHC look-alike, RHC, or PCC service is delivered.

Section 2. Provider Participation Requirements. (1) A participating FQHC, FQHC look-alike, RHC, PCC, satellite facility of an FQHC, satellite facility of an FQHC look-alike, or satellite facility of a PCC[center or clinic] shall be currently:

(a) Enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(b) Participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671.

(2)(a) To be initially enrolled with the department, an FQHC, FQHC look-alike, or RHC shall:

1. Enroll in accordance with 907 KAR 1:672; and

2. Submit proof of its certification by the United States Department of Health and Human Services, Health Resources and Services Administration as an FQHC, FQHC look-alike, or RHC.

(b) To remain enrolled and participating in the Kentucky Medicaid program, an FQHC, FQHC look-alike, or RHC shall:

1. Comply with the enrollment requirements established in 907 KAR 1:672;

2. Comply with the participation requirements established in 907 KAR 1:671; and

3. Upon recertification with the United States Department of

Health and Human Services, Health Resources and Services Administration as an FQHC, FQHC look-alike, or RHC, submit proof of its continued certification to the department upon obtaining recertification.

(c) The requirements established in paragraph (a) and (b) of this subsection shall apply to a satellite facility of an FQHC or FQHC look-alike.

(3)(a) An FQHC, FQHC look-alike, or PCC that operates multiple satellite facilities shall separately enroll each satellite facility with the department in accordance with 907 KAR 1:672.

(b) An FQHC, FQHC look-alike, or PCC that operates multiple satellite facilities shall be authorized to consolidate claims and cost report data of its satellite facilities.

(4) An FQHC, FQHC look-alike, or PCC shall not submit a claim for a service provided at a satellite facility if the satellite facility is not currently:

(a) Enrolled with the department in accordance with 907 KAR 1:672; and

(b) Participating with the department in accordance with 907 KAR 1:671.

(5) An FQHC, FQHC look-alike, RHC, or PCC that has been terminated from federal participation pursuant to 42 C.F.R. 405.2436 shall be terminated from Kentucky Medicaid program participation.

(6)[-

(2) An FQHC shall be enrolled as a primary care center.

(3) A participating:

(a) FQHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an FQHC;

(b) FQHC look-alike and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an FQHC look-alike;

(c) RHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an RHC; or

(d) PCC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of a PCC.

(7) An FQHC, FQHC look-alike, RHC, or PCC[center or clinic] and staff shall comply with all applicable federal, state, and local regulations concerning the administration and operation of a PCC, FQHC, or an RHC.

(4) A center or clinic performing laboratory services shall meet the requirements established in 907 KAR 1:028 and 907 KAR 1:575.

Section 3. Standard Reimbursement for an FQHC, FQHC look-alike, RHC, or PCC. (1)[For services provided on and after July 1, 2004,] The department shall reimburse:

(a) A PCC, FQHC, FQHC look-alike, or RHC an all-inclusive encounter rate per patient visit in accordance with a prospective payment system (PPS) as required by 42 U.S.C. 1396a(aa); or

(b) A satellite facility of an FQHC, FQHC look-alike, or PCC an all-inclusive encounter rate per patient visit in accordance with a prospective payment system (PPS) as required by 42 U.S.C. 1396a(aa).

(2) Except for drugs or pharmacy services, costs related to drugs or pharmacy services shall be excluded from the all-inclusive encounter rate per patient visit referenced in subsection (1) of this section.

(3)[-

(2) The department shall calculate a PPS[base] rate for:

(a) An existing center or clinic in accordance with Section 4 of this administrative regulation; or

(b) a new FQHC, FQHC look-alike, RHC, or PCC[center or clinic] in accordance with Section 4[5] of this administrative regulation.

(4)[(3)] The department shall adjust a PPS rate per visit:

(a)[By fifty (50) percent of the percentage increase in the MEI

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

applicable to primary care services on January 1, 2002;

(b) By the percentage increase in the MEI applicable to FQHC, FQHC look-alike, RHC, or PCC[primary care] services on July 1 of each year[beginning July 1, 2002]; and

(b)[(e)] In accordance with Section 7[6] of this administrative regulation:

1. Upon request and documentation by an FQHC, FQHC look-alike, RHC, or PCC[a center or clinic] that there has been a change in scope of services; or

2. Upon review and determination by the department that there has been a change in scope of services.

(5)[(4)] A rate established in accordance with this administrative regulation shall not be subject to an end of the year cost settlement.

Section 4.[Establishment of a PPS Base Rate for an Existing Provider.] (1) The department shall establish a PPS base rate to reimburse an existing PCC, FQHC, and RHC 100 percent of its average allowable cost of providing Medicaid-covered services during a center's or clinic's fiscal years 1999 and 2000. A center's or clinic's fiscal year that ends on January 31 shall be considered ending the prior year.

(2) A center or clinic shall complete MAP 100601 annually and submit it to the department by the last calendar day of the third month following the center's or clinic's fiscal year end.

(3) The department shall:

(a) Use a center's or clinic's desk reviewed or audited cost reports for fiscal years ending February 1999 through January 2000 and February 2000 through January 2001;

(b) Trend the cost from the second base year forward to July 1, 2001 by the percentage of increase as measured by the HCFA hospital market basket index; and

(c) Calculate the average cost by dividing the total cost associated with FQHC, PCC, and RHC services by the total visits associated with the FQHC, PCC, and RHC services.

(4) If a center or clinic has only one (1) full year of cost report data, the department shall calculate a PPS base rate using a single audited cost report.

(5) The department shall adjust a PPS base rate determined in accordance with this section to account for an increase or decrease in the scope of services provided during fiscal year 2001 in accordance with Section 6 of this administrative regulation.

(6) Until the establishment of a PPS base rate by the department, a center or clinic shall be paid for services at an interim rate.

(7) Except for a center that has been receiving an incentive payment, the interim rate shall be the rate on file on June 30, 2001.

(8) A center that has been receiving an incentive payment shall have an interim rate based upon the average costs of providing services for fiscal years 1999 and 2000. The average shall be calculated in accordance with this section using unaudited cost report data.

(9) A center shall not be eligible for an incentive payment for services provided on and after July 1, 2001.

(10)(a) A center or clinic shall have thirty (30) days from the date of notice by the department of its PPS rate to request an adjustment based on a change in scope of services; and

(b) The department shall have thirty (30) days to review the request prior to establishing a final PPS rate that shall be subject to appeal in accordance with Section 9 of this administrative regulation.

Section 5.] Establishment of a PPS Rate for a New FQHC, FQHC look-alike, RHC, or PCC[Base Rate for a New Provider].

(1)(a) The department shall establish a PPS[base] rate to reimburse a new PCC, FQHC, FQHC look-alike, or RHC 100 percent of its reasonable cost of providing Medicaid covered services during the FQHC, FQHC look-alike, or RHC's[a center's or clinic's] base year.

(b) Except for a time frame in which the department reimburses an FQHC, FQHC look-alike, RHC, or PCC an interim rate, the initial and subsequent final PPS rate established for an FQHC, FQHC look-alike, RHC, or PCC shall:

1. Be prospective; and

2. Not settled to cost.

(2)(a) The department shall determine the reasonable costs of

an FQHC, FQHC look-alike, RHC, or PCC based on the cost reported which contains twelve (12) full months of operating data most recently submitted to the department by the FQHC, FQHC look-alike, RHC, or PCC.

(b) The base rate referenced in subsection (1)(a) of this section shall be based on the reasonable cost determination made by the department pursuant to paragraph (a) of this subsection[(2) Reasonable costs shall be determined by the department based on a center's or clinic's cost report used by the department to establish the PPS rate].

(3)(a) Until an FQHC, FQHC look-alike, or RHC[a center or clinic] submits a Medicaid cost report containing twelve (12) full months of operating data for the facility's base[a fiscal] year, the department shall reimburse the FQHC, FQHC look-alike, or RHC[make payments to the center or clinic based on] an interim rate equal to the per diem rate established for the FQHC, FQHC look-alike, or RHC by Medicare.

(b) An FQHC, FQHC look-alike, or RHC shall provide the department with a copy of the Medicare rate letter for the rates in effect during the FQHC's, FQHC look-alike's, or RHC's interim period.

(c)1. The department shall adjust an interim rate for an FQHC, FQHC look-alike, or RHC based on the establishment of the final rate.

2. All claims submitted to the department and paid by the department based on the interim rate shall be adjusted to comport with the final rate.

(d)1. Until a PCC submits a Medicaid cost report containing twelve (12) full months of operating data for the facility's base year, the department shall reimburse the PCC an interim rate equal to the average PPS rate paid to PCCs in the same region in which the PCC is located.

2. The department shall adjust an interim rate for a PCC based on the establishment of the final rate.

3. All claims submitted to the department and paid by the department based on the interim rate shall be adjusted to comport with the final rate.

(4)(a) An FQHC, FQHC look-alike, RHC, or PCC shall submit an annual cost report to the department by the end of the fifth month following the end of the FQHC's, FQHC look-alike's, RHC's, or PCC's first full fiscal year.

(b) The department shall:

1. Review an annual cost report submitted by an FQHC, FQHC look-alike, RHC, or PCC within ninety (90) business days of receiving the cost report; and

2. Notify the FQHC, FQHC look-alike, RHC, or PCC of the:

a. Necessity of the FQHC, FQHC look-alike, RHC, or PCC to submit additional documentation if necessary;

b. Final rate established;

c. Appeal rights regarding the final rate; and

d. Estimated time for determining a final rate if a final rate is not established within ninety (90) days.

(c)1. If additional documentation is necessary to establish a final rate, the FQHC, FQHC look-alike, RHC, or PCC shall:

a. Provide the additional documentation to the department within thirty (30) days of the notification of need for additional documentation; or

b. Request an extension beyond thirty (30) days to provide the additional documentation.

2. The department shall grant no more than one (1) extension.

3. An extension shall not exceed thirty (30) days.

(d) If the department requests additional documentation from an FQHC, FQHC look-alike, RHC, or a PCC but does not receive additional documentation or an extension request within thirty (30) days, the department shall reimburse the FQHC, FQHC look-alike, RHC, or PCC based on the Medicaid physician fee schedule applied to physician services pursuant to 907 KAR 3:010 until:

1. The additional documentation has been received by the department; and

2. The department has established a final rate.

Section 5. Reimbursement for Services Provided to an Enrollee by a PCC That is Not an FQHC, FQHC Look-Alike, or RHC. (1) For a visit by an enrollee to a PCC that is not an FQHC, FQHC



## VOLUME 39, NUMBER 10 – APRIL 1, 2013

look-alike, or RHC, the PCC's reimbursement shall be the reimbursement established pursuant to an agreement between the PCC and the managed care organization with whom the enrollee is enrolled.

(2) The department shall not supplement the reimbursement referenced in subsection (1) of this section.

Section 6. Supplemental Reimbursement for FQHC Services, FQHC Look-Alike Services, and RHC Services. If a managed care organization's reimbursement to an FQHC, FQHC look-alike, or RHC for a visit by an enrollee to the FQHC, FQHC look-alike, or RHC is less than what the FQHC, FQHC look-alike, or RHC would receive pursuant to Sections 3 and 4 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

(1) Equals the difference between what the managed care organization reimbursed and what the reimbursement would have been if it been made in accordance with Sections 3 and 4 of this administrative regulation;

(2) Is in accordance with 42 U.S.C. 1396a(bb)(5)(A); and

(3) Ensures that total reimbursement does not exceed the federal upper payment limit in accordance with:

(a) 42 C.F.R. 447.304; and

(b) 42 C.F.R. 447.321[.];

(4) A new center or clinic shall submit a budget that sets forth:

(a) Estimates of Medicaid allowable costs to be incurred by the center or clinic during the initial reporting period of at least twelve (12) months; and

(b) The number of Medicaid visits a center or clinic expects to provide during the reporting period.

(5) An interim payment shall be based on an annual budgeted or projected average cost per visit that shall be subject to reconciliation after a Medicaid cost report with twelve (12) months of actual operating data has been received].

Section 7. Change in Scope and PPS Rate Adjustment[6. Adjustments to a PPS Rate].

(1) If an FQHC, FQHC look-alike, RHC, or PCC[a center or clinic] changes its scope of services after the base year, the department shall adjust the FQHC's, FQHC look-alike's, or RHC's[a center's or clinic's] PPS rate[by dividing a center's or clinic's total Medicaid costs by total Medicaid visits. A provider shall submit MAP 100501 to request a rate adjustment after a change in service].

(2) A change in scope of service shall be restricted to:

(a) Adding or deleting a covered service;

(b) Increasing or decreasing the intensity of a covered service;

or

(c) A statutory or regulatory change that materially impacts the costs or visits of an FQHC, FQHC look-alike, RHC, or PCC.

(3) The following individually shall not constitute a change in scope:

(a) A general increase or decrease in the costs of existing services;

(b) An expansion of office hours;

(c) An addition of a new site that provides the same Medicaid covered services;

(d) A wage increase;

(e) A renovation or other capital expenditure;

(f) A change in ownership; or

(g) An addition or deletion of a service provided by a non-licensed professional or specialist.

(4) An addition or deletion of a covered service shall be restricted to the addition or deletion of a licensed professional staff member who can perform a Medicaid covered service that is not currently being performed within the FQHC, FQHC look-alike, or RHC by a licensed professional employed or contracted by the facility.

(5) A change in intensity shall:

(a) Include a material change;

(b) Increase or decrease the existing PPS rate by at least five (5) percent; and

(c) Last at least twelve (12) months.

(6) The department shall consider a change in scope request

due to a statutory or regulatory change that materially impacts the costs of visits at an FQHC, FQHC look-alike, or RHC if:

(a) A government entity imposes a mandatory minimum wage increase and the increase was not included in the:

1. Calculation of the final PPS rate; or

2. Subsequently included in the MEI applied yearly; or

(b) A new licensure requirement or modification of an existing requirement by the state results in a change that affects all facilities within the class. A provider shall document that an increase or decrease in the cost of a visit occurred as a result of a licensure requirement or policy modification.

(7) A requested change in scope shall:

(a) Increase or decrease the existing PPS rate by at least five (5) percent; and

(b) Last at least twelve (12) months.

(8) For a change in scope that is effective during a base year for determining an FQHC's, FQHC look-alike's, or RHC's final PPS rate, the base year costs associated with the change in scope shall not be duplicated when determining the revised PPS rate due to the change in scope.

(9) The following documents shall be submitted to the department within six (6) months of the effective date of a change in scope:

(a) A narrative describing the change in scope;

(b) A projected cost report containing twelve (12) months of data for the interim rate change; and

(c) A completed MAP 100501, Prospective Payment System Rate Adjustment.

(10) The department shall:

(a) Review the documentation listed in subsection (9) of this section; and

(b) Notify the FQHC, FQHC look-alike, or RHC in writing of the approval or denial of the request for change in scope within ninety (90) business days.

(11)(a) If the department requests additional documentation to calculate the rate for a change in scope, the FQHC, FQHC look-alike, or RHC shall:

1. Provide the additional documentation to the department within thirty (30) days of the notification of need for additional documentation; or

2. Request an extension beyond thirty (30) days to provide the additional documentation.

(b)1. The department shall grant no more than one (1) extension.

2. An extension shall not exceed thirty (30) days.

Section 8. Regions. The following shall be the regions used to determine a PCC's regional location for the purpose of determining a new PCC's interim rate:

(1) Region one (1) shall be the region containing Ballard, Caldwell, Calloway, Carlisle, Crittenden, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, and McCracken Counties;

(2) Region two (2) shall be the region containing Christian, Daviess, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Ohio, Todd, Trigg, Union, and Webster Counties;

(3) Region three (3) shall be the region containing Breckinridge, Bullitt, Carroll, Grayson, Hardin, Henry, Jefferson, Larue, Marion, Meade, Nelson, Oldham, Shelby, Spencer, Trimble, and Washington Counties;

(4) Region four (4) shall be the region containing Adair, Allen, Barren, Butler, Casey, Clinton, Cumberland, Edmonson, Green, Hart, Logan, McCreary, Metcalfe, Monroe, Pulaski, Russell, Simpson, Taylor, Warren, and Wayne Counties;

(5) Region five (5) shall be the region containing Anderson, Bourbon, Boyle, Clark, Estill, Fayette, Franklin, Garrard, Harrison, Jackson, Jessamine, Lincoln, Madison, Mercer, Montgomery, Nicholas, Owen, Powell, Rockcastle, Scott, and Woodford Counties;

(6) Region six (6) shall be the region containing Boone, Campbell, Gallatin, Grant, Kenton, and Pendleton Counties;

(7) Region seven (7) shall be the region containing Bath, Boyd, Bracken, Carter, Elliott, Fleming, Greenup, Lawrence, Lewis, Mason, Menifee, Morgan, Robertson, and Rowan Counties; and

(8) Region eight (8) shall be the region containing Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Laurel, Lee, Leslie,



## VOLUME 39, NUMBER 10 – APRIL 1, 2013

Letcher, Magoffin, Martin, Owsley, Perry, Pike, Whitley, and Wolfe Counties] Total Medicaid costs shall be determined in accordance with the following:

(a) The Medicaid costs of existing services shall be determined by multiplying a center's or clinic's current Medicaid PPS rate by the number of Medicaid visits used to calculate the base Medicaid PPS rate; and

(b) The Medicaid costs of a new service shall be determined by:

1. Adding:

a. The projected annual direct cost of a new service as determined from a center's or clinic's budgeted report; and

b. The administrative cost of a new service which shall be equal to the ratio of administrative costs to direct costs determined from the base year cost reports multiplied by a center's or clinic's projected direct cost of a new service; and

2. Multiplying the sum derived in subparagraph 1 of this paragraph by a center's or clinic's projected Medicaid utilization percentage for the change in service.

(3) The amount determined in subsection (2)(a) of this section shall be added to the amount determined in subsection (2)(b) of this section.

(4) The amount determined in subsection (3) of this section shall be divided by total visits to derive a center's or clinic's new PPS rate.

(5) Total Medicaid visits shall include:

(a) The annual number of Medicaid visits used in the calculation of the PPS base rate; and

(b) The projected annual number of Medicaid visits for a new service.

(6) The department shall adjust the PPS rate determined under this section to a final rate upon completion of:

(a) A Medicaid comprehensive desk review of a center's or clinic's cost report;

(b) A Medicaid audit of a center's or clinic's cost report in accordance with 45 C.F.R. 74.27 and 48 C.F.R. Part 31; or

(c) A Medicare audit that has been reviewed and accepted by Medicaid of a center's or clinic's cost report].

Section 9.[7-] Limitations. (1) Except for a case in which a recipient or enrollee[patient], subsequent to the first encounter, suffers an illness or injury requiring additional diagnosis or treatment, an encounter with more than one (1) health care provider and multiple encounters with the same health care provider which take place on the same day and at a single location shall constitute a single visit.

(2) A vaccine available without charge to an[a] FQHC, FQHC look-alike, RHC, or PCC through the department's Vaccines for Children Program and the administration of the vaccine shall not be reported as a cost to the Medicaid Program.

Section 10.[8-] Out-of-State Providers. Reimbursement to an out-of-state FQHC, FQHC look-alike, or RHC shall be the rate on file with the FQHC's, FQHC look-alike's, or RHC's[their] state Medicaid agency.

Section 11.[9-] Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An[A] FQHC, FQHC look-alike, PCC, or RHC may appeal a department decision[decisions] as to the application of this administrative regulation as it impacts the facility's reimbursement rate in accordance with 907 KAR 1:671.

Section 12.[10-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP 100501, Prospective Payment System Rate Adjustment," November 2008 edition[November, 2001 edition]; and

(b) "Instructions for Completing the MAP 100501 Form", February 2013 edition["MAP 100601, Scope of Services Survey Base-line Documentation, November, 2001 edition"].

(2) This material may be inspected, copied, or obtained, sub-

ject 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: March 1, 2013

FILED WITH LRC: March 1, 2013 at 4 p.m.

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services (DMS) reimbursement policies for Medicaid covered services provided by a federally-qualified health center (FQHC), rural health clinic (RHC), or primary care center (PCC) that is not an FQHC, FQHC look-alike, or RHC. An FQHC or FQHC look-alike is a federally-recognized entity that serves a population that is medically underserved. An RHC is a federally-recognized entity that is designated or certified by the secretary of the Department of Health and Human Services as being located in an area that is a health professional shortage area or medically underserved area. A PCC is an entity whose licensure requirements are established by the Cabinet for Health and Family Services Office of Inspector General pursuant to 902 KAR 20:058 and are not federally-recognized as being equivalent to an FQHC.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the Department for Medicaid Services (DMS) reimbursement policies for Medicaid covered services provided by an FQHC, RHC, or PCC (that is not an FQHC, FQHC look-alike, or RHC.)

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by reimbursing for Medicaid covered services provided by an FQHC, RHC, or PCC in a manner which ensures the receipt of federal funding for the reimbursement.

(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 reimbursing for Medicaid covered services provided by an FQHC, RHC, or PCC in a manner which ensures the receipt of federal funding for the reimbursement.

(2) If 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 supplemental payments (in addition to payments that PCCs receive from managed care organizations) to PCCs for services provided to managed care organization enrollees. Additional amendments include elaborating on the enrollment/participation process and requirements; establishing that DMS will reimburse a new PCC an interim rate equal to the average rate to PCCs in the region in which the PCC is located (currently DMS pays an interim rate based on projected costs submitted to DMS by the PCC); elaborating on reimbursement requirements such as cost report requirements; clarifying policy; inserting criteria for what constitutes a change in scope; and eliminating obsolete statements.

(b) The necessity of the amendment to this administrative regulation: The primary amendment is necessary to prevent a loss of federal funding for services provided by primary care centers that are not federally qualified health centers, federally-qualified health center look-alikes, or rural health clinics. The Centers for Medicare and Medicaid Services (CMS) issued a letter to the Department for Medicaid Services "deferring" (declining to provide federal matching funds) for supplemental payments made by DMS to PCCs (that are not FQHCs) for the most recently finalized quarterly expenditure period (July 1, 2012 through September 30, 2012.) CMS stated that the PCCs to which DMS provides supple-

mental payments are being "improperly classified" as FQHCs, FQHC look-alikes, or RHCs as they have not been designated by the Health Resources and Services Administration (HRSA) as FQHCs or FQHC look-alikes nor have they been certified as RHCs. The supplemental payments represent payments DMS made to PCCs above what the PCCs were reimbursed by managed care organizations for services provided to managed care enrollees. DMS has been reimbursing PCCs the difference (on a per claim basis) between what DMS paid to PCCs prior to managed care implementation and what PCCs receive from managed care organizations. CMS indicates that the supplemental payments violate 42 U.S.C. 1396a(bb)(5)(A) and 42 C.F.R. 438.60 and that PCC reimbursement (as they are not FQHCs, FQHC look-alikes or RHCs) cannot be supplemented by DMS above what the PCCs receive from managed care organizations. As CMS will not provide federal matching funds for the supplemental payments, DMS is amending the regulation to protect Kentucky taxpayer funds from being used to offset the loss of federal funds and to ensure that DMS operates within the fiscal parameters established by the Kentucky General Assembly and Governor via the biennium budget (in accordance with the Kentucky Constitution.) The amendment to a PCC's interim rate is necessary due to some PCC's submitting extraordinarily high projected costs to DMS, for interim rate purposes, compared to what the actual costs experienced by the PCC proved to be over the first full year of costs. The amendment helps ensure that DMS pays a reasonable interim rate on the front end and minimizes the possibility of a PCC receiving an exorbitant amount (in contrast to actual costs) of reimbursement on the front end.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by preventing a loss of federal funds for reimbursement to PCCs, by protecting Kentucky taxpayer funds from being used to offset the loss of federal fund, and by ensuring that DMS operates within the fiscal parameters established by the Kentucky General Assembly and Governor via the biennium budget (in accordance with the Kentucky Constitution.)

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by preventing a loss of federal funds for reimbursement to PCCs, by protecting Kentucky taxpayer funds from being used to offset the loss of federal fund, and by ensuring that DMS operates within the fiscal parameters established by the Kentucky General Assembly and Governor via the biennium budget (in accordance with the Kentucky Constitution.)

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Centers for Medicare and Medicaid Services identified 107 primary care centers that do not qualify as FQHCs, FQHC look-alikes, or RHCs and to which DMS is to cease providing supplemental payments.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Any primary care center that is not a federally-qualified health center (FQHC) or FQHC look-alike and wishes to be reimbursed in the same manner as an FQHC or FQHC look-alike will have to apply to the United States Department of Health and Human Services (USDHHS), Health Resources and Services Administration (HRSA) and be designed by HRSA as an FQHC or FQHC look-alike. Similarly, any PCC that wishes to be reimbursed in the same manner as an RHC must complete the steps necessary to be federally certified as an RHC.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment, but any PCC who does not become an FQHC, FQHC look-alike, or RHC will no longer receive supplemental payments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). A PCC which applies and is ap-

proved by HRSA as an FQHC or FQHC look-alike or is certified as an RHC will benefit by receiving an enhanced reimbursement for services provided.

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

(a) Initially: The amendment is necessary to prevent DMS from losing \$8.7 million in federal taxpayer matching funds for supplemental payments to PCCs for the July 1, 2012 to September 30, 2012 quarter. The Centers for Medicare and Medicaid Services (CMS) has indicated it will no longer provide federal matching funds for supplemental payments to PCCs who are not FQHCs, FQHC look-alikes, or RHCs. DMS hopes to avoid any loss of federal funds but the amount lost depends partly on the adoption of the amendment.

(b) On a continuing basis: The amendment is necessary to prevent DMS from losing \$8.7 million in federal taxpayer matching funds for supplemental payments to PCCs for the July 1, 2012 to September 30, 2012 quarter. The Centers for Medicare and Medicaid Services (CMS) has indicated it will no longer provide federal matching funds for supplemental payments to PCCs who are not FQHCs, FQHC look-alikes, or RHCs. DMS hopes to avoid any loss of federal funds but the amount lost depends partly on the adoption of the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in the sense that primary care centers that are not an FQHC, FQHC look-alike, or RHC will not be reimbursed in the same manner as those entities as the Centers for Medicare and Medicaid Services (CMS) has stated that such payments violate federal law and regulation and are ineligible for federal matching funds.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(bb)(5)(A) and 42 C.F.R. 438.60 mandate the amendment.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(bb)(5)(A) only authorizes federally-qualified health centers (FQHCs), FQHC look-alikes, or RHCs to receive Medicaid reimbursement in addition to reimbursement they receive pursuant to a contract between the FQHC, FQHC look-alike, or RHC and a managed care organization. 42 C.F.R. 438.60 establishes that no Medicaid reimbursement may be made to a provider who is a provider with a managed care organization in addition to what the provider receives from the managed care organization except for delineated exceptions. Payments to PCCs who are not FQHCs, FQHC look-alikes, or RHCs do not qualify as any of the exceptions.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are 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? The Department for Medicaid Services will be affected by 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. 438.60 and this administrative regulation authorize the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS projects no revenue will initially be generated by the amendment to this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS projects no revenue will be generated in subsequent years by the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? The amendment is necessary to prevent DMS from losing \$8.7 million in federal matching taxpayer funds for supplemental payments to PCCs for the July 1, 2012 to September 30, 2012 quarter. The Centers for Medicare and Medicaid Services (CMS) has indicated it will no longer provide federal matching funds for supplemental payments to PCCs who are not FQHCs, FQHC look-alikes, or RHCs. DMS hopes to avoid any loss of federal funds but the amount lost depends partly on the adoption of the amendment.

(d) How much will it cost to administer this program for subsequent years? The amendment is necessary to prevent DMS from losing \$8.7 million in federal taxpayer matching funds for supplemental payments to PCCs for the July 1, 2012 to September 30, 2012 quarter. The Centers for Medicare and Medicaid Services (CMS) has indicated it will no longer provide federal matching funds for supplemental payments to PCCs who are not FQHCs, FQHC look-alikes, or RHCs. DMS hopes to avoid any loss of federal funds but the amount lost depends partly on the adoption of the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY**  
**907 KAR 1:056E**

This emergency administrative regulation is being promulgated to repeal two (2) obsolete administrative regulations - 907 KAR 1:418, Incorporation by reference of the Rural Health Clinic Services Manual, and 907 KAR 1:427, Incorporation by reference of the Primary Care Services Manual - and is being promulgated concurrently with another emergency administrative regulation - 907 KAR 1:055E, Payments for primary care center, federally-qualified health center, and rural health clinic services. 907 KAR 1:055E is being promulgated to eliminate Medicaid payments to primary care centers in amounts that exceed those approved by the Centers for Medicare and Medicaid Services (CMS) and for which CMS will not provide federal matching funds. 907 KAR 1:418 and 907 KAR 1:427 contain archaic policies on subjects that are now addressed in 907 KAR 1:054, Primary care center and federally-qualified health center services, and 907 KAR 1:055. As 907 KAR 1:055E must be promulgated on an emergency basis to prevent a loss of federal funds, this administrative regulation must be promulgated on an emergency basis to support 907 KAR 1:055E by eliminating any contradiction between 907 KAR 1:055E and the two (2) administrative regulations that are being repealed. This action must be

implemented on an emergency basis to eliminate the presence of contradictory policies and requirements among Kentucky Medicaid regulations and to prevent a loss of federal funds. This emergency administrative regulation shall not be replaced by an ordinary administrative regulation as this emergency administrative regulation repeals 907 KAR 1:418 and 907 KAR 1:427 leaving nothing to be repealed by an ordinary administrative regulation. No ordinary administrative regulation is being promulgated.

STEVEN L. BESHEAR, Governor  
AUDREY TAYSE HAYNES, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Commissioner's Office**  
**(Emergency Repealer)**

**907 KAR 1:056E. Repeal of 907 KAR 1:418 and 907 KAR 1:427.**

RELATES TO: 42 U.S.C. 1396a

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: March 1, 2013

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Kentucky 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, in accordance with KRS 13A.310(3)(c), repeals 907 KAR 1:418 and 907 KAR 1:427. 907 KAR 1:418 and 907 KAR 1:427 are being repealed because they contain archaic policies on subjects now addressed in 907 KAR 1:054 and 907 KAR 1:055. 907 KAR 1:055E is being concurrently promulgated to prevent a loss of federal funds by eliminating payments to primary care centers that exceed those approved by the Centers for Medicare and Medicaid Services (CMS) and for which CMS will not provide federal matching funds. As 907 KAR 1:055E must be promulgated on an emergency basis to prevent a loss of federal funds, this administrative regulation must be promulgated on an emergency basis to support 907 KAR 1:055E by eliminating any contradiction between 907 KAR 1:055E and the two (2) administrative regulations that are being repealed.

Section 1. The following administrative regulations are hereby repealed:

(1) 907 KAR 1:418, Incorporation by reference of the Rural Health Clinic Services Manual; and

(2) 907 KAR 1:427, Incorporation by reference of the Primary Care Services Manual.

LAWRENCE KISSNER, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 1, 2013

FILED WITH LRC: March 1, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 22, 2013 at 9:00 a.m. in the Cabinet for Health and Family Services, Office of the Ombudsman's Conference Room Located on the First Floor at 1E-B; 275 East Main Street; Frankfort, Kentucky; 40621. Individuals interested in attending this hearing shall notify this agency in writing by April 15, 2013, five (5) work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business April 30, 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, email [jill.brown@ky.gov](mailto:jill.brown@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in accordance with KRS 13A.310(3)(c), repeals 907 KAR 1:418 and 907 KAR 1:427.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to repeal 907 KAR 1:418 and 907 KAR 1:427. 907 KAR 1:418 and 907 KAR 1:427 are being repealed because they contain archaic policies on subjects now addressed in 907 KAR 1:054 and 907 KAR 1:055. 907 KAR 1:055E is being concurrently promulgated to prevent a loss of federal funds by eliminating payments to primary care centers that exceed those approved by the Centers for Medicare and Medicaid Services (CMS) and for which CMS will not provide federal matching funds. As 907 KAR 1:055E must be promulgated on an emergency basis to prevent a loss of federal funds, this administrative regulation must be promulgated on an emergency basis to support 907 KAR 1:055E by eliminating any contradiction between 907 KAR 1:055E and the two (2) administrative regulations that are being repealed.

(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 repealing obsolete or duplicate Medicaid program regulatory material as authorized by KRS 194A.030(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by repealing obsolete or duplicate Medicaid program regulatory material as authorized by KRS 194A.030(2).

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This repealer administrative regulation is not expected to affect individuals, businesses, organizations, or 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 or amendment. No action is required of regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). No benefit, other than the elimination of potentially confusing archaic administrative regulation material, is expected for regulated entities.

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

(a) Initially: The administrative regulation imposes no cost on

the Department for Medicaid Services.

(b) On a continuing basis: The administrative regulation imposes no cost on the Department for Medicaid Services.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement the 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 fee nor funding increase is necessary to implement the administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation neither establishes nor increases any fee.

(9) Tiering: Is tiering applied? Tiering is not applied as this is a repealer 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 for Medicaid Services will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Not applicable, this administrative regulation is being repealed. KRS 194A.030(2), 194A.050(1), 205.520(3) and 42 U.S.C. 1396a authorize the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no 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? This administrative regulation will generate no revenue for state or local government.

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no administrative cost on the Department for Medicaid Services.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no administrative cost on the Department for Medicaid Services.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET  
Kentucky Teachers' Retirement System  
(As Amended at ARRS, March 12, 2013)

102 KAR 1:230. Limitations on benefits.

RELATES TO: KRS 161.611, ~~161.611~~ 26 C.F.R. 1.415, ~~161.611~~ 26 U.S.C. 125, 132(f)(4), 402, 414, 415, 417, 457, 3401, 6041, 6051, 6052, ~~161.611~~ STATUTORY AUTHORITY: KRS 161.310 (1), 161.716, ~~161.611~~ 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 members of the retirement system. This administrative regulation establishes the limitations on benefits required by 26 U.S.C. 415.

Section 1. Definitions. (1) "415(b) limit" means the limitation on benefits established by 26 U.S.C. 415(b).

(2) "415(c) limit" means the limitation on annual additions established by 26 U.S.C. 415(c).

(3) "Annual benefit" means, for purposes of the 415(b) limit, a benefit payable annually in the form of a straight life annuity (without ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(n)) and to rollover contributions (as defined in 26 U.S.C. 415(b)(2)(A)). The "benefit attributable" is determined in accordance with 26 C.F.R. 1.415(b).

(4) "Defined benefit dollar ~~benefit~~ limitation" means \$160,000, as adjusted, effective January 1 each year, in the manner established by the Secretary of the United States Treasury pursuant to 26 U.S.C. 415(d), and payable in the form of a straight life annuity. A limitation as adjusted under 26 U.S.C. 415(d) applies to limitation years for which the adjustment applies.

(5) "Limitation year" means the calendar year.

(6) "Nonqualified service credit" means, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, permissive service credit other than that allowed with respect to:

(a) Service as an employee of the Government of the United States or any state, agency, or political subdivision thereof (other than military service or service for credit that was obtained as a result of a repayment described in 26 U.S.C. 415(k)(3);

(b) Service as an employee, other than as an employee described in paragraph (a) of this subsection, of an education organization described in 26 U.S.C. 170(b)(1)(A)(ii) that is a public, private, or sectarian school that provides elementary education or secondary education through grade twelve (12), or a comparable level of education as determined pursuant to the applicable law of the jurisdiction in which the service was performed;

(c) Service as an employee of an association of employees described in paragraph (a) of this subsection; or

(d) Military service, other than qualified military service pursuant to 26 U.S.C. 414(u), recognized by the retirement system.

Section 2. Adjustments and Limitations. (1) If the member has fewer than ten (10) years participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction.

(a) The numerator shall be the number of years (or part thereof) of participation in the plan, and the denominator shall be ten (10).

(b) The reduction established in this subsection shall not apply to preretirement death and disability benefits.

(2) If the benefit of a member begins prior to age sixty-two (62), and because the plan provides an immediately commencing

straight life annuity payable both at age sixty-two (62) and the age of benefit commencement, the defined benefit dollar limitation shall be applicable to the participant at the earlier age shall be an annual benefit payable in the form of a straight life annuity, beginning at the earlier age, that shall be the actuarial equivalent of the defined benefit dollar limitation applicable to the member at age sixty-two (62) (adjusted pursuant to subsection (1) of this section, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two (62) shall be determined as the lesser of paragraph (a) or (b) of this subsection~~the following (a) or (b)~~:

(a) The actuarial equivalent (at the earlier age) of the defined benefit dollar limitation (adjusted pursuant to~~under~~ subsection (1) of this section if necessary), with actuarial equivalence computed using a five (5) percent interest rate and the applicable mortality table for the annuity starting date as specified by the system actuary (and expressing the member's age in completed calendar months as of the annuity starting date); ~~or~~ and

(b) The actuarial equivalent (at the earlier age) of the defined benefit dollar limitation (adjusted pursuant to~~under~~ subsection (1) of this section if necessary) multiplied by a ratio of the annual amount of the immediately commencing straight life annuity pursuant to~~under~~ the plan at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity pursuant to~~under~~ the plan at age sixty-two (62), both determined without applying the 415(b) limit, computed using a five (5) percent interest rate and the applicable mortality table as specified by the system actuary.

1. Any decrease in the defined benefit dollar limitation determined in accordance with this subsection shall not reflect a mortality decrement if benefits are not forfeited upon the death of the member~~participant~~.

2. If any benefits are forfeited upon death, the full mortality decrement shall be taken into account.

(3) The reductions provided for in subsection (2) of this section~~this subsection~~ shall not apply to preretirement disability benefits or preretirement death benefits.

(4) If the benefit of a member~~participant~~ begins after the member~~participant~~ attains age sixty-five (65), and because the plan provides an immediately commencing straight life annuity payable both at age sixty-five (65) and the age of benefit commencement, the defined benefit dollar limitation shall be the lesser of paragraph (a) or (b) of this subsection~~the following (a) or (b)~~:

~~(a)~~ applicable to the member at the later age shall be the annual benefit payable in the form of a straight life annuity, beginning at the later age, that shall be actuarially equivalent to the defined benefit dollar limitation applicable to the participant at age sixty-five (65) (adjusted pursuant to subsection (1) of this section, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after sixty-five (65) shall be determined as follows:

~~(a)~~ The lesser of the actuarial equivalent (at the later age) of the defined benefit dollar limitation computed using the interest rate and mortality table specified by the system actuary; and

~~(b)~~ The actuarial equivalent (at the later age) of the defined benefit dollar limitation (adjusted pursuant to~~under~~ subsection (1) of this section if necessary), with actuarial equivalence computed using a five (5) percent interest rate assumption and the mortality table specified by the system actuary (and expressing the member's age based on completed calendar months as of the annuity starting date); ~~or~~ For these purposes, mortality between age sixty-five (65) and the age at which benefits commence shall be ignored~~]~~.

~~(b)~~ The defined benefit dollar limitation (adjusted pursuant to~~under~~ subsection (1) of this section if necessary), multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity pursuant to~~under~~ the plan at the

member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity pursuant to the plan at age sixty-five (65), both determined without applying the 415(b) limit. For this purpose, the adjusted immediately commencing straight life annuity pursuant to the plan at the member's annuity starting date shall be the annual amount of such annuity payable to the member, computed disregarding the member's accruals after age sixty-five (65) but including actuarial adjustments even if those actuarial adjustments are used to offset accruals, and the adjusted immediately commencing straight life annuity pursuant to the plan at age sixty-five (65) shall be the annual amount of the annuity that would be payable pursuant to the plan to a hypothetical member who is age sixty-five (65) and has the same accrued benefit as the member.

(5) If the benefit pursuant to the retirement system is other than an annual benefit ~~the form specified in Section 1(3) of this administrative regulation~~, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors established in 26 C.F.R. 1.415(b).

(6) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then subsection (5) of this section shall be applied by either reducing the section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount determined using the assumptions established in 26 C.F.R. 1.415(b)-1(c)(2)(ii) that takes into account the additional benefits pursuant to under the form of benefit as follows: (a) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) does not apply, a monthly benefit, the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced 415(b) limit applicable at the annuity starting date that is the "lesser of", if adjusted in accordance with the assumptions established in paragraph (a) or (b) of this subsection;

[a] following assumptions:—1.] The annual amount of the straight life annuity (if any) payable to the member pursuant to the retirement system commencing at the same annuity starting date as the form of benefit to the member; or

[b] 1.2.] The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five (5) percent interest assumption (or the applicable statutory interest assumption) and:

2.a. For limitation years prior to January 1, 2009, the applicable mortality tables described in 26 C.F.R. 1.417(e)-1(d)(2); and

b. For limitation years after December 31, 2008, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B).

[7] (8)] Effective on and after January 1, 2009, for purposes of applying the 415(b) limit to a member: the following shall apply:

(a) A member's applicable 415(b) limit shall be applied to the member's annual benefit in the member's first limitation year without regard to any automatic cost of living adjustments; and

(b) 1. To the extent that the member's annual benefit equals or exceeds the 415(b) limit, the member shall no longer be eligible for cost of living increases until the benefit plus the accumulated increases are less than the 415(b) limit;

2. In any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested pursuant to the then applicable 415(b) limit including any adjustment to the 26 U.S.C. 415(b)(1)(A) dollar limit pursuant to 26 U.S.C. 415(d) and 26 C.F.R. 1.415(b).

Section 3. Participation in Other Qualified Plans: Aggregation of Limits. (1) The 415(b) limit with respect to any member who at any time has ever been a member in any other defined benefit plan as defined in 26 U.S.C. 414(j) maintained by the member's employer in a retirement system shall apply as if the total benefits payable from all these defined benefit plans in which the member has been a member were payable from one (1) plan.

(2) The 415(c) limit with respect to any member who at any time has ever been a member in any other defined contribution plan as defined in 26 U.S.C. 414(i) maintained by the member's employer in a retirement system shall apply as if the total annual

additions under all these defined contribution plans in which the member has been a member were payable from one (1) plan.

Section 4. Effect on Members. (1) Benefit increases resulting from the increase in the limitations of 26 U.S.C. 415(b) shall be provided to all current and former members, with benefits limited by 26 U.S.C. 415(b), who have an accrued benefit pursuant to the plan immediately prior to the effective date.

(2) These benefit increases shall not be provided to current and former members who have an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations pursuant to 26 U.S.C. 415(b).

Section 5. Benefits Not Taken into Account for 415(b) Limit. The following benefits established in this section shall not be taken into account in applying these limits:

(1) Any ancillary benefit that is not directly related to retirement income benefits; and

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity.];

Section 6. 415(c) Limit. Except as provided in Section 7 of this administrative ~~administration~~ regulation, after-tax member contributions or other annual additions with respect to a member shall not exceed the lesser of \$40,000 (as adjusted pursuant to 26 U.S.C. 415(d)) or 100 percent of the member's compensation. (1)(a) Annual additions shall be defined to mean the sum (for any year) of employer contributions to a defined contribution plan, post-tax member contributions, and forfeitures credited to a member's individual account.

(b) Member contributions shall be determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying the 415(c) limits only, the definition of compensation, if applicable, shall be compensation actually paid or made available during a limitation year, except as noted in subsection (3) of this section ~~below~~ and as permitted by 26 C.F.R. 1.415(c)-2, except, that member contributions picked up pursuant to 26 U.S.C. 414(h), shall not be treated as compensation.

(3) Unless another description of compensation that is permitted by 26 C.F.R. 1.415(c)-2 is specified by a retirement system, compensation shall be described as wages within the meaning of 26 U.S.C. 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement pursuant to 26 U.S.C. 6041(d), 6051(a)(3) and 6052 and shall be determined without regard to any rules pursuant to 26 U.S.C. 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in 26 U.S.C. 3401(a)(2)).

(a) 1. For limitation years beginning on and after January 1, 1998, compensation shall also include amounts that would otherwise be included in compensation but for an election pursuant to 26 U.S.C. 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

2. For limitation years beginning on and after January 1, 2001, compensation shall also include any elective amounts that are not includible in the gross income of the employee by reason of 26 U.S.C. 132(f)(4).

(b) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of two and one-half (2 1/2) months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

1. The payment is:
  - a. Regular compensation for services during the employee's regular working hours;
  - b. Compensation for services outside the employee's regular working hours, such as overtime or shift differential; or
  - c. Commissions, bonuses, or other similar payments; and
2. Absent a severance from employment, the payments would have been paid to the employee while the employee continued in

VOLUME 39, NUMBER 10 – APRIL 1, 2013

employment with unused accrued bona fide sick, vacation, or other leave that the employee would have been able to use if employment had continued.

(c) Back pay, within the meaning of 26 C.F.R. 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included pursuant to this description.

(d) If the annual additions for any member for a plan year exceed the ~~415(c) limit~~limitation under 26 U.S.C. 415(c), the Internal Revenue Code, the excess annual addition shall be corrected as permitted pursuant to~~under~~ the Employee Plans Compliance Resolution System (or similar IRS correction program).

Section 7. Service Purchases Pursuant to 26 U.S.C. [under Section] 415(n). (1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one (1) or more contributions to purchase permissive service credit in~~under~~ a retirement system, then the requirements of 26 U.S.C. 415(n) shall be treated as met only if:

(a) The requirements of 26 U.S.C. 415(b) are met, determined by treating the accrued benefit derived from all these contributions as an annual benefit for purposes of the 415(b) limit; or

(b) The requirements of 26 U.S.C. 415(c) are met, determined by treating all these contributions as annual additions for purposes of the 415(c) limit.

(2) For purposes of applying this section, a retirement system shall not fail to meet the reduced limit pursuant to~~under~~ 26 U.S.C. 415(b)(2)(C) solely by reason of this section and shall not fail to meet the percentage limitation pursuant to 26 U.S.C. 415(c)(1)(B) solely by reason of this section.

(3)(a) Permissive service credit shall consist of service credit:

1. Recognized by a retirement system for purposes of calculating a member's benefit in~~under~~ a retirement system;

2. The member has not received in~~under~~ a retirement system; and

3. That the member may receive only by making a voluntary additional contribution, in an amount determined pursuant to~~under~~ a retirement system, which does not exceed the amount necessary to fund the benefit attributable to the service credit.

(b) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term may include service credit for periods for which there is no performance of service, and, notwithstanding paragraph (a)2 of this subsection, may include service credited in order to provide an increased benefit for service credit that a member is receiving in~~under~~ a retirement system.

(4) The retirement system shall fail to meet the requirements of this section if:

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this subparagraph; or

(b) Any nonqualified service credit is taken into account pursuant to this section before the member has at least five (5) years of participation in~~under~~ a retirement system.

(5) In the case of service described in Section 1(7)(a), (b), or (c) of this administrative regulation, the service shall be nonqualified service if recognition of the service would cause a member to receive a retirement benefit for the same service from~~under~~ more than one (1) plan.

(6) In the case of a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 26 U.S.C. 457(e)(17)(A) applies, without regard to if~~whether~~ the transfer is made between plans maintained by the same employer:

(a) The limitations of subsection (4) of this section shall not apply in determining if~~whether~~ the transfer is for the purchase of permissive service credit; and

(b) The distribution rules applicable pursuant to~~under~~ federal law to a retirement system shall apply to these amounts and any benefits attributable to these amounts.

(7)(a) For an eligible member, the 415(c) limit shall not be applied to reduce the amount of permissive service credit that may be purchased to an amount less than the amount that was allowed to be purchased pursuant to~~under~~ the terms of the retirement

system as in effect on August 5, 1997.

(b) For purposes of this subsection, an eligible member shall be an individual who first became a member in the retirement system before January 1, 1998.

Section 8. Modification of Contributions for 26 U.S.C. 415(c) and 415(n) Purposes. The retirement system may modify a request by a member to make a contribution to a retirement system if the amount of the contribution would exceed the limits established~~provided~~ in 26 U.S.C. 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the retirement system may establish a periodic payment plan for the member to avoid a contribution in excess of the limits established in 26 U.S.C. 415(c) or 415(n).

(2) If payment pursuant to section (1) of this subsection shall not avoid a contribution in excess of the limits established in 26 U.S.C. 415(c) or 415(n), the retirement system shall~~may~~ either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

Section 9. Repayments of Cashouts. Any repayment of contributions, including interest thereon, to the retirement system with respect to an amount previously refunded upon a forfeiture of service credit under the retirement system or another governmental plan maintained by the Commonwealth or a local government within the Commonwealth shall not be taken into account for purposes of the 415(b) or (c) limits.

DR. TOM SHELTON, Chairperson

APPROVED BY AGENCY: December 17, 2012

FILED WITH LRC: January 14, 2013 at noon

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) 848-8500, fax (502) 573-0199.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Medical Licensure  
(As Amended at Senate and House Standing  
Committees on Judiciary, March 4, 2013)**

**201 KAR 9:081. Disciplinary proceedings.**

RELATES TO: 218A.205, KRS 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 218A.205(3)(c), (d), (e); 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of licensees. KRS 311.595 and 311.597 authorize disciplinary action against licensees for specified offenses. KRS 218A.205(3)(c), (d), and (e) requires the board to promulgate an administrative regulation establishing procedures for disciplinary action against a licensee empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the administrative regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. [The purpose of] This administrative regulation establishes/is to set forth the procedures to be followed in handling formal and informal disciplinary proceedings before the board [or before any committee to the board], to conduct~~such that~~ the proceedings [will be conducted] with due regard for the rights and privileges of all affected parties.

Section 1. Definitions. (1) "Act" means the Kentucky Medical and Osteopathic Practice Act, KRS 311.550 to 311.620.

(2) "Board" is defined by KRS 311.550(1).

(3) "Charge" is defined by KRS 311.550(14).

(4) "Complaint" is defined by KRS 311.550(15).

(5) "Executive director" is defined by KRS 311.550(4).

(6) "General counsel" is defined by KRS 311.550(2).

(7) "Grievance" is defined by KRS 311.550(13).



(8) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any complaint or show cause order.

(9) "Relating to a controlled substance" means any conviction or plea to a criminal charge, regardless of adjudication or the title of the offense named in the plea or judgment of conviction, that is determined from all available facts to have been based upon or resulted from, in whole or part, an allegation of conduct involving the improper, inappropriate, or illegal use, possession, transfer, prescribing, or dispensing of a controlled substance.

(10) "Show cause order" means an order issued pursuant to KRS 311.572["Executive director" means the executive director of the board or any assistant executive directors appointed by the board.

(2) "General counsel" means the general counsel of the board or any assistant general counsel appointed by the board.

(3) "Board" means the Kentucky Board of Medical Licensure or its inquiry or hearing panels.

(4) "Grievance" means any allegation in whatever form alleging misconduct by a physician.

(5) "Charge" means a specific allegation contained in any document issued by the board or its inquiry or hearing panels alleging a violation of a specified provision of the Kentucky Medical and Osteopathic Practice Act.

(6) "Complaint" means a formal administrative pleading authorized by the inquiry panel that sets forth charges against a physician and commences a formal disciplinary proceeding.

(7) "Show cause order" means an order directing the named physician to show cause why the board should or should not take a specified action based on specified information which the order alleges to be true.

(8) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any complaint or show cause order.

(9) "Informal proceedings" means proceedings instituted at any stage of the disciplinary process with the intent of reaching an informal dispensation of any matter without further recourse to formal disciplinary procedures.

(10) "Act" means the Kentucky Medical and Osteopathic Practice Act].

Section 2. Reception of Grievances; Investigations. (1)(a) A grievance[Grievances] may be submitted by any individual, organization, or entity.

(b)1. The board shall provide a copy of the Information on Filing a Grievance, the Consumer's Guide to the KBML, the Grievance Form, and the Waiver of Privilege, Agreement to Release Records to a party who wants to register a grievance against a physician.

2. Each grievance shall be filed on the Grievance Form; and

a. Include the name and address of the party filing the grievance; or

b. Be filed anonymously, subject to paragraph (d) of this subsection[retain a written form upon which grievances may be made and any party submitting a grievance may be required to complete the form and required to include the party's name and address unless the grievance is submitted anonymously].

(c) A board member or employee[members or employees] may initiate a grievance [simply] by providing a written memorandum to the executive director.

(d) If the board receives an anonymous grievance, an investigation shall[will only] be conducted if the grievance is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the grievance is meritorious. [and may also be required to give their affidavit acknowledging the truth and veracity to the best of their knowledge and belief of the information contained in the grievance.]

(2)(a) The board shall initiate each investigation pertaining to prescribing or dispensing of a controlled substance[substances] within seventy-two (72) hours of the date of receipt of the grievance.

(b) Except as provided by subsection (1)(d) of this section, each grievance[all grievances] shall be investigated as necessary and as promptly as possible, and presented to the inquiry panel for review.

(c) An investigation[Investigations] pertaining to prescribing or dispensing of a controlled substance[substances] shall be presented to the inquiry panel within 120 days of the date of receipt of the grievance unless the circumstances of a particular grievance make it impossible to timely present the grievance to the inquiry panel.

(d)1. The executive director may hold an investigation pertaining to prescribing or dispensing of a controlled substance[substances] in abeyance for a reasonable period of time in order to permit a law enforcement agency to perform or complete essential investigative tasks, following a request by the requesting law enforcement agency.

2. If[In each instance when] an investigation pertaining to prescribing or dispensing of a controlled substance[substances] is not presented to the inquiry panel within 120 days of the date of receipt of the grievance, the investigative report shall[will] plainly state the circumstances of that particular grievance or investigation that made timely presentation to the inquiry panel impossible.

(e) The inquiry panel or[and] executive director shall have the authority to direct any investigation and shall possess any and all powers possessed by the board in regard to investigations as provided by KRS 311.591 and 311.605.

(f) The inquiry panel shall further be empowered to request the attendance of any person at any meeting of the inquiry panel in regard to the investigation of any grievance or consideration of any disciplinary matter.

(g) The failure, without good cause, of any physician licensed to practice medicine or osteopathy by the board to appear before the inquiry panel when requested shall be considered unprofessional conduct in violation of KRS 311.595(9).

(3) The inquiry panel shall be empowered to request compliance with the reporting requirements of KRS 311.605 or[ ] 311.606 and may pursue an investigation[investigations], on its own initiative, in regard to an act[acts] of noncompliance or any other perceived violation of the Act.

Section 3. Reports and Recommendations; Petitions. (1) If[When in the opinion of] the inquiry panel determines that a grievance warrants the issuance of a complaint against a physician, the inquiry panel shall cause a complaint to be prepared.

(2) If the panel chair determines that[When in the opinion of the executive director] a grievance warrants the issuance of a complaint against a physician and circumstances do not allow the timely presentation of the grievance to the inquiry panel, the panel chair[executive director] shall cause a complaint to be prepared.

(3) If[When in the opinion of the executive director or] the inquiry panel determines that a disciplinary matter warrants the issuance of a show cause order against a physician, the [executive director or the] inquiry panel shall cause a proposed order to be prepared.

(4) The board[on its own initiative,] may issue a show cause order against a physician in regard to any application for licensure, obtaining, retaining, or reobtaining licensure. [(5) Nothing in this subsection shall be construed to limit the board's power to deny a license to any applicant without a prior hearing upon a finding that the applicant has violated any provision of the Act.]

Section 4. Complaints. [(4)] The complaint issued by an inquiry panel shall;

(1) Be signed and dated;

(2)[The complaint shall] Be styled in regard to the matter of the license to practice in the Commonwealth of Kentucky held by the named physician and [shall be] designated with an appropriate case number; and

(3)[(2) The complaint shall] Set forth;



(a) The board's jurisdiction in regard to the subject matter of the complaint; and

(b)[shall further set forth,] In numerical paragraphs, sufficient information to apprise the named physician of the general nature of the charges.

Section 5. Show Cause Orders. ~~[(1)]~~ The show cause order shall:

(1) Be signed and dated by an officer of the board;

(2)[and shall be dated. The show cause order shall] Be styled in regard to the license, application for license, or application for renewal, registration, or reregistration of a license to practice in the Commonwealth of Kentucky held by or submitted by the named physician, appropriately, and ~~[shall be]~~ designated with an appropriate order number;

(3)[. (2) The show cause order shall] Set forth;

(a) The board's jurisdiction in regard to the subject matter of the order; and

(b)[shall further set forth,] In numerical paragraphs, the information which the board accepts to be true and the statutory basis for the board's finding that grounds exist for the discipline of the named physician's license; and

(4)[. (3) The show cause order shall] Direct the named physician to show cause why disciplinary action should not be taken in view of the matters expressed in the order.

Section 6. Orders to Respond. Upon issuance of a complaint, the inquiry panel shall notify[issue an order directing] the charged physician that:

(1) A response is due[to respond] within thirty (30) days after receiving notice of the complaint; [.] and

(2)[informing the physician that] Failure to respond within that time period may be taken by the board as an admission of the charges. ~~[Section 7. Orders of Temporary Restriction. An order temporarily suspending, limiting or restricting the license held by the named physician shall set forth the grounds which the inquiry panel believes support a finding that sufficient reasonable cause exists to believe that the continued unaffected practice by the named physician would constitute a danger to the health, welfare and safety of the physician's patients or of the general public.]~~

Section 7. [8.] Notice and Service of Process. Each notice shall be issued as required by KRS 13B.050. ~~[(1) Any notice required by the Act or this administrative regulation shall be in writing, dated and signed by the appropriate person.~~

(2) Service of notice and other process shall be made by hand-delivery or delivery by certified mail to the physician's last known address of which the board has record or by such service on the named physician's attorney of record. Failure of the named physician to receive actual notice after execution of the prescribed service shall not prejudice the board from pursuing proceedings that result in the denial or discipline of the named physician's license. ~~[Section 9. Hearings Pursuant to Order Temporarily Suspending, Limiting or Restricting a License. (1) A physician whose license has been temporarily suspended, limited or restricted shall, upon written request, be accorded hearing on the board's order.~~

(2) Any findings of fact or conclusions of law rendered by the hearing officer pursuant to a hearing on an order of temporary discipline shall not be binding upon the hearing panel in its ultimate determination regarding the charges contained in the complaint, nor shall the hearing officer thereafter be prejudiced from presiding at the hearing on the complaint.

(3) At the hearing on the order of temporary discipline, the hearing officer may entertain any motion timely submitted in regard to any matter concerning the disciplinary case, provided, however, that any orders issued pursuant to such motions shall not be considered appealable.

(4) Either party to the hearing on the order of temporary discipline may petition the hearing panel to review the order of the hearing officer either sustaining, modifying or withdrawing the inquiry panel's order by filing a written petition delineating those aspects of the hearing officer's determination with which the party takes exception and requesting the hearing panel to review the hearing

officer's determination. The hearing panel may grant or deny review in its discretion.

~~(5) Nothing in this section shall be construed to limit either party's right to appeal an order sustaining, modifying or withdrawing an order of temporary discipline to the circuit court of the county in which the board's offices are located as provided by statute. However, the filing of an appeal shall not prejudice the board's jurisdiction to continue the proceeding in regard to the charges contained in the complaint.]~~

Section 8. [40.] Proceedings Pursuant to the Issuance of a Complaint or Show Cause Order. (1) Appointment of hearing officer. The board shall appoint a hearing officer in accordance with KRS 13B.030 and 13B.040 ~~[who is empowered to preside at any and all proceedings, to rule upon all motions and objections, to prepare and submit proposed findings of fact, conclusions of law and to perform any other act necessary to the proper conduct of the proceedings].~~

(2) Appointment of the prosecuting attorney. The board's general counsel or assistant general counsel shall act as the prosecuting attorney in regard to any disciplinary proceeding, unless the board appoints a special prosecuting attorney ~~[provided, however, that the board may appoint special prosecuting attorneys in its discretion]~~. The prosecuting attorney shall not participate in any deliberations of the board pursuant to the issuance of a complaint, show cause order, or order of temporary discipline.

(3) Appointment of advisory counsel. The board may appoint a representative of the Attorney General's office, the board's general counsel, or other attorney to act as advisory counsel to the board in regard to any deliberations of the board pursuant to the issuance of a complaint, show cause order, or order of temporary discipline.

(4) The provisions of KRS Chapter 13B shall govern the conduct of each proceeding ~~[Form of pleadings; service. Pleadings may be in any neat form provided that all pleadings must be dated and signed by the offering party. The original of all pleadings must be filed with the executive director for entry into the official record and copies must be served on the hearing officer, the opposing party and any other person who might be designated by the hearing officer.]~~

(5) Prehearing conferences. Upon motion of either party or upon his or her own initiative, the hearing officer may order that a prehearing conference be held. The prehearing conference may be the forum for consideration of any matter properly before the hearing officer including all motions, discovery, stipulations, identification of issues, dates of future proceedings and objections.

(6) Discovery. Either party may at any time after the issuance of a complaint or show cause order move the hearing officer to order that discovery from the other party be allowed by any of the following methods:

(a) Oral deposition, provided, however, that either party shall have the right to move the hearing officer to order that the deposition be entered into the record in lieu of further testimony by the witness;

(b) Request for a more definite statement;

(c) Request for production of names of witnesses, documents and other demonstrative evidence; and

(d) Request for a brief synopsis of the testimony expected to be given by any expert witness.

The hearing officer may limit or allow discovery of any matter relevant to the issues and may issue protective orders as necessary.

(7) Hearings. Hearings shall proceed in accordance with the rules of examination applicable in courts of law in the Commonwealth. The rules of evidence applicable in courts of law in the Commonwealth shall apply, provided, however, that hearsay evidence shall be admissible unless irrelevant or grossly prejudicial. The order and burden of proof shall be established by the hearing officer, provided, however, that the burden of proof shall be upon the charged physician in any hearing on the charges contained in a show cause order. The hearing officer shall rule upon any motions or objections and may require the submission of briefs in regard to any issue. The hearing officer may allow opening and closing statements

by either party, or other offers of prosecution or defense that will allow the orderly and expeditious conduct of the proceedings.

(8) **Record.** The hearing officer shall be charged with the responsibility of compiling a written record of the proceedings which shall contain all evidence introduced at the hearing and all pleas, motions, objections, responses, rulings and other legal documents which the hearing officer deems properly part of the record.

(9) **Presentation of record,** hearing officer's proposed findings, conclusions and recommendations. The hearing officer shall present the record, his or her proposed findings of fact, conclusions of law and recommendations to the executive director for deliberation by the hearing panel. The hearing officer shall serve a copy of his findings, conclusions and recommendations on all parties at least twenty (20) days prior to the date set for the hearing panel's final determination. All parties shall have the right to file exceptions to the hearing officer's findings, conclusions and recommendations ten (10) days prior to the date set for the hearing panel's final determination.

(10) **Briefs.** Any party to the proceeding may move the hearing officer to allow briefs to be filed with the hearing panel prior to the hearing panel's final determination. The hearing officer may grant the motion and establish a briefing schedule but only if the hearing officer believes that such a procedure would substantially aid the hearing panel in its deliberations. Briefs shall not exceed five (5) pages in length unless otherwise allowed by the hearing officer. The hearing panel may, on its own initiative, order that briefs be submitted.

(11) **Oral argument.** Any party to the proceeding may move the hearing panel to allow oral argument prior to the hearing panel's final determination. The hearing panel may order oral arguments on its own initiative.

(12) **Board's findings of fact, conclusions of law and final order, remand.** At the conclusion of its deliberations the hearing panel may adopt the hearing officer's proposed findings, conclusions and recommendations of action in whole or in part or may reject them totally and prepare its own. The hearing panel shall enter a final order dated and signed by an officer of the hearing panel stating its ultimate determination. Prior to, during or subsequent to any deliberations the hearing panel may remand the matter to the hearing officer for further proceedings as directed].

**Section 9. [Meetings of the Board and Panels. (1) The full membership of the Board shall meet quarterly each calendar year, in the months of March, June, September, and December. At such meetings, the board will make licensing decisions regarding initial applications for licensure, make decisions regarding recommendations made by its various statutory committees, determine whether to enter into contractual relationships, and address issues of general policy or interpretation of statute.**

**(2) The members of Inquiry Panel A shall meet bimonthly each calendar year, in the months of February, April, June, August, October, and December. At its February, April, August, and October meetings, Inquiry Panel A will finally resolve cases in which a hearing has been conducted or a negotiated settlement tendered, will determine whether to grant requests to modify or terminate previously accepted negotiated settlements, will determine appropriate action upon recently completed investigations, and will make licensing decisions regarding renewal applications. At its June and December meetings, which coincide with the meeting of the full Board, Inquiry Panel A will take appropriate action upon recently completed investigations of prescribing or dispensing of controlled substances and other matters that require immediate attention.**

**(3) The members of Inquiry Panel B shall meet bimonthly each calendar year, in the months of January, March, May, July, September, and November. At its January, May, July, and November meetings, Inquiry Panel B will finally resolve cases in which a hearing has been conducted or a negotiated set-**

**tlement tendered, will determine whether to grant requests to modify or terminate previously accepted negotiated settlements, will determine appropriate action upon recently completed investigations, and will make licensing decisions regarding renewal applications. At its March and September meetings, which coincide with the meeting of the full board, Inquiry Panel B will take appropriate action upon recently completed investigations of prescribing or dispensing of controlled substances and other matters that require immediate attention.**

**Section 10. Definitions. "A conviction relating to controlled substances" shall include any conviction or plea to criminal charges, regardless of adjudication, that is based upon or resulted from, in whole or part, allegations of conduct involving the improper, inappropriate or illegal use, possession, transfer, prescribing or dispensing of controlled substances. The underlying facts of the offense, rather than the title of the offense named in the plea or judgment of conviction, will be determinative of whether the conviction or plea was "relating to controlled substances".**

**Section 11.]** **Mandatory Reporting; Mandatory Disciplinary Sanctions; Emergency Action; Expedited Proceedings.** (1)(a) Every applicant for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky shall report upon the applicant's[their] initial application any criminal conviction [they have] sustained or any plea of guilt, plea of nolo contendere, or Alford plea the applicant has[they have] entered to criminal charges in any state, regardless of adjudication.

(b) Every applicant for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky shall report upon the applicant's[their] initial application any disciplinary action taken or sanction imposed upon the applicant's[their] license to practice medicine or osteopathy in any state, to include surrendering or placing the applicant's[their] license in an inactive or retirement status to resolve a pending investigation by the licensing authority.

(c) Every applicant for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky shall report upon the applicant's[their] initial application if the applicant is[they are] currently under investigation by the licensing authority of any other state for possible violations of the licensing or regulatory statutes of that state.

(d) Every person licensed to practice medicine or osteopathy within the Commonwealth of Kentucky shall report to the board any criminal conviction or plea of guilt, nolo contendere, or Alford plea to any criminal charges, regardless of adjudication, within ten (10) days of the entry of judgment of conviction or the entry of the plea, entered into in any state. As part of this reporting, the licensee shall provide a copy of the judgment of conviction or plea documents.

(e) Every person licensed to practice medicine or osteopathy within the Commonwealth of Kentucky shall report to the board within ten (10) days of receipt, notice of any disciplinary action taken or sanction imposed upon the person's[their] license in any state, including surrendering a[their] license or placing a[their] license into inactive or retired status to resolve a pending licensing investigation. As part of this reporting requirement, the licensee shall provide a copy of the order issued by or entered into with the other licensing board.

(f) 1. Failure to report a criminal conviction or plea, or action taken by another licensing board, as required of an applicant by paragraphs (a) through (c) of this **subsection[section]**, shall constitute a violation of KRS 311.595(9) and (12).

2. Upon a finding by the board that the applicant committed a[such] violation, the appropriate panel:

**a.** Shall impose a fine of \$5,000 and the appropriate sanction mandated by subsection (2), (3), or (4) of this **section; and**

**b.[administrative regulation. In addition to these minimum mandatory sanctions, the panel]** May impose any additional sanction authorized by KRS 311.595, including denial of the application or revocation of the license previously issued based upon the incomplete information.

(g)1. Failure to report a criminal conviction or plea, or action taken by another licensing board as required of a licensee by paragraphs (d) and (e) of this subsection, shall constitute a violation of KRS 311.595(9) and (12).

2. Upon a finding by the board that the licensee committed a[such] violation, the appropriate panel:

a. Shall impose a fine of \$5,000 and the appropriate sanction mandated by subsection (2), (3), or (4) of this **section; and**

b. ~~Administrative regulation. In addition to these minimum mandatory sanctions, the panel~~ May impose any additional sanction authorized by KRS 311.595 based upon all of the information available to the panel at the time of action.

(2)(a) If an initial applicant reports being[that they are] the subject of a pending criminal investigation or of a pending investigation by a state licensing authority, the board shall defer any action upon that initial application until it has received official notice that the criminal or state licensing investigation has been completed and official notice of what action was taken as a result of the investigation.

(b)1. If an initial applicant has been convicted of a felony offense or entered a plea of guilt, an Alford plea, or a plea of nolo contendere to any felony charge relating to a controlled substance[substances], regardless of adjudication, in any state, the board shall[may] exercise its normal discretion to grant or deny the application~~[,]~~ based upon all available facts.

2. If the board decides to[should] grant a license to the[such an] initial applicant, the board:

a. Shall, at a minimum, permanently ban the applicant from prescribing or dispensing controlled substances as an express condition of granting the license; **and**

b. ~~If the board grants the license subject to a permanent ban, it~~ May impose other conditions in addition to that permanent ban as express conditions of granting the license.

(c) If a licensee has been convicted of or entered a plea of guilt, an Alford plea, or a plea of nolo contendere to any felony offense relating to a controlled substance[substances], regardless of adjudication in any state, the appropriate panel:

1.a. Shall, at a minimum, permanently ban the licensee from prescribing or dispensing controlled substances as a disciplinary sanction; **and**

b. ~~In addition to this minimum sanction, the panel~~ May take any appropriate disciplinary action authorized by KRS 311.595 against the licensee; **or**

2. Shall[, or in lieu of the minimum sanction, the panel may] revoke the license~~[,]~~ based upon the facts available to the panel at the time of action.

(3)(a)1. If an initial applicant has been convicted of a misdemeanor offense relating to a controlled substance[substances] or entered a plea of guilt, an Alford plea, or plea of nolo contendere to a misdemeanor charge relating to a controlled substance[substances], regardless of adjudication, in any state, the board shall[may] exercise its normal discretion to grant or deny the application~~[,]~~ based upon all available information.

2. If the Board decides to[should] grant the application, the board:

a. Shall, at a minimum, ban the applicant from prescribing or dispensing controlled substances for a period of two (2) to five (5) years as an express condition of granting the license; **and**

b. ~~If the board grants the license subject to a ban, it~~ May impose other conditions in addition to that ban as express conditions of granting the license.

(b) If a licensee has been convicted of or entered a plea of guilt, an Alford plea, or a plea of nolo contendere to a misdemeanor offense relating to prescribing or dispensing a controlled substance[substances], regardless of adjudication in any state, the appropriate panel:

1.a. Shall, at a minimum, ban the licensee from prescribing or dispensing controlled substances for a period of two (2) to five (5) years as a disciplinary sanction; **and**

b. ~~In addition to this minimum sanction, the panel~~ May take any appropriate disciplinary action against the licensee~~[,]~~ **or**

2. Shall[in lieu of the minimum sanction, may] revoke the license~~[,]~~ based upon the facts available to the panel at the time of action.

(4)(a)1. If an initial applicant has surrendered the applicant's[their] professional license or placed that license into an inactive or retired status to resolve a pending licensing investigation, the board shall not grant a license to that initial applicant, unless the licensing authority of that state has subsequently reissued or reinstated the license.

2. If the licensing authority of the state has subsequently reissued or reinstated the license, the board shall[may] exercise its normal discretion in determining whether to grant or deny the application based upon the available facts.

(b) If an initial applicant has had a disciplinary action taken against or sanction imposed upon the applicant's license to practice medicine or osteopathy in any state, the board:

1.a. Shall, at a minimum, impose the same substantive sanctions imposed by the other state as an express condition of granting the license; **and**

b. May[, or may deny the application, or, in addition to the minimum sanction,] impose additional sanctions as an express condition of granting the license; **or**

2. Shall deny the application[,] based upon the facts available to the board.

(c) If a licensee has had disciplinary action taken against or sanctions imposed upon the licensee's[applicant's][their] license to practice medicine or osteopathy in any state, the appropriate panel:

1.a. Shall, at a minimum, impose the same substantive sanctions as a disciplinary sanction against the licensee's[applicant's][their] Kentucky license; **and**

b. ~~In addition to this minimum sanction, the panel~~ May take any appropriate additional disciplinary action against the licensee[licensee]; or

2. Shall[, or in lieu of the minimum sanction, the panel may] revoke the license~~[,]~~ based upon the facts available to the panel at the time of action.

(5)(a) Failure to report [either] a criminal conviction, a[or] plea, or a disciplinary sanction[sanctions] by another licensing board~~[,]~~ as required by this section~~[,]~~ shall constitute ["]a violation of law which constitutes an immediate danger to the public health, safety, or welfare.["] for purposes of KRS 311.592 and 13B.125.

(b) If the board or one (1) of its panels learns that a licensee has suffered a qualifying criminal conviction or disciplinary sanction and has failed to report it as required by this section, the panel or its chair may immediately issue an emergency order appropriately suspending or restricting the licensee in accordance with this section.

(c) If [such] an emergency order is issued and an emergency hearing is conducted pursuant to KRS 13B.125(3), the hearing officer shall not modify or amend the scope of the emergency order if there is substantial evidence to support the finding that the licensee failed to report a qualifying criminal conviction or disciplinary sanction as required by this section.

(6)(a) If the only violation charged in a complaint against the licensee is a criminal conviction or disciplinary sanction described in this section, and the conviction or disciplinary action may be proved by accompanying official certification, the board shall take appropriate steps to expedite the resolution of that complaint.

(b) Following receipt of the licensee's response to the complaint, board counsel shall promptly file a motion for summary disposition on the ground that no genuine issues of material fact are in dispute, pursuant to KRS 13B.090(2).

(c) The licensee:

1. Shall not [be permitted to] re-litigate either the criminal conviction or disciplinary sanction; **and**

2. May offer as[the only available] defense [is] that the certification of the document is fraudulent.

(d)1. If the licensee has admitted the occurrence of the criminal conviction or disciplinary action in the response, an[no] additional response shall not be given[is required or permitted] to the motion for summary disposition.

2. If the licensee has denied the occurrence of the criminal conviction or disciplinary sanction, and alleges that the certification is fraudulent, the licensee may file a response to the motion for summary disposition[resolution] within twenty (20) days of receipt of the motion.

(e)1. Once the assigned hearing officer determines that a/no/ response was either not permitted or not filed within the allotted time or the hearing officer[is permitted or] has received the written response within the time allotted [or determines that a response was not filed within the allotted time], the hearing officer shall issue a ruling upon the motion as soon as possible but no later than thirty (30) days after the motion is submitted for decision.

2. If the hearing officer issues a recommended order, the recommended order shall be presented to the board's hearing panel at its next meeting for resolution and imposition of the sanction required by this section.

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

(a) "Information on Filing a Grievance", January 2013;

(b) "Consumer's Guide to the KBML", January 2013;

(c) "Grievance Form", January 2013; and

(d) "Waiver of Privilege, Agreement to Release Records", January 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

CONTACT PERSON: C. Lloyd Vest II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

GENERAL GOVERNMENT CABINET  
Kentucky Board of Medical Licensure  
(As Amended at Senate and House Standing  
Committees on Judiciary, March 4, 2013)

201 KAR 9:260. Professional standards for prescribing and dispensing controlled substances.

RELATES TO: KRS 218A.205, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 218A.205(3)(a), 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licenses. KRS 218A.205(3)(a) requires the board to establish mandatory prescribing and dispensing standards related to controlled substances. This administrative regulation establishes the professional standards for prescribing and dispensing controlled substances. [Each physician who is authorized to prescribe or dispense controlled substances shall conform to the following mandatory professional standards relating to controlled substances while practicing within the Commonwealth of Kentucky. The following standards shall be considered the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky for prescribing and dispensing controlled substances for the various conditions or settings described, subject to the enumerated exceptions.]

Section 1. Applicability[Exceptions]. (1) A physician who is authorized to prescribe or dispense a controlled substance shall comply with the standards of acceptable and prevailing medical practice for prescribing and dispensing a controlled substance[requirements] established in [KRS 218A.172 and] this administrative regulation.

(2) [The standards of acceptable and prevailing medical practice for prescribing and dispensing a controlled substance in Kentucky shall include:

(a)][These exceptions do not apply to][The standards for Schedule II controlled substances and Schedule III controlled substances with hydrocodone established in KRS 218A.172;

and

(b) The requirements established in this administrative regulation.

(3)][(2)] The professional standards established in this administrative regulation shall not apply to a physician[physicians] prescribing or dispensing a controlled substance[substances];

(a) To a patient as part of the patient's hospice or end-of-life treatment;

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

(c) To a patient for the treatment of pain associated with cancer or with the treatment of cancer;

(d) To a patient who is a registered resident of a long-term-care facility as defined in KRS 216.510;

(e) During the effective period of any period of disaster or mass casualties which has a direct impact upon the physician's practice;

(f) In a single dose prescribed or dispensed to relieve the anxiety, pain, or discomfort experienced by that patient submitting to a diagnostic test or procedure; or

(g) That has[have] been classified as a Schedule V controlled substance.

Section 2. Professional Standards for Documentation of Patient Assessment, Education, Treatment Agreement and Informed Consent, Action Plans, Outcomes and Monitoring.

(1) Each physician prescribing or dispensing a controlled substance[substances] shall obtain and document all relevant information in a patient's medical record in a legible manner and in sufficient detail to enable the[provide for:

(a) This] board to determine whether the physician is conforming to professional standards for prescribing or dispensing controlled substances and other relevant professional standards.];]

(2) If a physician is unable to conform to professional standards for prescribing or dispensing controlled substances due to circumstances beyond the physician's[their] control, or the physician makes a professional determination that it is not appropriate to comply with a specific standard, based upon the individual facts applicable to a specific patient's diagnosis and treatment, the physician shall document those circumstances in the patient's record and only prescribe or dispense a controlled substance[substances] to the patient if[when] the patient record appropriately justifies the prescribing or dispensing of a controlled substance[substances] under the circumstances.

Section 3. Professional Standards for the Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint. [(1)] Prior to the initial prescribing or dispensing of any controlled substance for pain or other symptoms associated with the same primary medical complaint, the first physician prescribing or dispensing a controlled substance[substances] shall:

(1)[(a)] Obtain an appropriate medical history relevant to the medical complaint, including a history of present illness, and:

(a) If the complaint does not relate to a psychiatric condition, conduct a physical examination of the patient relevant to the medical complaint and related symptoms[, for all medical complaints other than psychiatric conditions,] and document the information in the patient's medical record; or

(b) If the complaint relates to a psychiatric condition[, Psychiatrists, or other designated mental health providers, shall] perform, or have performed by a psychiatrist or other designated mental health provider, an evaluation appropriate to the presenting complaint and document the relevant findings;

(2)[(b)] Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the

patient encounter, and appropriately utilize that information in the evaluation and treatment of the patient;

(3)(c) After examining the benefits and risks of prescribing or dispensing a controlled substance/substances to the patient, including nontreatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substance/substances in the amount specified;

(4)(d) Not prescribe or dispense a long-acting or controlled-release opioid/opioids (e.g. OxyContin, fentanyl patches, or/and methadone) for acute pain that is not directly related to and close in time to a specific surgical procedure;

(5)(e) Explain to the patient that a controlled substance/substances used to treat an acute medical complaint is/are for time-limited use, and that the patient should discontinue the use of the controlled substance/substances when the condition requiring the controlled substance use has resolved; and

(6)(f) Explain to the patient how to safely use and properly dispose of any unused controlled substance/substances.

**Section 4. Professional Standards for Commencing Long Term Use of Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint.** (1) Before a physician commences to prescribe or dispense any controlled substance to a patient sixteen (16) years or older for pain or other symptoms associated with the same primary medical complaint for a total period of longer than three (3) months, the physician shall comply with the following mandatory professional standards established in subsection (2) of this section. These standards may be accomplished by different licensed practitioners in a single group practice at the direction of or on behalf of the prescribing physician if/so long as;

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

(b) There is compliance with all applicable standards; and

(c) Each practitioner performing an action to meet the required standards is acting within the practitioner's/their legal scope of practice.

(2)(a) The physician shall obtain the following information from the patient and record all relevant information in the patient's medical record:

1. History of present illness;

2. Past medical history;

3. History of substance use and any prior treatment for that/such use by the patient, and history of substance abuse by first degree relatives of the patient;

4. Past family history of relevant illnesses and treatment; and

5. Psychosocial history.

(b) The physician shall conduct an appropriate physical examination of the patient sufficient to support the medical indications for prescribing or dispensing a controlled substance/substances on a long-term basis.

(c) The physician shall perform appropriate baseline assessments to establish beginning values to assist in establishing and periodically evaluating the functional goals of any treatment plan.

(d) If a specific or specialized evaluation is necessary for the formulation of a working diagnosis or treatment plan, the physician shall only continue the use of a controlled substance/substances after determining that continued use of the controlled substance/substances is safe and medically appropriate in the absence of that/such information.

(e) If the physician determines that the patient has previously received medical treatment for the presenting medical complaint or related symptoms and that review of the prior treatment records is necessary to justify long-term prescribing of a controlled substance/substances, the physician shall obtain those prior medical records and incorporate the information therein into the evaluation and treatment of the patient.

(f)1. Based upon consideration of all information available, the physician shall promptly formulate and document a work-

ing diagnosis of the source of the patient's medical complaint and related symptoms without simply describing or listing/it is not sufficient to simply describe or list the related symptoms.

2. If the physician is unable, despite best efforts, to formulate a working diagnosis, the physician shall consider the usefulness of additional information, such as a specialized evaluation or assessment/evaluations or assessments, referral to an appropriate specialist/specialists, and the usefulness of further observation and evaluation, before attempting again to formulate a working diagnosis.

3. If the physician is unable to formulate a working diagnosis, despite the use of an appropriate specialized evaluation or assessment/evaluations or assessments, the physician shall only prescribe/provide long term use of a controlled substance/substances after establishing that its/such use at a specific level is medically indicated and appropriate.

(g)1. To the extent that functional improvement is medically expected based upon the patient's condition, the physician shall formulate an appropriate treatment plan.

2. The treatment plan shall include specific and verifiable goals of treatment, with a schedule for periodic evaluations.

(h)1. The physician shall utilize appropriate screening tools to screen each patient to determine if the patient:

a. Is presently suffering from another medical condition which may impact the prescribing or dispensing of a controlled substance/substances; or

b. Presents a significant risk for illegal diversion of a controlled substance/substances;

2. If, after screening, the physician determines that there is a reasonable likelihood that the patient suffers from substance abuse or dependence, or a psychiatric or psychological condition, the physician shall take the necessary actions to facilitate a referral to an appropriate treatment program or provider. The physician shall appropriately incorporate the information from the treatment program or provider/provider into the evaluation and treatment of the patient.

3. If, after screening, the physician determines that there is a risk that the patient may illegally divert a controlled substance/substances, but determines to continue long term prescribing of the controlled substance/substances, the physician shall use a /"/prescribing agreement/"/ that meets professional standards. The /"/prescribing agreement/"/ and informed consent document may be combined into one (1) document.

4. The physician shall obtain and document a baseline drug screen.

5. If, after screening, the physician determines that the controlled substance/substances prescribed to the patient will be used or is/are likely to be used other than medically or other than for an accepted therapeutic purpose, the physician shall not prescribe any/consider whether or not it is appropriate to commence prescribing controlled substance/substances to that patient.

(i) After explaining the risks and benefits of long-term use of a controlled substance/substances, the physician shall obtain the written informed consent of the patient in a manner that meets professional standards.

(j) The physician shall initially attempt, to the extent possible, or establish and document a previous attempt by another physician, of a trial of noncontrolled modalities and lower doses of a controlled substance/substances in increasing order to treat the pain and related symptoms/symptom associated with the primary medical complaint, before continuing with long term prescribing of a controlled substance/substances at a given level.

**Section 5. Professional Standards for Continuing Long Term Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint.** (1) If a physician continues to prescribe or dispense a controlled substance/substances beyond three (3) months to a patient sixteen (16) years or older for pain and related symptoms associated with the primary

medical complaint, the physician shall comply with the ~~following~~ professional standards *established in subsection (2) of this section*. These standards may be accomplished by different licensed practitioners in a single group practice at the direction of or on behalf of the prescribing physician as ~~established/set forth~~ in Section 4(1) of this administrative regulation.

(2)(a)1. The physician shall ensure that the patient is seen at least once a month initially for evaluation and review of progress. The physician may determine that the patient is to be evaluated less frequently, on a schedule determined by the physician's professional judgment after the physician has determined:

a. The controlled *substance/substances* prescribed or dispensed ~~has/have~~ been titrated to the level appropriate and necessary to treat the medical complaint and related symptoms;

b. The controlled *substance/substances* prescribed or dispensed ~~is/are~~ not causing unacceptable side effects; and

c. There is sufficient monitoring in place to minimize the likelihood that the patient will use the controlled *substance/substances* in an improper or inappropriate manner or divert ~~if/them~~ for an improper or inappropriate use.

(b) At appropriate intervals, the physician shall:

1. Ensure that a current history is obtained from the patient;

2. ~~[shall]~~ Ensure that a focused physical examination is considered, and performed, if appropriate; ~~[and]~~

3. ~~[shall]~~ Perform appropriate measurable examinations as indicated in the treatment plan.

(c) At appropriate intervals, the physician shall evaluate the working diagnosis and treatment plan based upon the information gained to determine whether there has been functional improvement or any change in baseline measures. ~~if appropriate,~~ The physician shall modify the diagnosis, treatment plan, or controlled *substance/substances* therapy, as appropriate.

(d) If the physician determines that the patient presents a significant risk of diversion or improper use of a controlled *substance/substances*, the physician shall discontinue the use of the controlled *substance/substances* or justify ~~its/their~~ continued use in the patient record.

(e) If the medical complaint and related symptoms continue with no significant improvement in function despite treatment with a controlled *substance/substances*, and ~~if/where~~ improvement is medically expected, the physician shall obtain appropriate consultative assistance to determine whether there are undiagnosed conditions ~~to/that must~~ be addressed in order to resolve the medical complaint.

(f) For a patient ~~[patients]~~ exhibiting symptoms suggestive of a mood, anxiety, ~~or/and/or~~ psychotic disorder ~~[disorders]~~, the physician shall obtain a psychiatric or psychological consultation ~~[consultations]~~ for intervention if appropriate.

(g) If a patient reports ~~[that they are]~~ experiencing episodes of ~~[a]~~ breakthrough ~~[a]~~ pain, the physician shall:

1. Attempt to identify the trigger or triggers for ~~each episode/such episodes~~;

2. Determine whether the breakthrough pain may be adequately treated through noncontrolled treatment; and

3. If the physician determines that the nonmedication treatments do not adequately address the triggers, and after considering the risks and benefits, ~~[the physician]~~ determines to add an as-needed controlled *substance/substances* to the regimen, ~~[the physician shall]~~ take appropriate steps to minimize the improper or illegal use of the additional controlled *substance/substances*;

(h) At least once a year, the physician shall perform or shall ensure that the patient's primary treating physician performs a preventive health screening and physical examination appropriate to the patient's gender, age, and medical condition.

(i)1. At least once every three (3) months, the physician shall obtain and review a current KASPER report, ~~for the twelve (12) month period immediately preceding the request,~~

and appropriately use that information in the evaluation and treatment of the patient.

2. If the physician obtains or receives specific information that the patient is not taking the controlled *substance/substances* as directed, is diverting a controlled *substance/substances*, or is engaged in any improper or illegal use of a controlled *substance/substances*, the physician shall immediately obtain and review a KASPER report and appropriately use the information in the evaluation and treatment of the patient.

3. If a KASPER report discloses that the patient is obtaining a controlled *substance/substances* from another practitioner ~~[other practitioners]~~ without the physician's knowledge and approval, in a manner that raises suspicion of illegal diversion, the physician shall promptly notify the other practitioner ~~[practitioners]~~ of the relevant information from the KASPER review.

4. The physician shall obtain consultative assistance from a specialist ~~if/when~~ appropriate.

(j) ~~if/When~~ appropriate, the physician shall conduct random pill counts and appropriately use that information in the evaluation and treatment of the patient.

(k)1. During the course of long-term prescribing or dispensing of a controlled *substance/substances*, the physician shall utilize drug screens, appropriate to the controlled *substance/substances* and the patient's condition, in a random and unannounced manner at appropriate times. ~~If the drug screen or other information available to the physician indicates that [and, if appropriate, in cases where] the patient is noncompliant, the physician shall:~~

a. Do a controlled taper;

b. Stop prescribing or dispensing the controlled *substance/substances* immediately; or

c. Refer the patient to an addiction specialist, mental health professional, pain management specialist, or drug treatment program, depending upon the circumstances.

2. The physician shall discontinue controlled substance treatment ~~or/and/or~~ refer the patient to addiction management ~~if [one (1) or more of the following conditions exist]:~~

a. There has been no improvement in function and response to the medical complaint and related symptoms, ~~if/where~~ improvement is medically expected;

b. Controlled substance therapy has produced significant adverse effects; or

c. The patient exhibits inappropriate drug-seeking behavior or diversion.

Section 6. Professional Standards for the Prescribing and Dispensing of Controlled Substances in an Emergency Department. ~~[(4)]~~ In addition to complying with the standards for the initial prescribing or dispensing of a controlled substance as established ~~[detailed]~~ in Sections 3/4 and 7 of this administrative regulation, a physician prescribing or dispensing a controlled substance for a specific medical complaint and related symptoms to a patient in an emergency department ~~[is strongly discouraged and]~~ shall not routinely:

(1) ~~[(a)]~~ Administer an intravenous controlled *substance/substances* for the relief of acute exacerbations of chronic pain, unless intravenous administration is the only medically appropriate means of delivery;

(2) ~~[(b)]~~ Provide a replacement prescription ~~[prescriptions]~~ for a controlled *substance/substances* that was ~~[were]~~ lost, destroyed, or stolen;

(3) ~~[(c)]~~ Provide a replacement dose ~~[doses]~~ of methadone, suboxone, or subutex for a patient ~~[patients]~~ in a treatment program;

(4) ~~[(d)]~~ Prescribe a long-acting or controlled-release controlled *substance/substances*, such as OxyContin, fentanyl patches, or methadone or a replacement dose ~~[doses]~~ of that medication ~~[such medications]~~;

(5) ~~[(e)]~~ Administer Meperidine to the patient; or

(6) ~~[(f)]~~ Prescribe or dispense more than the minimum amount medically necessary to treat the patient's medical condition until the patient can be seen by ~~the[their]~~ primary



treating physician or another physician, with no refills. If the controlled substance prescription/substances prescribing exceeds seven (7) days in length, the patient record shall/must justify the amount of the controlled substance/substances prescribed.

**Section 7. Professional Standards for the Prescribing and Dispensing of Controlled Substances for the Treatment of Other Conditions.** (1) Before initially prescribing or dispensing a controlled substance/substances to a patient/patients for a condition/conditions other than pain, the physician shall:

(a) Obtain an appropriate medical history relevant to the medical complaint, including a history of present illness, and:

1. If the complaint does not relate to a psychiatric condition, conduct a physical examination of the patient relevant to the medical complaint and related symptoms, for all medical complaints other than psychiatric conditions, and document the information in the patient's medical record; or

2. If the complaint relates to a psychiatric condition, Psychiatrists or other designated mental health providers shall perform, or have performed by a psychiatrist or other designated mental health provider, an evaluation appropriate to the presenting complaint and document the relevant findings;

(b) Obtain and review a KASPER report for that patient, for the twelve (12) month period immediately preceding the patient encounter for the twelve (12) month period immediately preceding the patient encounter, and appropriately utilize that information in the evaluation and treatment of the patient;

(c) After examining the benefits and risks of prescribing or dispensing a controlled substance/substances to the patient, including nontreatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substance/substances in the amount specified;

(d) Avoid providing more controlled substances than necessary by prescribing or dispensing only the amount of a controlled substance/substances needed to treat the specific medical complaint;

(e) Explain to the patient that a controlled substance/substances used to treat an acute medical complaint is/are for time-limited use, and that the patient should discontinue the use of a controlled substance/substances when the condition requiring the controlled substance use has resolved; and

(f) Explain to the patient how to safely use and properly dispose of any unused controlled substance/substances.

(2) If the physician continues to prescribe or dispense a controlled substance/substances to a patient for the same medical complaint and related symptoms, the physician shall fully conform to the standards of acceptable and prevailing practice for treatment of that medical complaint and for the use of the controlled substance/substances.

(3) If/When a physician receives a request from an established patient to prescribe or dispense a limited amount of a controlled substance/substances to assist the patient in responding to the anxiety or depression resulting from a nonrecurring single episode or event, the physician shall:

(a) Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the patient request and appropriately utilize the information obtained in the evaluation and treatment of the patient;

(b) Make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substance/substances in the amount specified, with or without requiring a personal encounter with the patient to obtain a more detailed history or to conduct a physical examination; and

(c) If the decision is made that it is medically appropriate to prescribe or dispense the controlled substance, prescribe or dispense the minimum amount of the controlled substance/substances to appropriately treat the situational anxiety or depression.

**Section 8. Responsibility to Educate Patients Regarding**

the Dangers of Controlled Substance Use. (1) A physician/Physicians prescribing or dispensing a controlled substance/substances shall take appropriate steps to educate a patient/patients receiving a controlled substance/substances.

(2) Educational materials relating to these subjects may be found on the board's Web site, [www.kbml.ky.gov/](http://www.kbml.ky.gov/), and are incorporated by reference into this administrative regulation.

**Section 9. Additional Standards for Prescribing or Dispensing Schedule II Controlled Substances or Schedule III Controlled Substances Containing Hydrocodone.** (1) In addition to the other standards established in this administrative regulation, prior to the initial prescribing or dispensing of a Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone to a human patient, a physician shall:

(a) Obtain a medical history and conduct a physical or mental health examination of the patient, as appropriate to the patient's medical complaint, 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 and appropriately utilize that data in the evaluation and treatment of the patient;

(c) Make a written 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.

(2)(a) In addition to the other standards established in this administrative regulation, a physician prescribing or dispensing additional amounts of a Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone for the same medical complaint and related symptoms shall:

1. Review, at reasonable intervals based on the patient's individual circumstances and course of treatment, the plan of care;

2. Provide to the patient any new information about the treatment; and

3. Modify or terminate the treatment as appropriate.

(b) If the course of treatment extends beyond three (3) months, the physician shall:

1. Query KASPER no less than once every three (3) months for all available data on the patient for the twelve (12) month period immediately preceding the query; and

2. Review that data before issuing any new prescription or refills for the patient for any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone.

(3) To the extent not already required by the standards established in this administrative regulation, for each patient for whom a physician prescribes or dispenses a Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone, the physician shall keep accurate, readily accessible, and complete medical records which include, as appropriate:

(a) Medical history and physical or mental health examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed or dispensed;

(h) Instructions and agreements, and

(i) Periodic reviews of the patient's file.

(4) The additional standards for prescribing or dispensing

a Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone established in this section shall not apply to:

(a) A physician prescribing or administering that controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure or delivery and the medication usage does not extend beyond the fourteen (14) days; or

(b) A physician prescribing or dispensing that controlled substance:

1. For administration in a hospital or long-term-care facility if the hospital or long-term-care facility with an institutional account, or a physician in those hospitals or facilities if no institutional account exists, queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query, within twelve (12) hours of the patient's or resident's admission, and places a copy of the query in the patient's or resident's medical records for use during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. In a single dose to relieve the anxiety, pain, or discomfort experienced by a patient submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing:

a. Is done as a substitute for the initial prescribing or dispensing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

6. Within ninety (90) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing is done by another physician in the same practice or in an existing coverage arrangement, if done for the same patient for the same medical condition; or

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federalwide assurance number from the United States Department for Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health.

Section 10. Violations. (1) Any violation of the professional standards established in this administrative regulation [or in KRS 218A.172] shall constitute a violation of KRS 311.595(12) and (9), which may result in the imposition of disciplinary sanctions by the board, pursuant to KRS 311.595.

(2) Each violation of the professional standards established in this administrative regulation [or in KRS 218A.172] shall be established by expert testimony by one (1) or more physicians retained by the board, following a review of the licensee's patient records and other available information including KASPER reports. [The professional standards established in this administrative regulation shall not apply to physicians prescribing or dispensing controlled substances:

(a) To a patient as part of the patient's hospice or end-of-life treatment;

(b) To a patient admitted to a licensed hospital, during and as part of a normal and expected part of the patient's course of admission at that hospital;

(c) To a patient for the treatment of pain associated with the treatment of cancer;

(d) To a patient who is a registered resident of a skilled long-term care facility; or

(e) As a direct part of their professional responsibilities in an emergency department and in accordance with the professional standards established in Section 5 of this administra-

tive regulation.

(2) These exceptions do not apply to the standards established in KRS 218A.172.

Section 2. Professional Standards for Initial Prescribing or Dispensing of Controlled Substances. Prior to the initial prescribing or dispensing of any controlled substance for a specific medical complaint and related symptoms, each physician shall:

(a) Verify the identity of the patient by a current and valid government-issued photographic identification. If the physician does not have a copy of that identification in the patient's medical record, that physician shall ensure that the identification is copied and placed in the patient's medical record for future reference;

(b) Obtain an appropriate medical history relevant to the medical complaint, including a history of present illness, and conduct a physical examination of the patient relevant to the medical complaint and related symptoms, for all medical complaints other than psychiatric conditions, and document the information in the patient's medical record;

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

1. A physician prescribing or dispensing controlled substances to a patient, who is younger than eighteen (18) years of age at the time of prescribing or dispensing, for the treatment of Attention Deficit Hyperactive Disorder or Attention Deficit Disorder; or,

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

- (a) Ambien;
- (b) Anorexics;
- (c) Ativan;
- (d) Klonopin;
- (e) Librium;
- (f) Nubain;
- (g) Oxazepam;
- (h) Phentermine;
- (i) Soma;
- (j) Stadol;
- (k) Stadol-NS;
- (l) Tramadol;
- (m) Valium;
- (n) Versed; and
- (o) Xanax; or

3. A physician who is unable to obtain and review a KASPER report in a timely manner for reasons beyond the physician's control determines, upon the available facts, that it is medically appropriate to prescribe controlled substances in the absence of a KASPER report. For this exception, the physician shall document as soon as possible the circumstances that made it impossible to obtain and review a KASPER report before prescribing and the reason(s) the physician determined it was medically appropriate to prescribe controlled substances in the absence of KASPER information.

(d) After examining the benefits and risks of prescribing or dispensing controlled substances to the patient, including non-treatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substances in the amount specified. When the identified risks are significant or unique, the physician shall document in the patient's record the reasoning underlying the decision to prescribe or dispense controlled substances in spite of those risks;

(f) Avoid providing more controlled substances than necessary by prescribing or dispensing only the amount of controlled substances needed to treat the specific medical com-



plaint, for a definite, pre-determined time period;

(g) Not prescribe or dispense long-acting or controlled-release opioids (e.g. OxyContin, fentanyl patches, and methadone) for acute pain;

(h) Explain to the patient that controlled substances used to treat an acute medical complaint are for time-limited use, and that the patient should discontinue the use of controlled substances when the condition requiring the controlled substance use has resolved;

(i) Explain to the patient how to safely and properly dispose of any unused controlled substances.

**Section 3. Professional Standards to Commence the Long-Term Use of Any Controlled Substance.** Before a physician continues to prescribe or dispense any controlled substance to a patient for a medical complaint or its associated symptoms for a total period of longer than three (3) months, the physician shall comply with the following mandatory professional standards:

**Patient History.** (1) The physician shall obtain the following information from the patient and record all relevant information in the patient's medical record in a legible manner, in sufficient detail to provide for meaningful diagnosis and treatment of the patient, or to allow for another practitioner to assume the medical care of the patient at any given time in a safe and medically appropriate manner:

(a) History of present illness, including each of its components;

(b) Past medical history, including past diagnostic efforts and treatments for the present medical complaint and other medical complaints;

(c) History of legal or illegal substance use by the patient and by first-degree relatives of patient, including treatments for abuse or dependence;

(d) Past family history of illnesses and treatment relevant to the medical complaint and related symptoms; and,

(e) Psychosocial history.

(2) If a physician's practice utilizes a patient questionnaire as a primary source of obtaining such information, the physician shall ensure that:

(a) All questions are completely answered;

(b) Any material conflict in the answers is clarified with the patient;

(c) Complete information is obtained regarding any significant disclosure; and,

(d) All relevant information is incorporated into the patient's record and utilized in the development of the working diagnosis.

**Physical Evaluations and Assessments.** (1) The physician shall conduct a comprehensive physical examination of the patient for all medical conditions and related symptoms, other than psychiatric conditions, and properly document the findings of each evaluation or assessment in the patient's record, including but not limited to:

(a) Appropriate clinical examination addressing the medical complaint and related symptoms of a sufficient degree to support the medical indications for prescribing or dispensing controlled substances on a long-term basis;

(b) Measurable examinations that will establish baselines and will assist in establishing and periodically evaluating the functional goals of any treatment plan.

(4) If a specific or specialized evaluation is necessary for the formulation of a working diagnosis or treatment plan, the physician shall arrange for such evaluation as quickly as possible in order to be able to incorporate the findings into the working diagnosis and treatment plan. The physician shall document the relevant information obtained from the evaluation. If the physician determines that such an evaluation is necessary and the patient declines or fails to complete the evaluations in a timely manner for any reason, then the physician shall not continue the use of controlled substances unless the physician determines that continued use of controlled substances is safe and medically appropriate in the absence of such information. In that event, the physician shall docu-

ment the reasons that the patient failed to complete the evaluation and the reasoning supporting the continued use of controlled substances in the absence of that relevant information;

**Obtaining Medical Records from Other Practitioners.** (1) If the physician determines that the patient has previously received medical treatment for the presenting medical complaint or related symptoms and that review of the prior treatment records is necessary to justify long-term prescribing of controlled substances, the physician shall request a copy of the other physician's records regarding the patient as quickly as possible, in order to incorporate such information into the working diagnosis and treatment plan;

(2) If the physician has requested a copy of the other physician's records and has not received them within a reasonable time, the physician will take appropriate steps to follow up and obtain such records. If the physician is unable, after reasonable attempts, to obtain the relevant records, the physician shall document the efforts made to obtain the records, the failure to receive the records, and the impact the inability to obtain such records has upon the physician's decision whether to continue or modify treatment, particularly the use of controlled substances, for that patient;

(3) Each physician, who receives a written request from another physician for a copy of records relating to that physician's prior treatment of a specific patient, shall promptly provide a copy of the patient's medical record to the requesting physician.

**Establishing a Working Diagnosis.** (1) Based upon consideration of all information available, the physician shall promptly formulate and document a working diagnosis of the source of the patient's medical complaint and related symptoms. It is not sufficient to simply describe or list the related symptoms;

(2) If the physician is unable, despite best efforts, to formulate a working diagnosis, the physician shall consider the usefulness of additional information, such as specialized evaluations or assessments, referral to appropriate specialists, usefulness of further observation and evaluation, before attempting again to formulate a working diagnosis;

(3) If the physician is unable, despite best efforts, to formulate a working diagnosis, the physician must determine whether long term use of controlled substances is indicated and appropriate. The physician may determine that a different or lower level of treatment is more appropriate until a working diagnosis can be established;

(4) The physician shall document the working diagnosis or all of the efforts taken in their unsuccessful attempt to formulate a working diagnosis and the reasons for their decision whether or not to utilize controlled substances on a long-term basis in the absence of a working diagnosis.

**Formulating a Treatment Plan.** (1) The physician shall formulate and document in the patient's medical record the proposed treatment plan, based upon the working diagnosis of the medical complaint and related symptoms, along with relevant baseline information obtained in the evaluation of the patient;

(2) The treatment plan shall include specific and verifiable goals of treatment, with a schedule for periodic evaluations, which will permit the physician to assess whether a treatment is appropriately addressing the medical complaint and improving the patient's functional abilities. Statements such as "treat [medical] condition and related symptoms", "to make patient feel better," or "prescribe controlled substances" are not sufficient treatment goals. The treatment plan shall include an exit strategy for the termination of use of any treatment modality, including controlled substances, for appropriate reasons;

**Patient Screening.** (1) The physician shall utilize appropriate screening tools to screen each patient to determine if the patient:

(a) Is presently suffering from abuse or dependence of any substance, including alcohol;

(b) Is presently suffering from a psychiatric or psychological condition that requires treatment or that may impact the

patient's treatment with controlled substances; or

(c) Presents a significant risk for illegal diversion of controlled substances, based upon information, gained by obtaining and reviewing a current KASPER report for all available data on that patient, that the patient has obtained controlled substances from multiple practitioners or has refilled prescriptions for controlled substances inappropriately.

(2) If, after screening, the physician determines that there is a reasonable likelihood that the patient suffers from substance abuse or dependence, the physician shall refer the patient to an appropriate treatment program or provider, or to an addiction specialist. If, after screening, the physician determines that there is a reasonable likelihood that the patient suffers from a qualifying psychiatric or psychological condition, the physician shall refer the patient for a psychological or psychiatric consultation, if appropriate. After making such referral, the physician shall consider the recommendations of the treatment program or specialist, before determining whether to continue with the long-term use of controlled substances with that patient, and, if so, appropriate treatment measures and monitoring. The physician shall document all relevant information about the screen, the referral, the recommendations, and any resulting prescribing decisions in the patient's medical record;

(3) If, after screening, the physician determines that there is a significant likelihood that the patient may illegally divert controlled substances, the physician must determine whether the use of a "prescribing agreement" would be sufficient to prevent diversion. This determination necessarily requires the physician to determine whether they have the professional resources to conduct necessary monitoring of the patient's controlled substance use. The terms of a "prescribing agreement" shall include, but not be limited to the patient's agreement to:

- (a) Avoid improper use of controlled substances;
  - (b) Identify other licensed professionals providing medical care to the patient and authorize the physician to communicate with these other providers to coordinate care, particularly prescribing or dispensing of controlled substances;
  - (c) Only obtain controlled substances from the designated physician;
  - (d) Only fill controlled substances prescriptions at an approved pharmacy;
  - (e) Submit to urine drug screens or pill counts on request;
  - (f) Not seek early refills or call in prescriptions of controlled substances;
  - (g) To produce an official police report for any effort to replace controlled substances that were lost or stolen;
  - (h) If necessary, submit to third-party administration of controlled substances prescribed if determined appropriate.
- In order to avoid confusion and for the benefit of both parties, the physician shall consider including in the agreement the consequences for a violation of each provision. The "prescribing agreement" and informed consent document may be combined into one document.

(4) The physician shall obtain and document a baseline urine drug screen to determine whether the medications that are being prescribed are in the patient's system and to determine whether any un-prescribed or illegal controlled substances are in the patient's system.

(5) If, after screening, the physician determines that the controlled substances prescribed to the patient will be used or are likely to be used other than medicinally or other than for an accepted therapeutic purpose, the physician shall not prescribe controlled substances to that patient;

**Obtaining Informed Consent.** (1) The physician shall explain the risks and benefits of long term use of controlled substances and obtain informed consent from the patient for such prescribing. The decision to provide controlled substances to a patient on a long-term basis should be a deliberate and conscious decision by both the physician and the patient, after full consideration of the risks and benefits of such treatment;

(2) After explaining the risks and benefits of long-term use

of controlled substances, the physician shall obtain the informed consent of the patient, in a writing that specifically sets out each risk and benefit discussed with the patient, and shall include and maintain that written informed consent in the patient's medical record. The informed consent document and any "prescribing agreement" may be combined into one document.

**Initial Trial of Other Treatments; Titration.** (1) Controlled substances shall only be utilized on a long-term basis after other appropriate non-controlled therapies have been attempted and have proven unsuccessful in appropriately treating the medical complaint and related symptoms. If controlled substances are utilized on a long-term basis, the physician shall prescribe or dispense controlled substances at the lowest level and for the shortest duration necessary to appropriately treat the medical complaint and related symptoms;

(2) The physician shall initially attempt, to the extent possible, or to establish and document a previous attempt by another physician, in increasing order, the following steps to treat the medical complaint and related symptoms:

- (a) Use of physical therapy modalities alone or use of non-steroidal anti-inflammatory medication alone;
- (b) Use of physical therapy modalities in conjunction with non-steroidal anti-inflammatory medication;
- (c) Use of lowest level of controlled substances considered effective to treat the medical complaint and related symptoms, as part of an opioid trial; and,
- (d) Titration of levels of controlled substances in measured steps until the level of controlled substances adequately treats the medical complaint and related symptoms.

**Section 4. Professional Standards for Long-Term Prescribing or Dispensing of Controlled Substances.** If a physician continues to prescribe or dispense controlled substances beyond three (3) months for a specific medical complaint and related symptoms, the physician shall comply with the following mandatory professional standards:

**Patient Visits.** (1) The physician shall personally see the patient at least once a month initially for evaluation and review of progress. The physician may see the patient less frequently, on a schedule determined by the physician's professional judgment after the physician has determined:

- (a) The controlled substances prescribed or dispensed have been titrated to the level appropriate and necessary to treat the medical complaint and related symptoms;
- (b) The controlled substances prescribed or dispensed are not causing harmful side effect; and,
- (c) There is sufficient monitoring in place to ensure that the patient will not use the controlled substances in an improper or inappropriate manner or divert them for an improper or inappropriate use.

(2) At each patient visit, the physician shall obtain a current history from the patient, shall conduct a focused physical examination, and shall perform appropriate measurable examinations as indicated in the treatment plan. The physician shall document all relevant information into the patient's medical record;

(3) At each patient visit, the physician shall evaluate the working diagnosis and treatment plan based upon the information gained during that encounter to determine whether there has been functional improvement or any change in baseline measures. If appropriate, the physician shall modify the diagnosis or treatment plan, or both, as appropriate. The reasons for any modification shall be documented in the patient's medical record.

**Reviewing Functional Goals; Specialty Consultations.** (1) The physician shall regularly review and determine whether the patient is exhibiting improved function, by meeting treatment goals jointly set, and is responding favorably to the medical treatment, including controlled substance therapy;

(2) For patients presenting a significant risk of diversion or improper use of controlled substances, the physician shall obtain the patient's consent to discuss the patient's treatment with independent sources, including family members, in order

to verify:

(a) The patient's progress toward or achievement of treatment goals; and,

(b) The patient's use of controlled substances and any side effects of that use, through independent sources;

(3) If the medical complaint and related symptoms continue with no significant improvement in function despite treatment with controlled substances, the physician shall obtain consultative assistance to determine whether there are undiagnosed conditions that must be addressed to resolve the medical complaint, such as psychiatry, neurology, internal medicine, physical medicine and rehabilitation, orthopedics, addiction medicine, rheumatology, or oncology;

(4) For patients exhibiting symptoms suggestive of mood, anxiety and/or psychotic disorders, the physician shall obtain psychiatric or psychological consultations for intervention if such condition is affecting treatment;

**Managing Breakthrough Pain.** (1) If a patient reports that they are experiencing episodes of "breakthrough" pain, the physician shall:

(a) Attempt to identify the trigger or triggers for such episodes;

(b) Determine whether the breakthrough pain may be adequately treated through non-controlled treatment;

(c) If the episodes continue and the non-medication treatments do not adequately address the triggers, and after considering the risks and benefits, the physician determines to add an as-needed controlled substance to the regimen, the physician must take appropriate steps to minimize the improper or illegal use of the additional controlled substances by prescribing or dispensing only the amount of controlled substances needed to treat the specific medical complaint, for a definite, pre-determined time period. The physician shall also include appropriate monitoring of the additional controlled substance;

**Preventive Medicine.** (1) At least once a year, the physician shall perform or shall ensure that the patient's primary treating physician performs preventive health screening and physical examination appropriate to the patient's gender, age, and medical condition. The physician shall ensure that the patient is provided treatment appropriate to the findings and results of such screening. The physician shall document in the patient's medical record the annual preventive health screening performed or the results of the screening performed by the primary treating physician, the findings and results, and the treatment provided, if any;

**Periodic KASPER Reviews and Monitoring Adherence.** (1) At least once every three months, the physician shall obtain and review a current KASPER report to ensure that the patient is properly filling the prescriptions issued and that the patient is not obtaining controlled substances from other practitioners without the physician's knowledge and approval;

(2) If, at any time while the physician is prescribing or dispensing controlled substances to a patient, the physician obtains or receives specific information that the patient is not taking the controlled substances as directed, is diverting controlled substances, or is engaged in any improper or illegal use of controlled substances, the physician shall immediately obtain and review a KASPER report for the purposes specified in subsection (1); supra;

(3) If a KASPER report discloses that the patient is not filling the controlled substance prescriptions as directed or is obtaining controlled substances from other practitioners without the prescribing physician's knowledge and approval, the physician shall immediately address those issues with the patient. The physician shall not prescribe or dispense any more controlled substances unless the physician has addressed the issues with the patient and has determined that it is medically appropriate and safe to continue prescribing or dispensing controlled substances to the patient;

(4) If a KASPER report discloses that the patient is obtaining controlled substances from other practitioners without the physician's knowledge and approval, the physician shall promptly notify the appropriate law enforcement agency and

the other practitioners of the relevant information from the KASPER review;

(5) The physician shall document in the patient's medical record each time a KASPER review is performed, information obtained; and, if applicable, the patient's account of any irregularities noted in the review; and, the physician's determination of what actually occurred;

(6) If the physician should determine that it is medically appropriate and safe to continue or resume prescribing or dispensing controlled substances to the patient after assessing their failure to fill prescriptions as directed or their obtaining controlled substances from other practitioners without the prescribing physician's knowledge and approval, the physician shall fully document in the patient's medical record the physician's rationale for resuming such prescribing or dispensing, to include an analysis of the risks and benefits of that decision, along with the increased monitoring or oversight measures being put into place to ensure controlled substances are not illegally diverted or used;

(7) The physician shall obtain consultative assistance from a specialist when appropriate.

**Random Pill Counts.** (1) When appropriate, the physician shall conduct unannounced random pill counts to determine whether the patient is taking the controlled substances as directed;

(2) If the physician discovers irregularity in the pill count, the physician shall immediately address those findings with the patient. The physician must use all available information, including a discussion with the patient, to determine whether the patient is illegally diverting controlled substances;

(3) If the physician determines that the patient has diverted controlled substances, the physician should immediately discontinue the prescribing or dispensing of controlled substances to that patient, if medically feasible. If it is not medically feasible to immediately discontinue the prescribing or dispensing of controlled substances, the physician shall immediately begin a tapering process to safely discontinue prescribing or dispensing controlled substances, after putting in place specific protections that will ensure that no further diversion occurs, such as requiring storage and administration of the controlled substances to the patient by a person designated by the physician, with additional random pill counts;

(4) The physician shall fully document the results of each pill count conducted, the physician's determination of the reasons for any shortage, and the physician's decisions regarding continued treatment, in the patient's medical record.

**Urine Drug Screens.** (1) During the course of long-term prescribing or dispensing of controlled substances, the physician shall utilize urine drug screens in a random manner at appropriate times to determine whether the patient is taking prescribed medications or taking illegal substances or medications not prescribed by the physician.

(2) If the patient tested negative for controlled substances prescribed or dispensed by the physician and confirmatory testing substantiates a "red flag," the physician shall do one of the following:

(a) Do a controlled taper;

(b) Stop prescribing or dispensing controlled substances immediately; or,

(c) Refer the patient to an addiction specialist or drug treatment program, depending upon the circumstances.

(3) The physician shall discontinue controlled substance treatment and/or refer the patient to addiction management if one or more of the following conditions exist:

(a) There has been no improvement in function and response to the medical complaint and related symptoms;

(b) Controlled substance therapy has produced significant adverse effects; and/or

(c) The patient exhibits drug-seeking behavior or diversion.

**Section 5. Professional Standards for Prescribing or Dispensing Controlled Substances in an Emergency Department**

**Setting.** The following professional standards apply to physicians who prescribe or dispense controlled substances in an emergency department setting:

(1) Before prescribing or dispensing a controlled substance in an emergency department setting, the physician shall:

(a) Obtain an appropriate medical history relevant to the medical complaint and conduct a physical examination of the patient relevant to the medical complaint and related symptoms and document the information in the patient's medical record;

(b) Obtain and review a KASPER report for all available data on the patient, document relevant information in the patient's record, and consider the available information to determine whether it is medically appropriate and safe to prescribe or dispense controlled substances. If the physician cannot obtain a KASPER report for review in sufficient time to make the determination whether to prescribe or dispense controlled substances, the physician shall not prescribe or dispense controlled substances unless demonstrated and documented in the patient's medical record that the medical necessity for and safety in prescribing or dispensing the controlled substance substantially outweigh the risk of unlawful use or diversion of the controlled substances, particularly considering the nature and severity of the patient's presenting complaint;

(c) After examining the benefits and risks of prescribing or dispensing controlled substances to the patient, including non-treatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substances in the amount specified, and document that decision in the patient's record and, if appropriate, the reasoning underlying that decision.

(2) The physician is strongly discouraged from and shall not routinely:

(a) Administer intravenous and/or intramuscular controlled substances for the relief of acute exacerbations of chronic pain;

(b) Provide replacement prescriptions for controlled substances that were lost, destroyed, or stolen;

(c) Provide replacement doses of methadone, suboxone, or subutex for patients in a treatment program;

(d) Prescribe long-acting or controlled-release controlled substances, such as OxyContin, fentanyl patches, or methadone or replacement doses of such medications;

(e) Administer Demerol (Meperidine) to the patient;

(f) Prescribe or dispense more than a three (3) day supply of controlled substances, with no refills.

(3) If the physician determines that exceptional circumstances exist which warrant prescribing or dispensing controlled substances in a manner that is strongly discouraged in Section 2(1), supra, the physician shall document in the patient's medical record the exceptional circumstances that warranted such prescribing or dispensing.

(4) The physician shall ensure that each patient receiving controlled substances by dispensing or prescription is given is informed, by handout or display signage, of the standards established in this regulation regarding the prescribing or dispensing of controlled substances.

(5) These standards shall not apply or be enforced during periods involving disaster, mass casualties, or extreme emergency.

**Section 6. Professional Standards for Documentation of Patient Assessment, Education, Treatment Agreement and Informed Consent, Action Plans, Outcomes and Monitoring.**

(1) Each physician shall document all relevant information in a patient's medical record in a legible manner and in sufficient detail to provide for:

(a) Meaningful diagnosis and treatment of the patient;

(b) The safe and medically appropriate assumption of care by another physician at any given time; and,

(c) This board to determine whether the physician is conforming to professional standards for prescribing or dispens-

ing controlled substances and other relevant professional standards. Such information includes, but is not limited to:

(a) Medical history and physical examinations;

(b) Diagnostic and laboratory test results and therapeutic outcomes;

(c) Evaluations and consultations;

(d) Records of past treatment outcomes including indicators of benefits, such as functional outcomes, and indicators of risk, such as adverse effects;

(e) Medications (including date prescribed, type, dosage, strength and quantity);

(f) Intensity levels of medical complaint and related symptoms;

(g) Subjective complaints of the patient;

(h) Objective findings related to subjective complaints, including impact on functioning and quality of life;

(i) Diagnostic impressions, and potential treatment options;

(j) Treatment objectives;

(k) Discussion of risks and benefits;

(l) Informed consent;

(m) Instructions and agreements; and

(n) Periodic review of treatments, including adverse effects, functional goals, and any other outcomes that reflect benefits or problems with the treatment.

(2) If a physician is unable to conform to professional standards for prescribing or dispensing controlled substances, to the professional standards established by KRS 218A.172, or to other professional standards, due to circumstances beyond their control, the physician shall appropriately document such circumstances and the physician's response to the inability to conform to the specific standards and the impact upon the continuing care of the patient.

**Section 7. Responsibility to Educate Patients Regarding the Dangers of Controlled Substance Use.** (1) It is the acceptable and prevailing medical practice within the Commonwealth of Kentucky for physicians prescribing or dispensing controlled substances to educate patients receiving controlled substances about the following subjects through verbal or written counseling:

(a) Proper use;

(b) Impact upon driving and work safety;

(c) Effect of use during pregnancy;

(d) Potential for overdose and appropriate response to overdose;

(e) Safe storage of controlled substances;

(f) Proper disposal;

(2) Educational materials relating to these subjects may be found on the board's Web site, [www.kbml.ky.gov](http://www.kbml.ky.gov), and are incorporated by reference into this provision.

**Section 8. Violations.** (1) Any violation of the professional standards established in this regulation or in KRS 218A.172 shall constitute a violation of KRS 311.595(12) and (9), which may result in the imposition of disciplinary sanctions pursuant to KRS 311.595;

(2) Each violation of the professional standards established in this regulation or in KRS 218A.172 shall be established by expert testimony by one or more physicians retained by the board, following a review of the licensee's patient records and other available information including KASPER reports.]

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

CONTACT PERSON: C. Lloyd Vest II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

### GENERAL GOVERNMENT CABINET Board of Nursing (As Amended at ARRS, March 12, 2013)

#### 201 KAR 20:220. Nursing continuing education provider approval.

RELATES TO: KRS 314.011(12), 314.073, 314.131(1), (2)  
STATUTORY AUTHORITY: KRS 314.131(1), (2)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(2) and 314.073(3) require the board to establish continuing competency requirements and approve providers of continuing education. This administrative regulation establishes requirements for providers of continuing education.

Section 1. Definitions. (1) "Continuing education activity" means an offering given by a provider of continuing education who has been approved by the board and that relates to the practice of nursing or contributes to the competency of a nurse extending knowledge beyond that obtained in initial nursing preparation or pertinent to specific work requirements.

(2) "Refresher course" means an organized learning experience, designed, planned, and evaluated to meet behavioral outcomes designed to update knowledge of nursing theory and practice competencies by licensure category.

Section 2. (1) A provider applicant who wants to offer a continuing education activity or a refresher course shall submit an:

- (a) ["Application for Provider Approval"]; and
- (b) Application fee as established/set forth in 201 KAR 20:240.

(2) If an application is approved, the board shall issue a provider number to the applicant.

(3) Provider approval shall initially expire on December 31 of the second year following initial approval.

(4) On or before September 30 of the year in which an approval period expires, an approved provider shall submit the:

- (a) ["Application for Provider Renewal"]; and
- (b) Fee as established/set forth in 201 KAR 20:240.
- (5) Renewal shall be for five (5) years.
- (6)(a) A provider applicant may establish compliance by submitting evidence of approval by one (1) of the following organizations:

1. ~~(a)~~ American Academy of Nurse Practitioners;
2. ~~(b)~~ American Association of Critical Care Nurses;
3. ~~(c)~~ American Association of Nurse Anesthetists;
4. ~~(d)~~ American College of Nurse-Midwives;
5. ~~(e)~~ American Nurses Credentialing Center;
6. ~~(f)~~ Association of Women's Health, Obstetrical and Neonatal Nurses;
7. ~~(g)~~ National Association of Nursing Practitioners in Women's Health;
8. ~~(h)~~ National Association Pediatric Nurses Associates and Practitioners;
9. ~~(i)~~ National Association for Practical Nurses Education and Service;
10. ~~(j)~~ National Federation of Licensed Practical Nurses;
11. ~~(k)~~ National League for Nursing; and
12. ~~(l)~~ State Boards of Nursing.

(b) Paragraph (a) of this subsection shall include a provider that offers a continuing education activity related to the pharmacology requirement established in 201 KAR 20:215, Section 5(2).

(7)(a) An organization that approves nursing continuing education may request that it be added to this administrative regulation.

(b) An organization shall be included in this administrative regulation if [the board determines that] its standards are comparable to the standards established by the provisions of this administrative regulation. ~~[(8) Continuing education earned from a provider that is recognized by an organization listed in subsection (6) of this section for an advanced practice registered nurse may be utilized for the pharmacology requirement of 201 KAR 20:215, Section 5(2).]~~

Section 3[2]. (1) The board may review a provider's continuing

education activities, refresher courses, or approval status at any time.

(2) Except as provided in subsection (3) of this section, if after a review of a provider it is determined that the provider does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny or limit the provider's approval status.

(3) If after a review of a continuing education activity or refresher course it is determined that the activity does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny approval status for subsequent offerings of that specific continuing education activity.

(4)(a) A request for a hearing before the board shall be filed within ten (10) days of receipt of the board's notice.

(b) If a provider fails to submit a request for a hearing within the time established/specified in paragraph (a) of this subsection, the board shall implement the action proposed in its notice.

Section 4[3]. Providers shall comply with the following standards:

(1)(a) A nurse who meets the qualifications established in paragraph (b) of this subsection shall be administratively responsible for continuing education activities, including:

1. Planning;
2. Development;
3. Implementation; and
4. Evaluation.

(b) A nurse administrator shall:

1. Hold a current active license;
2. Have experience in adult and continuing education; and
3. Hold a baccalaureate or higher degree, in nursing.

(c) The provider shall designate an alternate nurse administrator who shall meet the requirements established in/of paragraph (b) of this subsection. ~~[The nurse administrator of continuing education for licensed practical nursing groups shall hold a diploma, or its equivalent, from an approved school of practical nursing.]~~

(2) Organized learning activities shall be based upon a reasonable justification supporting the need for the ~~systematic needs assessment, and shall support quality~~ continuing education that:

(a) Enhances the quality, safety and effectiveness of care provided by nurses; and

(b) Contributes directly to the competence of a nurse.

(3) The content of nursing continuing education shall be designed to:

(a) Present current theoretical knowledge to enhance and expand nursing skills; and

(b) Promote the development, or change in attitudes, necessary to make competent judgments and decisions in nursing.

(4) Outcomes/Objectives for continuing education activities shall be:

(a) Related to nursing practice and interventions;

(b) Stated in clearly defined expected learner outcomes; and

(c) Consistent with evidence of a need for the continuing education activity or refresher course ~~needs assessment data~~.

(5) The continuing education activity shall reflect cooperative planning between the nurse administrator, faculty, and content experts.

(6) The content for each educational activity shall include and be documented in provider files [as follows]:

(a) An agenda indicating a presentation schedule, presenters, topics, meals, breaks; and/.

(b) An outline format with corresponding time frames and/. teaching methods indicated for each content area.

1. The content shall be related to and consistent with the outcome ~~[Topic outline, teaching methods, and corresponding time frames sufficient to support relevance and value of the educational activity to safe, effective nursing practice].~~

2. [c)] The outcomes shall provide statements of observable behaviors that present a clear description of the competencies to be achieved by the learner.

(7) Teaching methods shall be consistent with the content and learning objectives, and shall reflect the use of adult learning principles. Activities of both the teacher and the learner shall be specified in relation to the content outline.

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

(8) Faculty for continuing education activities and refresher courses shall have:

(a) Documented expertise in the subject matter; and

(b) Experience in presenting to adult learners and facilitating adult learning[~~demonstrate content knowledge and expertise~~].

(9) The name, title and credentials identifying the educational and professional qualifications for each faculty member shall be retained in the provider offering files.

(10) Resources allocated for the continuing education activity or refresher course shall be adequate in terms of education unit organization, with fiscal support for adequate staff, facilities, equipment, and supplies to ensure quality teaching-learning in a comfortable environment that is accessible to the target audience.

(11) Participants shall be provided with essential information for review prior to registration. This information shall include:

(a) Learner outcomes[~~Learning objectives~~];

(b) Content overview;

(c) Date, time, and presentation schedule;

(d) Presenter;

(e) Number of contact hours;

(f) Fee and refund policy; ~~and~~

(g) Target audience and any prerequisites; and

(h) Requirements for successful completion that shall be clearly specified and shall include a statement of policy regarding candidates who fail to successfully complete the continuing education activity[~~offering~~].

(12) Published information about continuing education activities offered by providers approved by the board shall include the provider number.:

(a) Provider number; and

(b) Following statement: "Kentucky Board of Nursing approval of an individual nursing continuing education provider does not constitute endorsement of program content."

(13)(a) A provider shall notify the board in writing within one (1) month of any changes in its administration, such as nurse administrator, mailing address, or telephone number [~~or other relevant information~~].

(b) Information relevant to the qualifications of the new nurse administrator as established[~~set forth~~] in subsection (1)(b) of this section shall be sent to the board.

(c) If a qualified nurse is not available to serve in the capacity of the administrator, the provider shall not offer any continuing education activity or refresher course until a qualified nurse administrator is appointed.

(14) A provider shall designate and publish the number of hours of any portion of an offering dedicated to pharmacology.

(15) Records of continuing education activities shall be maintained for a period of five (5) years, except for HIV/AIDS education, which shall be maintained for at least twelve (12) years, including the following:

(a) Title, date, and site of the activity;

(b) Name of the person responsible for coordinating and implementing the activity;

(c) Purpose, documentation of planning committee activities, learner outcomes[~~objectives~~], content outline, faculty, teaching, and evaluation methods;

(d) Participant roster, with a minimum of:

1. Name; and

2. Social Security number or license number;

(e) Summary of participant evaluations;

(f) Number of continuing education contact hours awarded;

1. Contact hours shall be calculated by taking the total number of minutes that the participants will be engaged in the learning activities, excluding breaks, and divide by fifty (50); and

2. Partial hours shall be[~~are~~] permissible after one (1) contact hour is earned;

(g) Master copy of certificate awarded; and

(h) All required instructional materials and references shall be identified.

(16) Participants shall receive a certificate of completion[~~attendance~~] that documents participation with the following:

(a) Name of participant;

(b) Offering title, date, and location;

(c) The[~~KBN's~~] provider's name, address, telephone number,

approval number, and expiration date of the providership;

(d) Name and signature of authorized provider representative;

(e) Number of continuing education contact hours awarded.

(17) There shall be a clearly defined method for evaluating the continuing education activity, which shall include[~~which includes the following~~]:

(a) An evaluation tool that includes participant appraisal of achievement of each outcome[~~learning objective~~]; teaching effectiveness of each presenter[~~relevance of content to stated outcomes~~]; effectiveness of teaching methods[~~and appropriateness of physical facilities~~]; and[~~and~~].

(b) A mechanism for periodic, systematic evaluation of the provider's total program of educational activities.

(18) There shall be a summary of the participants' evaluations for each continuing education activity or refresher course with an action plan with time lines for resolution of identified deficiencies[~~shall be maintained~~].

(19) The provider shall have current policies and procedures for the management of the providership that demonstrate compliance with the required standards.

(20) For an offering that includes clinical practice, the instructor-student ratio for the clinical experience shall not exceed one (1) to ten [(10)] [~~The continuing education providership shall be a recognizable function within the sponsoring organization~~].

(21) The following constitute in-service education and shall not be considered as a continuing education activity for purposes of this administrative regulation:

(a) An activity that is part of an employing agency's staff development program designed to provide information related to the work setting;

(b) On the job training;

(c) Orientation;

(d) Basic cardiopulmonary resuscitation; and

(e) Equipment demonstration.

Section 5[4]. (1) The following forms are incorporated by reference:

(a) "Application for Provider Approval", 10/2012[6/2005], Kentucky Board of Nursing; and

(b) "Application for Provider Renewal", 10/2012[6/2005], 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.

SALLY BAXTER, President

APPROVED BY AGENCY: October 11, 2012.

FILED WITH LRC: January 10, 2013 at 1 p.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 Kentucky Board of Interpreters for the Deaf and Hard of Hearing (As amended at ARRS, March 12, 2013)

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

RELATES TO: KRS 309.304(1), 309.312(1)(b)

STATUTORY AUTHORITY: KRS 309.304(3), 309.312(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) and 309.312(1)(b) require the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate an administrative regulation establishing the requirements for an applicant for licensure as an interpreter for the deaf and hard of hearing. This administrative regulation establishes these requirements.

Section 1. Application. Each applicant for a license shall:

(1) Submit a completed Application for Licensure form to the

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

board;

(2) Pay the application and license fee as set forth in 201 KAR 39:040; and

(3) Submit proof of valid certification:

(a) At a level recognized by RID, with the exception of NAD III;

(b) At EIPA level 3.5 and passage of the EIPA written if applying ~~for~~ prior to July 1, 2013;

(c) TECUnit; or

(d) Other certifications as described in 201 KAR 39:080, if applying for licensure via reciprocity.

Section 2. Incorporation by Reference. (1) "Application for Licensure", March/January 2013[2014], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TIM OWENS, Board Chair

APPROVED BY AGENCY: January 2, 2013

FILED WITH LRC: January 10, 2013 at 3 p.m.

CONTACT PERSON: Karen Lockett, Board Administrator, Kentucky Board of Interpreters for the Deaf and Hard of Hearing, PO Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296, ext. 222, fax (502) 696-1923.

### GENERAL GOVERNMENT CABINET Kentucky Board of Interpreters for the Deaf and Hard of Hearing (As Amended at ARRS, March 12, 2013)

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

RELATES TO: KRS 309.304(5), 309.312, 309.314

STATUTORY AUTHORITY: KRS 309.304(3), 309.312, 309.314

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3), 309.312, and 309.314 require the Board of Interpreters for the Deaf and Hard of Hearing to promulgate administrative regulations to carry the provisions of KRS 309.300 to 309.3189; to establish certification requirements for licensure; and to establish renewal and reinstatement fees. This administrative regulation establishes requirements for renewal of licenses, extension of temporary licenses, and reinstatement.

Section 1. Renewal of Licenses. A person licensed as an interpreter shall renew that license annually, as required by KRS 309.314(1) by submitting the following to the board:

(1) A completed License Renewal Application form;

(2) The renewal fee as established in 201 KAR 39:040;

(3) Proof of current certification of the licensee as established in 201 KAR 39:030; and

(4) Documentation of completion of the continuing education requirement established in 201 KAR 39:090.

Section 2. Grace Period. If a license is not renewed by July 1, it may be renewed during the following sixty (60) day period, in accordance with KRS 309.314, by:

(1) Complying with the requirements established in Section 1 of this administrative regulation; and

(2) Submitting the late renewal fee established in 201 KAR 39:040.

Section 3. (1) Reinstatement. A license not renewed prior to the close of the sixty (60) day grace period, in accordance with KRS 309.314(4), may be reinstated upon:

(a) Payment of the renewal fee plus a reinstatement fee as established by 201 KAR 39:040, Section 4(1);

(b) Submission of a completed License Reinstatement Application form to the board;

(c) Submission of evidence of completion of continuing educa-

tion as required by 201 KAR 39:090, Section 10; and

(d) Completion of the requirements of Section 4 of this administrative regulation.

(2) The board may reinstate a temporary license only if the licensee submits proof sufficient to the board of situations such as:

(a) Medical disability of the licensee;

(b) Illness of the licensee or an immediate family member; or

(c) Death or serious injury of an immediate family member.

(3) A request for reinstatement of a temporary license involving medical disability or illness shall be:

(a) Submitted by the person holding a license; and

(b) Accompanied by a verifying document signed by a licensed physician.

#### Section 4. Extensions of Temporary Licenses. (1) Temporary licenses shall expire on July 1 each year. To extend a temporary license, a request for extension shall be submitted by July 1 each year.

(2) To request an extension of a temporary license:

a. [(4)] A temporary licensee shall submit:

1. [(a)] A completed Temporary License Extension Application form;

2. [(b)] The appropriate fee set forth in 201 KAR 39:040;

3. [(c)] Proof of completion of the continuing education requirements set forth in 201 KAR 39:090;

4. [(d)] A letter recommending extension written by the Mentor(s) of Record for the previous licensure term which describes the progress achieved by the mentee. The board may waive this requirement upon submission of proof by the licensee that the licensee has substantially met the goals stated in the plan of supervision; and

5. [(e)] A revised plan of supervision for the upcoming licensure year.

b. [(2)] A deaf or hard of hearing temporary licensee shall submit:

1. [(a)] Upon applying for a first, second, or third extension:

a. [(1)] A completed Temporary License Extension Application form;

b. [(2)] The appropriate fee set forth in 201 KAR 39:040;

c. [(3)] Proof of completion of the continuing education requirements set forth in 201 KAR 39:090;

d. [(4)] A letter recommending extension written by the Mentor(s) of Record which describes the progress achieved by the Mentee. The board may waive this requirement upon submission of proof by the licensee that the licensee has substantially met the goals stated in the plan of supervision; and

e. [(5)] A revised plan of supervision for the upcoming licensure year.

2. [(b)] Upon applying for a fourth and subsequent extensions:

a. [(1)] All requirements listed in paragraph (a) of this subsection; and

b. [(2)] Proof of passage of the RID CDI Knowledge Exam.

(3) The extensions of temporary licenses under this section shall be subject to the term limitations imposed by 201 KAR 39:070, Section 2(2).

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

(a) "License Renewal Application", January 2013[40/2014, form];

(b) "License Reinstatement Application", March/January 2013[40/2014, form]; [and]

(c) "Temporary License Reinstatement Application", March/January 2013; and

(d) "Temporary License Extension Application", March/January 2013[40/2014, form].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TIM OWENS, Board Chair

APPROVED BY AGENCY: January 2, 2013

FILED WITH LRC: January 10, 2013 at 3 p.m.



VOLUME 39, NUMBER 10 – APRIL 1, 2013

CONTACT PERSON: Karen Lockett, Board Administrator,  
Kentucky Board of Interpreters for the Deaf and Hard of Hearing,  
PO Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296,  
ext. 222, fax (502) 696-1923.

**TOURISM, ARTS AND HERITAGE CABINET**  
**Department of Fish and Wildlife Resources**  
**(As Amended at ARRS, March 12, 2013)**

**301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and quota hunts.**

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990  
STATUTORY AUTHORITY: KRS 150.025(1), 150.177,  
150.178, 150.390(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits can be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

Section 1. Definitions. (1) "Antlered elk" means an elk having visible polished antler protruding above the hairline.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "At-large north" means any portion of the elk zone not included in a limited entry area and that lies north of US Hwy 15.

(4) "At-large south" means any portion of the elk zone not included in a limited entry area and that lies south of US Hwy 15.

(5) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife, but shall not include the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

(6)(5)(4) "Baiting" means to place, deposit, tend, distribute, or scatter bait.

(7)(6)(5) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(8)(7)(6) "Elk" means *Cervus elaphus nelsoni*. [(7) "Elk Hunting Unit" or "EHU" means a designated area in the restoration zone with specific management restrictions.]

(9)(8) "Elk Management Unit" or "EMU" means a designated area in the restoration zone with specific management restrictions for a post-season antlerless elk quota hunt.

(10)(9) "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters an agreement with the department to allow public access and hunting for at least five (5) years.

(11)(10) "Limited Entry Area" or "LEA" means a designated area in the restoration zone with specific management restrictions.

(12)(11) "Out-of-zone" means all counties not included in the restoration zone.

(13)(12)(11) "Restoration zone" means the following Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

(14)(13)(12) "Spike" means an elk having one (1) or two (2)

antler points on each side.

(15)(14)(13) "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk that are causing property damage. A person authorized to destroy an elk shall:

(1)(a) Attach a department-issued disposal permit to an elk prior to moving the carcass; and

(2)(b) Not remove the disposal permit until the carcass is processed.

Section 3. Elk Quota Hunts. (1) The elk quota hunt application period shall be January[Regular-Elk Quota Hunts. (1) The elk quota hunt lottery application period shall be December] 1 to April 30.

(2) An applicant shall:

(a) Complete the elk quota hunt application process on the department's Web site at fw.ky.gov; and

(b) Pay a nonrefundable application fee of ten (10) dollars[A person shall apply for the elk quota hunt via the department's Web site at fw.ky.gov and provide the applicant's:

(a) Name;

(b) Social Security number;

(c) Date of birth;

(d) Mailing address or phone number; and

(e) Nonrefundable application fee of ten (10) dollars].

(3) The commissioner may extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(4) There shall be a random electronic drawing from each applicant pool[drawing].

(5) Youth may enter a separate drawing pool for ten (10) either-sex elk permits that shall be valid for use during all elk seasons:

(a) Anywhere in the at-large north or at-large south portions[portion] of the restoration zone; or

(b) Within an LEA if the youth applies for and is drawn for an LEA, pursuant to Section 5(3) of this administrative regulation.

(6) A youth[Five (5) either-sex elk permits shall be available for a special youth-only quota hunt to be held for three (3) consecutive days beginning the last Saturday in September on Paul Van Booven WMA and adjacent private lands as allowed by the landowner.

(a) There shall be a separate random electronic drawing for the youth-only elk quota hunt.

(b) The application period for the youth-only elk quota hunt shall be December 1 through April 30.

(c) A youth shall apply via the department's Web site at fw.ky.gov and provide the applicant's:

1. Name;

2. Social Security number;

3. Date of birth;

4. Mailing address;

5. Phone number; and

6. Nonrefundable application fee of ten (10) dollars.

(d) An applicant shall not apply for the youth-only elk quota hunt more than once per application period.

(7)(e) An applicant for the youth-only elk quota hunt may also apply for the regular quota hunts as established in subsection (12) of[hunt as established in] this section.

(8) A youth applicant drawn for the youth-only elk quota hunt shall not be drawn in any other elk quota hunt held during the same calendar year.

(9) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn in the youth-only elk quota hunt in subsequent years.

(10)(f) A youth applicant drawn for the youth-only elk quota hunt shall not be drawn in the regular quota hunt lottery held during the same calendar year.

(g) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn for the youth-only elk quota hunt in subsequent years.

(6) No more than ten (10) percent of all drawn applicants in each quota hunt pool shall be nonresidents.



## VOLUME 39, NUMBER 10 – APRIL 1, 2013

~~(11)[(7)]~~ A quota hunt permit awarded ~~from any department-administered~~~~[via a department-administered lottery]~~ drawing shall not be transferable.

~~(12)~~ In addition to the youth-only quota hunt, there shall be ~~four~~ ~~(4)~~ separate regular elk quota hunts~~(8)~~ There shall be ~~four~~ ~~(4)~~ separate regular elk quota hunt lotteries~~]~~ consisting of:

- (a) Antlered archery and crossbow;
- (b) Antlered firearms;
- (c) Antlerless archery and crossbow; and
- (d) Antlerless firearms.

~~(13)[(9)]~~ An applicant shall:

- (a) Apply only once for an individual elk quota hunt~~[lottery]~~;
- (b) Not apply for more than two (2) of the four (4) quota hunts established in subsection (12) of this section~~[lotteries]~~;
- (c) Not be eligible to be drawn in more than one (1) of the four (4) quota hunt pools~~[lotteries]~~;
- (d) Only be selected by a random electronic drawing; and
- (e) Pay a nonrefundable application fee of ten (10) dollars for each~~[lottery]~~ entry.

~~(14)[(10)]~~ A person who is drawn for an antlered elk quota hunt shall be ineligible to be drawn for any antlered elk quota hunt for the following three (3) years.

~~(15)[(11)]~~ A person who does not have access to the department's Web site to apply for any quota hunt may contact the department toll free at 1-800-858-1549 for assistance in applying.

Section 4. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner shall issue to a landowner cooperator:

(a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;

(b) Two (2) antlerless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or

(c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access agreement for the duration of the agreement.

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 5 and 6 of this administrative regulation.

(3) A landowner cooperator permit is transferable, but shall only be used on the land for which the agreement was made.

(a) The permit may be transferred to any person eligible to hunt in Kentucky.

(b) Prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department with the hunter's:

- 1. Name;
- 2. Social Security number;
- 3. Address; and
- 4. Telephone number.

(c) The permit shall not be transferable after being used for the harvest of one (1) elk.

(4) Public access agreements with the department shall be recorded in writing.

Section 5. Hunter Requirements. (1) A person shall carry proof of purchase of a valid Kentucky hunting license and valid elk permit while hunting, unless exempted by KRS 150.170.

(2) The statewide bag limit shall be one (1) elk per hunter per license year.

(3) A drawn hunter may apply to hunt in up to three (3) areas in any combination of limited entry and at-large areas by completing the application process [LEAs] on the department's Web site [after the initial drawing].

(4) A hunter who does not apply for an LEA or [who] is not drawn for an LEA shall be assigned by the department to either the:

- (a) At-large north portion of the elk zone; or
- (b) At-large south portion of the elk zone[may hunt anywhere in the at-large portion of the zone].

(5) A hunter drawn for an LEA may hunt only in the assigned LEA, except that a person who is drawn for any elk quota hunt may

hunt on his or her land within the restoration zone.

~~(6)[An elk hunter in the restoration zone may be accompanied by up to two (2) other individuals.~~

~~(4)~~ A person drawn for a regular quota hunt shall be assigned to a single EHU and shall not hunt outside that EHU, except that a drawn applicant who owns land in the elk restoration zone may hunt on his or her land.

~~(5)]~~ An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.

~~(7)[(6)]~~ An elk hunter shall not:

- (a) Take elk except during daylight hours;
- (b) Use dogs, except to recover wounded elk using leashed tracking dogs;

(c) Hunt over bait inside the elk restoration zone;

(d) Drive elk from outside the assigned area~~[EHU]~~;

(e) Take an elk while it is swimming;

(f) Use electronic calls or electronic decoys; or

(g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 3:027~~[by the department]~~ may use a stationary vehicle as a hunting platform.

~~(8)[(7)]~~ A person shall:

(a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and

(b) Display the vehicle tag in the windshield of the vehicle while hunting elk.

~~(9)[(8)]~~ A person under sixteen (16) years old shall be accompanied by an adult who shall remain in a position to take immediate control of the person's firearm.

~~(10)[(9)]~~ An adult accompanying a person under sixteen (16) years old shall not be required to possess a hunting license or elk permit if the adult is not hunting.

~~(11)[(10)]~~ A hunter may use any deer hunting method authorized by 301 KAR 2:172.

~~(12)[(11)]~~ A person shall not use any of the following items to take an elk:

(a) Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2:172;

(b) A modern firearm less than .270 caliber;

(c) A muzzle-loading firearm less than .50 caliber;

(d) A shotgun less than 20 gauge;

(e) Any arrow without a broadhead point;

(f) A handgun with a barrel length of less than six (6) inches, a bore diameter less than .270 inches (.270 caliber), and when fired, the bullet shall produce at least 550 ft/lbs of energy at 100 yards.

~~(13)[(12)]~~ A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.

~~(14)[(13)]~~ An individual who receives or is transferred a landowner cooperator permit or a special commission permit may hunt in all of the antlered-only or antlerless-only quota hunts in accordance with the seasons and limits established in Section 6 of this administrative regulation.

Section 6. Elk Quota Hunt Seasons and Limits. (1) A person drawn for an antlerless or antlered archery and crossbow permit shall not hunt when an elk firearms season is open.

(2) A person drawn for an antlered archery and crossbow permit shall use:

(a) Archery equipment to take an antlered elk beginning the third Saturday in September through the third Monday in January; and

(b) A crossbow to take an antlered elk:

1. For two (2) consecutive days beginning the third Saturday in October; and

2. From the second Saturday in November through December 31.

(3) A person drawn for an antlerless archery and crossbow permit shall use:

(a) Archery equipment to take an antlerless elk beginning the third Saturday in October through the third Monday in January; and

(b) A crossbow to take an antlerless elk:

1. For two (2) consecutive days beginning the third Saturday in October; and

2. From the second Saturday in November through December 31.

(4) A person drawn for an antlered firearms permit shall use a modern gun or muzzleloader to take an antlered elk during one (1) of the following two (2) seven (7) day periods randomly assigned by the department:

(a) From the first Saturday in October for seven (7) consecutive days; or

(b) From the second Saturday in October for seven (7) consecutive days.

(5) A person drawn for an antlerless firearms permit shall use a modern gun or muzzleloader to take an antlerless elk during one (1) of the following two (2) seven (7) periods randomly assigned by the department:

(a) From the second Saturday in December for seven (7) consecutive days; or

(b) From the third Saturday in December for seven (7) consecutive days.

Section 7. LEA boundaries. (1) Caney LEA – Starting at the Intersection of State Hwy 550 and Kentucky 1697, the boundary proceeds north on State Hwy 550 through Mousie and Betty to the intersection with State Hwy 7 near Lackey. The boundary then goes south on State Hwy 7, past Dema to intersection with State Hwy 899. The boundary then goes south on State Hwy 899, through Pippa Passes to intersection with Kentucky 1697 at Alice Lloyd College. The boundary then goes west on Kentucky 1697 to intersection with State Hwy 550 in Garner, completing the boundary.

(2) Hazard LEA - Starting at the intersection of State Hwy 476 and State Hwy 80, the boundary proceeds east on Hwy 80 to the intersection with State Hwy 3209. The boundary then goes west on Hwy 3209 to the intersection with State Hwy 1087. The boundary then goes east on Hwy 1087 to the intersection with State Hwy 1098 near Yellow Mountain. The boundary then follows Hwy 1098 north and west to the intersection with State Hwy 15 near Quick-sand. The boundary then goes south on Hwy 15 to the intersection with State Hwy 476 near Lost Creek. The boundary then goes south on Hwy 476 to the intersection with State Highway 80, completing the boundary.

(3) Straight Creek LEA - Starting at the intersection of State Hwy 66 and State Hwy 221 at Straight Creek, the boundary proceeds east on State Hwy 221[through Stoney Fork] to the intersection with State Hwy 2009. The boundary then proceeds north along State Hwy 2009 to the intersection with US Route 421 [at Bledsoe]. The boundary then proceeds north on[following] US Route 421 to the intersection with State Hwy 406 near Stinnett[2058 at Helton]. The boundary then follows State Hwy 406[Hwy 2058 west to the intersection with State Hwy 1780 near Spruce Pine. The boundary then follows on Hwy 1780 north to the intersection with State Hwy 1850 at Warbranch. The boundary then follows Hwy 1850] west to the intersection with State Highway 66. The boundary then follows State Hwy 66 south to the intersection with Hwy 221 to complete the boundary.[EHU boundaries. (1) EHU 1 – Starting at the Martin/Lawrence County line at the Tug Fork of the Big Sandy River, the boundary proceeds southeast following the Tug Fork to the Pike County/Buchanan County, Virginia line. The boundary then proceeds southwest following the Kentucky/Virginia state line to U.S. Hwy 23. The boundary proceeds north following U.S. Hwy 23 to the Johnson/Lawrence County line. The boundary proceeds east following the county line of Johnson/Lawrence and Martin/Lawrence, completing the boundary.

(2) EHU 2 – Starting at the Johnson/Lawrence County line on U.S. Hwy 23, the boundary proceeds south to the intersection of U.S. Hwy 23 with State Hwy 80. The boundary then follows State Hwy 80 west to the intersection with State Hwy 15. The boundary then goes north following State Hwy 15 to the intersection of State Hwy 15 with the Breathitt/Wolfe County line. The boundary then follows the county lines of Magoffin/Wolfe County, Magoffin/Morgan County, and Johnson/Morgan County northeast to U.S. Hwy 23, completing the boundary.

(3) EHU 3A – Starting at the intersection of U.S. Hwy 23 and State Hwy 80, the boundary proceeds south following U.S. Hwy 23

to the intersection of U.S. Hwy 23 with the Kentucky/Virginia state line. The boundary then follows U.S. Hwy 119 west to the intersection of U.S. Hwy 119 with State Hwy 15. The boundary then follows State Hwy 15 northwest to the intersection of State Hwy 15 with State Hwy 80. The boundary then follows State Hwy 80 northeast to the intersection of State Hwy 80 and U.S. Hwy 23, completing the boundary.

(4) EHU 3B – Starting at the intersection of State Hwy 550 and Kentucky 1697, go north on State Hwy 550 through Mousie and Betty to the intersection with State Hwy 7 near Lackey. Turn south on State Hwy 7, travel past Dema to intersection with State Hwy 899. Turn south on State Hwy 899, go through Pippa Passes to intersection with Kentucky 1697 at Alice Lloyd College. Go west on Kentucky 1697 to intersection with State Hwy 550 in Garner, completing the boundary.

(5) EHU 4 – Starting at the Breathitt/Wolfe County line on State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway west to the Clay/Laurel County line. The boundary then follows the county lines of Clay/Jackson County, Clay/Owsley County, Perry/Owsley County, Breathitt/Owsley County, Breathitt/Lee County, and Breathitt/Wolfe County northeast to State Hwy 15 at the Breathitt/Wolfe County line, completing the boundary.

(6) EHU 5 – Starting at the intersection of the Hal Rogers Parkway and State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and U.S. Hwy 119. The boundary then follows U.S. Hwy 119 east to the intersection of U.S. Hwy 119 and U.S. Hwy 23. The boundary then follows U.S. Hwy 23 south to the intersection of U.S. Hwy 23 with the Kentucky/Virginia line. The boundary then follows the Kentucky/Virginia state line southwest to the intersection of the state line with U.S. Hwy 421. The boundary then follows U.S. Hwy 421 north to the intersection of U.S. Hwy 421 and State Hwy 66, then north along State Hwy 66 to the intersection of State Hwy 66 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway northeast to the intersection of Hal Rogers Parkway and State Hwy 15, completing the boundary.

(7) EHU 6A – Starting at the intersection of the Hal Rogers Parkway and State Hwy 66, the boundary proceeds south following State Hwy 66 to the intersection of State Hwy 66 with State Hwy 221 at Straight Creek. The boundary proceeds east on State Hwy 221 to the intersection with U.S. Hwy 421. The boundary then proceeds south on U.S. Hwy 421 to the intersection with the Kentucky/Virginia state line. The boundary then follows the state line west to the Kentucky/Tennessee state line and continues west to the intersection of the Wayne/McCreary County line with the Kentucky/Tennessee state line. The boundary then follows the county lines of McCreary/Wayne County, McCreary/Pulaski County, McCreary/Laurel County, Whitley/Laurel County, Knox/Laurel County, and Clay/Laurel County northeast to the intersection of Hal Rogers Parkway and the Clay/Laurel County Line. The boundary then follows Hal Rogers Parkway east to the intersection of Hal Rogers Parkway and State Hwy 66, completing the boundary.

(8) EHU 6B – Starting at the intersection of State Hwy 66 and the Hal Rogers Parkway at Big Creek, the boundary proceeds south on State Hwy 66 to the intersection with U.S. Hwy 421. The boundary then follows U.S. Hwy 421 south to the intersection with Kentucky 2058 near Helton, then follows Kentucky 2058 west to Kentucky 1780 at Spruce Pine. The boundary proceeds north on Kentucky 1780 to the intersection with Kentucky 1850 at Warbranch, then west along Kentucky 1850 to the intersection with State Hwy 66 near Queendale. The boundary then follows State Hwy 66 north to the intersection with Hal Rogers Parkway at Big Creek, completing the boundary.

(9) EHU 6C – Starting at the intersection of U.S. Hwy 421 and Kentucky 2058 near Helton, the boundary proceeds south on U.S. Hwy 421 to the intersection with State Hwy 221. The boundary then follows State Hwy 221 west to the intersection with Kentucky 1780 and turns north to follow Kentucky 1780 to the intersection with Kentucky 2058 at Spruce Pine. It then follows Kentucky 2058 east to the intersection with U.S. Hwy 421, completing the boundary.

(10) EHU 6D – Starting at the intersection of Kentucky 1780

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

and Kentucky 1850 at Warbranch, the boundary proceeds south on Kentucky 1780 to the intersection with State Hwy 221. The boundary then follows State Hwy 221 west to the intersection with Kentucky 2011, turning north along Kentucky 2011 to the intersection of Kentucky 2011 and State Hwy 66. It then follows State Hwy 66 north to Kentucky 1850, then proceeds east on Kentucky 1850 to the intersection with Kentucky 1780, completing the boundary.

(11) ~~EHU 6E~~ - Starting at the intersection of State Hwy 66 and Kentucky 2011 near Beverly, the boundary proceeds south along Kentucky 2011 to the intersection with State Hwy 221 at Stoney Fork. The boundary then follows State Hwy 221 west to the intersection with State Hwy 66 at Straight Creek, turning north along State Hwy 66 to the intersection with Kentucky 2011, completing the boundary.]

### Section 8. Post-season Quota Hunt[for Elk] on Private Land.

(1) A modern firearms quota hunt for antlerless elk and spikes shall take place beginning on the fourth Saturday in January for fourteen (14) consecutive days.

(2) Each hunter shall be randomly drawn from the pool of applicants:

- (a) Who were not drawn for the previous elk quota hunts; and
- (b) Who are residents of the elk restoration zone.

(3) A drawn applicant shall comply with the requirements in Section 5 of this administrative regulation except that an applicant may hunt only in the assigned EMU or on land the applicant owns within another EMU.

(4) EMU boundaries shall be:

(a) Knott County EMU - Starting at the intersection of State Hwy 550 and State Hwy 7 near Lackey, the boundary proceeds south along State Hwy 7 to the intersection with State Hwy 582 then southeast on State Hwy 582 to the intersection of State Hwy 582 and 160. The boundary then proceeds north on State Hwy 160 to the intersection with State Hwy 550 at Hindman, turning northeast on State Hwy 550 to the intersection with State Hwy 7, thus completing the boundary.

(b) Stoney Fork EMU - Starting at the intersection of State Hwy 2058 and U.S. Hwy 421 near Helton, the boundary then proceeds south along U.S. Hwy 421 to the intersection of U.S. Hwy 421 and U.S. Hwy 119 near Harlan, then west along U.S. Hwy 119 to the intersection of U.S. Hwy 119 and U.S. Hwy 25E. The boundary then goes north following U.S. Hwy 25E to the intersection with State Hwy 66, then north on State Hwy 66 to the intersection of State Hwys 66 and 1850, then east along State Hwy 1850 to the intersection of State Hwys 1850 and 1780 at Warbranch. The boundary then proceeds south on State Hwy 1780 to its intersection with State Hwy 2058 near Spruce Pine, then east on State Hwy 2058 back to U.S. Hwy 421 at Helton, thus completing the boundary.

(5) Any public hunting area within an EMU shall be closed to elk hunting during this season.

Section 9. Tagging and Checking Requirements. (1) Immediately after taking an elk and prior to removing the hide or head from the carcass, a hunter shall:

(a)[(4)] Record on a hunter's log the following information:

- 1.[(a)] The species harvested;
- 2.[(b)] The sex of the animal;
- 3.[(c)] Date of harvest; and
- 4.[(d)] County of harvest; and
- (b)[(2)] Check the harvested elk by:

1.[(a)] Calling (800) 245-4263 and providing the requested information; or

2.[(b)] Completing the online check-in process at fw.ky.gov.

(2) If a harvested elk leaves the possession of the hunter, the hunter shall attach to the carcass a hand-made tag that contains the hunter's:

(a) Confirmation number;

(b) Name; and

(c) Telephone number.

(3) A person shall not provide false information in:

(a) Completing the hunter's log;

(b) Checking an elk; or

(c) Creating a carcass tag.

Section 10. Elk Hunting on Public Land. (1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on Wildlife Management Areas (WMA), Hunter Access Areas, state forests, the Big South Fork National River and Recreation Area, the Daniel Boone National Forest, and the Jefferson National Forest within the restoration zone under the conditions of the permit received.

(2) Portions of Paintsville Lake WMA that lie out of the restoration zone are subject to the requirements established in Section 11 of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA.

(a) The archery and crossbow seasons shall be open as established in Section 6 of this administrative regulation.

(b) A firearm shall not be used to hunt elk.[Firearms shall not be used to hunt elk, except that youths participating in the youth-only elk quota hunt may use any deer hunting method authorized by 301 KAR 2:172 to take elk.

(c) The WMA shall be closed to all other hunting during the youth-only elk quota hunt.]

(5) A person shall not mimic the sound of an elk on public land open to elk hunting from September 1 until the opening of the elk archery season.

Section 11. Out-of-zone Elk Hunting. (1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone, except that a hunter shall not use any of the following to take elk:

(a) Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2:172;

(b) A modern firearm less than .270 caliber;

(c) A muzzle-loading firearm less than .50 caliber;

(d) A shotgun less than twenty (20) gauge;

(e) Any arrow without a broadhead point; or

(f) A handgun;

1. With a barrel length of less than six (6) inches;

2. With a bore diameter of less than .270 caliber; and

3. That produces less than 550 foot-pounds of energy at 100 yards.

(2) Unless exempted by KRS 150.170, a person who is hunting out-of-zone elk shall possess:

(a) A valid Kentucky hunting license; and

(b) An out-of-zone elk permit.

(3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.

(4) Any elk harvested out-of-zone shall be telechecked pursuant to Section 9 of this administrative regulation.

Section 12. A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours to obtain a disposal permit.

Section 13. A person who is the recipient of a valid elk quota hunt permit, landowner cooperator permit, or special commission permit may defer use of the permit to the following year if:

(1) There is a death of the permit holder's:

(a) Spouse;

(b) Child; or

(c) Legal guardian, if the permit holder is under eighteen (18) years old; and

(2) The permit holder provides to the department a death certificate and one (1) of the following documents prior to May 1 of the year following the hunting season:

(a) A marriage certificate;

(b) A birth certificate; or

(c) An affidavit of paternity or maternity.

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: January 10, 2013

FILED WITH LRC: January 11, 2013 at 3 p.m.

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

CONTACT PERSON: ROSE Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email [fwpubliccomments@ky.gov](mailto:fwpubliccomments@ky.gov).

### TOURISM, ARTS AND HERITAGE CABINET Kentucky Department of Fish and Wildlife Resources (As amended at ARRS, March 12, 2013)

#### **301 KAR 2:195. Falconry, raptor take, and raptor propagation. [Raptor propagation and falconry.]**

RELATES TO: KRS 150.010, [450.025,] 150.180, 150.183, 150.290, 150.305, 150.320, 150.330, 150.360[, 50 C.F.R. Parts 13, 17, 21, 22]

STATUTORY AUTHORITY: KRS 150.025(1), 150.280(1), [450.025, 450.028,] 50 C.F.R. Parts 13, 17, 21, 22  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing open seasons for the taking of wildlife, bag limits, and methods of taking wildlife, and to make these requirements apply to a limited area. KRS 150.280(1) requires the department to promulgate administrative regulations establishing procedures for propagating and holding of protected wildlife. 50 C.F.R. Parts 13, 17, 21, and 22 establish requirements for permitting, taking, possessing, and selling of raptors and endangered and threatened species. This administrative regulation establishes permitting, taking, possessing, and reporting requirements for people engaged in falconry and raptor propagation.

Section 1. Definitions. (1) "Adult raptor" means a raptor that is at least one (1) year old.

(2) "Captive-bred raptor" means a raptor or the eggs thereof, hatched in captivity from parents in captivity.

(3) "Eyas" means a young raptor that is still in the nest and not capable of flight.

(4) "Hack" means the temporary release of a raptor held for falconry to the wild so that it can survive on its own.

(5) "Hybrid raptor" means an offspring produced by two (2) distinct raptor species.

(6) "Imprinted" means a raptor that has been hand-raised by a human in isolation from the sight of other raptors from two (2) weeks of age through fledging.

(7) "Native raptor" means a raptor species which has historically existed or currently exists in the wild in Kentucky without introduction by humans.

(8) "Passage bird" means a raptor less than one (1) year of age that is capable of sustained flight and is no longer dependent on parental care.

(9) "Wild raptor" means a raptor that was originally taken from the wild.

Section 2. Federal requirements. Except as established in Sections 3 through 11 of this administrative regulation, a person shall be in compliance with the federal requirements established in 50 C.F.R. Part:

- (1) 13;
- (2) 17;
- (3) 21; and
- (4) 22.

Section 3. Permits and Licenses. (1) A person shall be required to obtain and possess a falconry permit to take or possess a raptor for use in falconry.

(2) A person with a valid state or federal falconry permit:

(a) May take wildlife pursuant to applicable statewide requirements if the falconer:

1. Has a valid Kentucky hunting license; or
2. Is hunting license exempt pursuant to KRS 150.170; and

(b) Shall not be required to obtain a wildlife transportation permit pursuant to 301 KAR 2:081 and 2:082 if the person:

1. Is importing or transporting a legally held falconry raptor into Kentucky; or

2. Is transporting a legally held falconry raptor into and through Kentucky to a destination outside of Kentucky.

Section 4. Falconry Permit Requirements, Classes of Permits, and Apprentice Sponsors. (1) To obtain a falconry permit of any class, a person shall:

(a) Complete a Kentucky Falconry Permit Application form provided by the Department; and

(b) Submit to the department:

1. The completed application;
2. The appropriate fee as established in 301 KAR 3:022; and
3. A completed Raptor Facilities and Equipment Inspection Report form signed by a state conservation officer.

(2) An apprentice falconry permit applicant shall:

(a) Be at least twelve (12) years old;

(b) Obtain a sponsor who holds a Kentucky general or master falconry permit pursuant to subsection (10) of this section;

(c) If under eighteen (18) years old, have a parent or legal guardian co-sign the application;

(d) Contact the department to schedule a time to take a written examination administered by the department; and

(e) Pass the written examination by scoring a minimum of eighty (80) percent.

(3) An apprentice class falconry permit holder shall:

(a) Only possess one (1) of the following wild or captive-bred raptors at any given time:

1. American kestrel (*Falco sparverius*);
2. Red-tailed hawk (*Buteo jamaicensis*);
3. Red-shouldered hawk (*Buteo lineatus*); or
4. Harris' hawk (*Parabuteo unicinctus*); and

(b) Not possess a raptor:

1. Taken from the wild as a nestling; or
2. That is imprinted on humans.

(4) A general class falconry permit applicant shall:

- (a) Be at least sixteen (16) years old;
- (b) If under eighteen (18) years old, have a parent or legal guardian co-sign the application;
- (c) Have practiced falconry at the apprentice level for at least two (2) years; and
- (d) Have complied with all previous year reporting requirements, if applicable, pursuant to Section 7 of this administrative regulation.

(5) A first time general class permit applicant shall also submit to the department a:

(a) Signed document from a general or master class falconry permit holder stating that the permit applicant has:

1. Practiced falconry with a wild raptor at the apprentice level for at least two (2) years; and
2. Maintained, trained, and hunted with a raptor for an average of six (6) months per year with at least four (4) months in each year;

(b) Summary of the species held as an apprentice; and

(c) The length of time the apprentice held each bird.

(6) A general class falconry permit holder shall:

- (a) Be allowed to possess the following:
1. A raptor obtained from the wild;
2. A hybrid raptor; or
3. A captive-bred raptor; and
- (b) Not possess more than three (3) of the following raptors at any given time:

1. Great horned owl (*Bubo virginianus*); or
2. Any member of the Order Falconiformes, except for the following species which shall not be possessed:

- a. Golden eagle (*Aquila chrysaetos*);
- b. Bald eagle (*Haliaeetus leucocephalus*);
- c. White-tailed eagle (*Haliaeetus albicilla*); or
- d. Stellar's sea eagle (*Haliaeetus pelagicus*).

(7) A master class falconry permit applicant shall:

(a) Have held a general class falconry permit for at least five (5) years; and

(b) Have complied with all previous year reporting requirements, pursuant to Section 7 of this administrative regulation.

(8) A first time master class permit applicant shall submit to the department a signed letter attesting that the applicant has prac-

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

ticed falconry at the general class permit level for at least five (5) years.

(9) A master class falconry permit holder:

(a) Shall not possess more than five (5) of the following wild raptors at any given time:

1. Great horned owl; and

2. Any member of the Order Falconiformes except a bald eagle;

(b) Shall obtain prior approval from the department pursuant to the requirements of 50 C.F.R. 21 and 22 to possess any of the following raptors:

1. Golden eagle;

2. White-tailed eagle; or

3. Stellar's sea eagle; and

(c) May possess any number of captive-bred raptors of the species allowed in paragraph (a) and (b) of this subsection.

(10) An apprentice sponsor shall:

(a) Not have more than three (3) apprentices at any given time;

(b) Be at least eighteen (18) years old;

(c) Possess a valid Kentucky general or master class falconry permit;

(d) Have held a general class falconry permit for a minimum of two (2) years; and

(e) Submit a signed letter to the department:

1. Attesting that the sponsor will assist the apprentice in:

a. Learning about the husbandry and training of raptors held for falconry;

b. Learning relevant wildlife laws and regulations; and

c. Deciding which species of raptor is most appropriate for the apprentice to possess; and

2. Containing the sponsor's:

a. Name;

b. Falconry permit number;

c. Address; and

d. Telephone number.

(11) A sponsor who is withdrawing sponsorship of an apprentice shall:

(a) Notify the department in writing within five (5) days of withdrawing the sponsorship; and

(b) Provide the apprentice with a signed and dated document stating the length of time that the apprentice practiced falconry under the sponsor's guidance.

(12) An apprentice who loses sponsorship shall obtain a new sponsor within thirty (30) days from the sponsor's notification of withdrawal.

(13) A new sponsor shall be in compliance with the requirements established in subsection (7) of this section.

(14) If an apprentice fails to obtain a new sponsor within thirty (30) days, the department shall:

(a) Revoke the apprentice's falconry permit; and

(b) Confiscate any raptor in the apprentice's possession if the apprentice does not transfer ownership of the raptor to another licensed falconer.

(15) A non-resident falconer who moves to Kentucky to establish residency shall apply for the appropriate Kentucky falconry permit within thirty (30) days after moving.

(16) A resident falconry applicant who is a new resident of the United States shall obtain the appropriate Kentucky falconry permit by:

(a) Meeting the application requirements established in subsection (1) of this section;

(b) Contacting the department to schedule a time to take a written examination administered by the department;

(c) Passing the written examination by scoring a minimum of eighty (80) percent; and

(d) Providing to the department written documentation of previous falconry experience including:

1. The number of years the applicant has practiced falconry;

2. The raptor species used in falconry; and

3. The game species taken with falconry.

(17) A person who held a Kentucky falconry permit within the last five (5) years, but has allowed the permit to lapse, may apply for reinstatement at the class level previously held by:

(a) Complying with the application requirements established in

subsection (1) of this section; and

(b) Providing the department with proof of previous certification at that class level.

(18) A person whose Kentucky falconry permit has lapsed for a period greater than five (5) years may apply for reinstatement at the class level previously held by:

(a) Complying with the application requirements established in subsection (1) of this section;

(b) Complying with the examination requirements established in subsection (2) of this section; and

(c) Providing the department with proof of previous certification at that class level.

(19) A falconry permit holder shall not be required to pay the permit fee established in 301 KAR 3:022 if the permit holder's current permit has not yet expired and the permit holder is applying for:

(a) An upgrade to the next falconry class; or

(b) A facility relocation.

Section 5. Facility, Equipment, and Care Requirements. (1) A falconry permit holder shall comply with all federal requirements established in 50 C.F.R. Part 21 for the permit holder's:

(a) Facility;

(b) Equipment; and

(c) Treatment and care for possessed raptors.

(2) A falconry permit holder who is relocating a raptor facility shall:

(a) Notify the department within five (5) business days of relocation; and

(b) Have a relocated raptor facility inspected and approved by a department conservation officer within thirty (30) days of relocation.

(3) A department conservation officer shall only inspect a raptor facility:

(a) In the presence of the permit holder;

(b) On a weekday; and

(c) Between 8 a.m. and 4:30 p.m. Eastern time.

Section 6. Banding, Tagging, and Telemetry Requirements. (1) A falconry permit holder shall comply with federal banding, tagging, and telemetry requirements established in 50 C.F.R. Part 21.

(2) A falconry permit holder who is required by federal regulations to band a raptor shall:

(a) Contact the department to request leg bands at least fifteen (15) days prior to obtaining a raptor; and

(b) Only use U.S. Fish and Wildlife Service leg bands that are issued by the department.

(3) A falconry permit holder shall attach at least two (2) radio transmitters to a hybrid raptor if the permit holder is flying it un tethered in the wild.

Section 7. Raptor Take and Release, Recordkeeping, and Reporting Requirements. (1) Unless exempted by KRS 150.170, a Kentucky falconry permit holder shall have in possession a Kentucky hunting license when taking a raptor from the wild.

(2) When taking a raptor from the wild, a nonresident shall have in possession:

(a) A valid Kentucky nonresident hunting license;

(b) A valid falconry permit or equivalent from the nonresident's home state; and

(c) An approved Kentucky Nonresident Raptor Take Form.

(3) To obtain a Kentucky Nonresident Raptor Take Form, a person shall:

(a) Print a copy of the form from the department's Web site at [fw.ky.gov](http://fw.ky.gov); or

(b) Contact the department at 800-858-1549 and request a mailed copy.

(4) A person shall submit to the department a completed and signed Kentucky Nonresident Raptor Take Form at least fifteen (15) working days prior to the requested take date.

(5) A falconry permit holder shall be responsible for complying with all applicable federal requirements if taking raptors on federal land.

(6) A falconry permit holder who is a nonresident shall only

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

take one (1) legal raptor in Kentucky per calendar year.

(7) An approved Kentucky Nonresident Raptor Take Form shall only be issued to a person whose state of residence allows a Kentucky resident to legally take a raptor from that state.

(8) A nonresident falconer who takes a raptor in Kentucky shall submit to the department a completed and signed Falconry Take Location Report within five (5) days of taking a bird.

(9) A licensed falconer shall comply with all raptor take requirements established in 50 C.F.R. 21 in addition to the requirements established in this section.

(10) A resident falconry permit holder shall not take more than two (2) raptors from the wild in any calendar year.

(11) An eyas shall only be taken:

(a) By a general or master class falconry permit holder; and

(b) From January 1 through July 31.

(12) A person shall not take more than one (1) sharp-shinned hawk (*Accipiter striatus*) eyas per calendar year.

(13) There shall be an annual maximum quota for sharp-shinned hawk eyases of:

(a) Ten (10) for Kentucky residents; and

(b) Five (5) for nonresidents.

(14) Prior to taking a sharp-shinned hawk eyas, a person shall be responsible for calling the department at 800-858-1549 to check if the sharp-shinned hawk eyas annual quota has been reached.

(15) A person shall not take a sharp-shinned hawk eyas from a nest unless there are at least three (3) eyases in the nest.

(16) Each person who takes a sharp-shinned hawk eyas shall submit to the department the Falconry Take Location Report within five (5) days of possession.

(17) Any permit class falconer may take a passage bird if it is a species the falconer is allowed to possess as established in Section 4 of this administrative regulation.

(18) The allowable period of take for:

(a) A passage bird, other than a great horned owl, *shall be/is*] September 1 through January 31;

(b) An adult or passage bird great horned owl *shall be/is*] September 1 through October 31; and

(c) An adult American kestrel shall only be taken from September 1 through January 31.

(19) An adult American kestrel or adult great horned owl shall only be taken by a:

(a) General class permit holder; or

(b) Master class permit holder.

(20) A person shall not take a peregrine falcon (*Falco peregrinus*) from the wild in Kentucky.

(21) A person shall not release the following raptors into the wild:

(a) A non-native raptor;

(b) A hybrid raptor; or

(c) A captive-bred, native raptor.

(22) Prior to releasing a raptor into the wild, a person shall remove all leg bands from the bird.

(23) A falconry permit holder shall complete and submit to the department a federal form 3-186A or enter the required information in the federal database at <http://permits.fws.gov/186A> within five (5) days if a raptor is:

(a) Acquired;

(b) Transferred;

(c) Released;

(d) Lost;

(e) Rebanded;

(f) Microchipped;

(g) Stolen; or

(h) Dead.

(24) A falconer shall retain copies of each submitted 3-186A form or the electronically submitted data for a minimum of five (5) years following a raptor's:

(a) Transfer;

(b) Release;

(c) Loss; or

(d) Death.

**Section 8. Transfer of Ownership and Propagation.** (1) A falconry permit holder may transfer ownership of a wild-caught raptor

pursuant to 50 C.F.R. Part 21, but shall not engage in the following activities with wild-caught raptors:

(a) Selling;

(b) Purchasing;

(c) Trading; or

(d) Bartering.

(2) A falconry permit holder may transfer a wild-caught raptor to a person who possesses a federal raptor propagation permit if:

(a)1. The raptor has been used in falconry for at least one (1) year for the following species:

a. Sharp-shinned hawk;

b. Cooper's hawk (*Accipiter cooperii*);

c. Merlin (*Falco columbarius*); or

d. American kestrel; or

2. The raptor has been used in falconry for at least two (2) years for all other legal species of raptor; and

(b) The person receiving the transferred bird possesses a state captive wildlife permit.

(3) A person who legally possesses a captive-bred raptor may engage in the activities listed in subsection (1)(a) through (d) of this section if:

(a)1. The transferred bird is marked with a metal leg band; or

2. The transferred bird is implanted with a microchip pursuant to 50 C.F.R. Part 21; and

(b) The person in receipt of the bird possesses:

1. The appropriate class falconry permit; or

2. A federal raptor propagation permit.

(4) A person shall not breed or propagate a native raptor without first obtaining:

(a) A federal raptor propagation permit, pursuant to 50 C.F.R. Part 21; and

(b) The appropriate Kentucky captive wildlife permit, pursuant to 301 KAR 2:081.

(5) A person who is propagating a native raptor shall submit to the department copies of all the following materials required by 50 C.F.R. Part 21:

(a) The raptor propagation application;

(b) Propagation records; and

(c) Propagation reports.

(6) The materials required in subsection (5) of this section shall be submitted to the department by the same dates required in 50 C.F.R. Part 21.

**Section 9. Other Activities.** (1) A falconry permit holder may use a raptor for conservation education programs, pursuant to 50 C.F.R. Part 21.

(2) A falconry permit holder who is in compliance with the permit requirements for Special Purpose Abatement, pursuant to 50 C.F.R. Part 21, may receive payment for nuisance wildlife control work if the permit holder also possesses a Kentucky Commercial Nuisance Wildlife Control permit, pursuant to 301 KAR 3:120.

(3) A person may assist a permitted wildlife rehabilitator, as established in 301 KAR 2:075, in conditioning raptors for subsequent release into the wild if the person is:

(a) A general or master class falconry permit holder; and

(b) Working with a species the falconry permit holder is allowed to possess.

(4) A general or master class permit holder may hack a raptor if the permit holder contacts the department and provides the following information:

(a) The hack site location;

(b) The species of raptor;

(c) The origin of the raptor; and

(d) The planned hacking dates.

**Section 10. Revocation of Permits and Appeal Procedure.** (1) The department shall revoke the falconry permit of a person convicted of a violation of this administrative regulation for a period of one (1) year.

(2) A person may request an administrative hearing pursuant to KRS Chapter 13B if the person's falconry permit is:

(a) Denied; or

(b) Revoked.



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

(a) "Kentucky Falconry Permit Application", January 2013 edition;

(b) "Raptor Facilities and Equipment Inspection Report", January 2013 edition;

(c) "Falconry Take Location Report", January 2013 edition; and

(d) "Kentucky Nonresident Raptor Take Form", January 2013 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern Time[KRS 150.025 authorizes the department to promulgate administrative regulations governing the taking of wildlife. 50 C.F.R. Parts 13, 17, 21, and 22 authorize the protection of endangered species and birds of prey. This administrative regulation establishes the requirements for the propagation of raptors and for falconry.

Section 1. Definitions. (1) "Exotic raptor" means those species which have no subspecies occurring in the wild in the United States or Mexico and which require the holding of a joint state and federal falconry permit to lawfully possess.

(2) "Legal hunting raptor" means the great horned owl (*Bubo virginianus*) and all hawks and falcons of the families Falconidae and Accipiteridae, except those that are endangered or threatened and under conditions described in Section 4(1)(c) of this administrative regulation, golden eagles (*Aquila chrysaetos*) as well as threatened species.

Section 2. Except as provided by Sections 3 through 11 of this administrative regulation, C.F.R. Part 13, General Permit Procedures; Part 17, Subpart 17.11, Endangered and Threatened Wildlife; Part 21, Migratory Bird Permits; and Part 22, Eagle Permits shall apply to the propagation of raptors and falconry.

Section 3. Hunting License, Falconry Permit Requirements and Transportation Permit Waiver. (1) Wildlife may be taken within state hunting seasons and bag limits with any legal hunting raptor provided the falconer has a valid state or federal falconry permit and a valid Kentucky resident or nonresident hunting license in his or her possession.

(2) A licensed falconer may undertake intrastate transportation of any legally held raptor without possessing a transportation permit as required in 301 KAR 2:081 and 2:082.

Section 4. Classes of Falconry Permits, Sponsors, Application, Processing and Issuance, Examination Required, Duration of Permits and Fees. (1) Classes of falconry permits.

(a) Apprentice falconry permits.

1. An apprentice falconer shall be at least fourteen (14) years of age and shall have a sponsor holding a general or master falconry permit.

2. An applicant between the ages of fourteen (14) and sixteen (16) years shall provide a written consent form or letter from a parent or guardian.

3. An apprentice may take and possess only one (1) nonexotic raptor, which shall be taken from the wild, and shall not take more than one (1) replacement from the wild during any twelve (12) month period which begins when the first replacement raptor is taken from the wild.

4. Only an American kestrel (*Falco Sparverius*), red-tailed hawk (*Buteo jamaicensis*), red-shouldered hawk (*Buteo Lineatus*), or any exotic legal hunting raptor may be possessed or taken by an apprentice falconer.

5. The red-tailed and red-shouldered hawks shall be first year (passage) age class birds, capable of flight.

6. Any American kestrel which has left the nest and is capable of flight may be taken from the wild.

7. There shall be no age restriction on exotic raptors.

8. An apprentice falconer may buy and sell only exotic raptors.

(b) General falconry permits.

1. A general permittee shall be:

a. At least eighteen (18) years of age;

b. Have at least two (2) years experience in the practice of falconry at the apprentice level; and

c. Have complied with all reporting requirements of this administrative regulation.

2. A permittee at the general level may possess no more than two (2) nonexotic raptors and shall not take more than two (2) replacements from the wild during any twelve (12) month period which begins when any replacement raptor is taken from the wild.

3. A general permittee may take and possess any legal hunting raptor defined in this administrative regulation.

(c) Master falconry permits.

1. A master permittee shall have at least five (5) years experience in the practice of falconry at the general class level and have complied with all requirements of this administrative regulation.

2. A master permittee may possess no more than three (3) nonexotic raptors.

3. No more than two (2) raptors for replacement birds shall be taken from the wild during any twelve (12) month period which begins when any replacement raptor is taken from the wild.

4. A master permittee may take and possess any legal hunting raptor, but shall not take, in any twelve (12) month period, as part of the three (3) bird limitation, more than one (1) raptor listed as threatened in 50 C.F.R. Part 17, Subpart B, Section 17.11, and then only when approved by the U.S. Fish and Wildlife Service and the Department of Fish and Wildlife Resources.

5. A master falconer may replace any number of captive bred raptors a year if the possession limit at one (1) time is not exceeded.

6. If a permit has been issued by the department and in accordance with the Bald Eagle Protection Act and 50 C.F.R. Part 22, Subpart B, Section 22.24, a master permittee may take and possess golden eagles for falconry purposes.

7. A master permittee shall not take any species listed as endangered by 50 C.F.R. Part 17, Subpart B, Section 17.11, but may possess those species in accordance with the Endangered Species Act and implementing regulations.

(2) Sponsors.

(a) A sponsor shall hold a master or general falconry permit.

(b) A sponsor shall not have more than three (3) apprentices at any one (1) time.

(c) A sponsor withdrawing sponsorship shall notify the department in writing giving reasons for withdrawal and shall notify the apprentice.

(d) If the apprentice does not have a new sponsor within thirty (30) days from the date of notification of withdrawal, his or her permit shall be deemed cancelled and the birds relocated.

(3) Application, processing and issuance.

(a) In order to obtain any class of joint state/federal falconry permit, an applicant shall complete the standard falconry permit application form (KYF-1), incorporated by reference in Section 12 of this administrative regulation, as designated by the Department of Fish and Wildlife Resources and approved by the U.S. Fish and Wildlife Service.

(b) Accompanying the completed application shall be two (2) checks:

1. One (1) payable to the Department of Fish and Wildlife Resources in the amount specified for a falconry permit in 301 KAR 3:022; and

2. One (1) payable to the U.S. Fish and Wildlife Service in the amount specified in 50 C.F.R. Part 13, Subpart B, Section 13.11.

(c) Also accompanying the application shall be an inventory of raptors which the applicant possesses at the time of application as specified in Section 6(1) of this administrative regulation and 50 C.F.R. Part 21, Subpart C, Section 21.28.

(d) Upon receipt of a completed application, inventory and fees, the application shall be forwarded to the appropriate state conservation officer who shall administer the required examination and inspect equipment and facilities.

(e) 1. If the equipment and facilities are found to be adequate and the applicant passes the examination as specified in subsection (4) of this section, the state conservation officer shall certify that by affixing his signature on a letter of recommendation, and the Department of Fish and Wildlife Resources shall forward the application, certification, appropriate fee and test score to the U.S. Fish and Wildlife Service.

2. The U.S. Fish and Wildlife Service may then issue the permit according to the applicable terms and conditions of 50 C.F.R. Parts 13, 21, or 22.

(4) Examination required. 3

(a) An applicant for any class of falconry permit shall take an appropriate written examination and score no less than eighty (80) percent.

(b) The test shall be approved in accordance with 50 C.F.R. Subpart C, Part 21.29(f) and shall be administered and supervised by the Department of Fish and Wildlife Resources at a designated site.

(5) Duration of permits. A permit shall be valid for a period of three (3) years from date of issuance.

(6) Fees. Falconry permit fees are as listed in 301 KAR 3:022.

Section 5. Facilities and Equipment. (1) Facilities and equipment shall meet the minimum standards described in 50 C.F.R. Part 21, Subpart C, Section 21.29.

(2) Facilities, equipment and raptors shall be made available at all times for inspection by authorized personnel of the Department of Fish and Wildlife Resources and the U.S. Fish and Wildlife Service.

Section 6. Marking. Any peregrine falcon (*Falco peregrinus*), gyrfalcons (*Falco rusticolus*) and Harris hawks (*Parabuteo unicinctus*) shall be banded with markers supplied by the U.S. Fish and Wildlife Service at all times according to provisions of 50 C.F.R. Part 21, Subpart C, Section 21.29.

Section 7. License Requirements and Conditions for Taking Raptors From the Wild. (1) License requirements:

(a) A holder of a Kentucky falconry permit shall have in his or her possession a valid annual Kentucky hunting license before taking any raptor from the wild.

(b) Before taking a raptor from the wild, a nonresident shall have a Kentucky nonresident annual hunting license and joint state/federal permit or individual state and federal falconry permits from his or her home state and a special permit from the Department of Fish and Wildlife Resources.

(c) Application for a special permit shall be made by writing the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, at least fifteen (15) days in advance of the date on which the permit is desired, and describing the nature of the request, the applicant's name, address, and the status and number of the federal/state falconry permit.

(2) Conditions for taking raptors from the wild.

(a) Eyas.

1. A young bird not yet capable of flight (eyas) may be taken only by a general or master falconer and only during the period May 12 through July 14.

2. No more than two (2) eyases shall be taken from the wild by the same permittee during this period.

3. At least one (1) young shall be left in any nest from which raptors are taken.

(b) Passage birds. A first year (passage) bird may be taken only during the period September 7 through December 31.

(c) Retrapping. A raptor may be retrapped only in accordance with 50 C.F.R. Part 21, Subpart C, Section 21.29.

(d) Mature birds.

1. Only the American kestrel and the great horned owl may be taken when over one (1) year old, except that any legal hunting raptor taken under a depredation or special purpose permit may be used for falconry by general and master falconers.

2. A trap or other device for taking raptors alive shall be tagged with the owners' name and address.

(e) A raptor taken from the wild shall be reported to the U.S. Fish and Wildlife Service as required in 50 C.F.R. Part 21, Subpart C, Sections 21.28, 21.29 and 21.30 with a copy of the report being sent to the Department of Fish and Wildlife Resources at the same time.

Section 8. Raptors Acquired Before 1977. (1)(a) A person possessing a raptor legally acquired before January 1, 1977, and who fails to meet the permit requirements, shall be allowed to retain the

raptor with a nonhunting raptor permit.

(b) These raptors shall not be replaced nor used for hunting.

(c) Facilities and equipment for holding them shall meet the standards in Section 5 of this administrative regulation.

(2) A falconry permittee legally possessing raptors acquired before January 1, 1977, in excess of the number allowed under his class permit, shall be allowed to retain and hunt the extra raptors. Replacement of those raptors shall not occur, nor shall an additional nonexotic raptor be obtained, until the number in possession is at least one (1) less than the total number authorized by the class of permit held by the permittee.

Section 9. Importation, Trading or Transferring, Purchasing, Bartering or Selling, Temporary Care and Feathers of Raptors. (1) Importation. A holder of a valid falconry permit may transport any legally held raptor into or within the state of Kentucky without a transportation permit from the Department of Fish and Wildlife Resources as required in 301 KAR 2:081 and 2:082.

(2) Trading or transferring.

(a) Any class falconry permittee may trade or transfer a raptor to another permittee if the transaction occurs entirely within the state of Kentucky and no money or other consideration is involved.

(b) A permittee may trade or transfer a raptor to another permittee in an interstate transaction if the prior written approval of all states involved is obtained and no money or other consideration is involved in the transaction, except as allowed in 50 C.F.R. Part 21, Subpart C, Section 21.28(d)(8).

(c) This transaction shall be reported to the U.S. Fish and Wildlife Service as required in 50 C.F.R. Part 21, Subpart C, Sections 21.28 and 21.30 with a copy of the report being sent to the Department of Fish and Wildlife Resources at the same time.

(3) Purchasing, bartering or selling. General and master class permittees may purchase, barter or sell any lawfully possessed raptor which is bred in captivity under authority of a raptor propagation permit issued pursuant to 50 C.F.R. Part 21, Subpart C, Sections 21.28 and 21.30, subject to the following conditions:

(a) Any permittee who buys from, sells to or barter with any person in the United States or a foreign country shall meet the conditions specified in 50 C.F.R. Part 21, Subpart C, Section 21.30(d)(5);

(b) A raptor propagation permittee who sells or barter raptors shall have a commercial captive wildlife permit issued by the Department of Fish and Wildlife Resources according to provisions of 301 KAR 2:081;

(c) All transactions shall be reported to the U.S. Fish and Wildlife Service as required in 50 C.F.R. Part 21, Subpart C, Sections 21.28 and 21.30 with a copy of the report being sent to the Department of Fish and Wildlife Resources at the same time.

(4) Temporary relocation of raptors. A raptor may be temporarily held for a permittee only by an individual who is authorized to possess raptors, and subject to all other conditions in 50 C.F.R. Part 21, Subpart C, Section 21.29(j)(4).

(5) Feathers. Molted feathers or feathers from birds that die in captivity, may be retained and exchanged by permittees only for imping purposes.

Section 10. Release of Raptors. (1) A person shall not intentionally release to the wild any species not native to Kentucky without first obtaining written permission from the commissioner.

(2) The marker from the released bird shall be removed and surrendered to the department.

(3) The marker from an intentionally released indigenous bird shall also be removed and surrendered to the department.

(4) A federal bird band shall be affixed to a captive bred raptor intentionally released to the wild.

Section 11. Raptor Propagation Requirements, Authorized Activities, Applications, Records, and Reports. (1) Raptor propagation requirements.

(a) A person shall not breed or propagate raptors without obtaining the appropriate Kentucky captive wildlife permit as required in 301 KAR 2:081.

(b) A commercial captive wildlife permit authorizes the propagation and sale of raptors.



(c) A noncommercial permit authorizes only propagation.  
 (d) A permittee shall comply with all requirements, including permit application, of 50 C.F.R. Part 21, Subpart C, Section 21.30.  
 (2) Authorized activities. All activities permitted by 50 C.F.R. Part 21, Subpart C, Section 21.30 are authorized in Kentucky except as otherwise noted in this administrative regulation.  
 (3) Applications, records, and reports. A copy of all raptor propagation applications, records, and reports required by the U.S. Fish and Wildlife Service in 50 C.F.R. Part 21, Subpart C, Section 21.30, shall be submitted to the Department of Fish and Wildlife Resources on the same dates as required by 50 C.F.R. Part 21, Subpart C, Section 21.30.

Section 12. Incorporation by Reference. (1) Standard falconry permit application form (KYF-1), (12/6/06) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Kentucky Department of Fish and Wildlife, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8:00 am to 4:30 pm].

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: December 5, 2012

FILED WITH LRC: December 28, 2012 at 8 a.m.

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email [fwpubliccomments@ky.gov](mailto:fwpubliccomments@ky.gov).

## EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(As Amended at ARRS, March 12, 2013)

### 701 KAR 5:140. Districts of Innovation.

RELATES TO: KRS 156.108, 156.160(1)(g), 160.107

STATUTORY AUTHORITY: KRS 156.108, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: **KRS**

156.160(1)(g) gives the Kentucky Board of Education the authority to promulgate administrative regulations and KRS 156.108 requires the Kentucky Board of Education to promulgate administrative regulations to prescribe the conditions and procedures to be used by a local board of education to be approved as a district of innovation by the Kentucky Board of Education. This administrative regulation establishes the requirements and approval process for districts of innovation.

Section 1. Definitions. (1) "Competency based learning" means a framework for the awarding of credit to students upon mastery of Kentucky's Core Academic Standards in 704 KAR 3:303 **or upon mastery of;** any additional competencies **which shall** also include explicit, measurable, transferable learning objectives that empower students **and;** **students receive timely, differentiated support based on their individual learning needs; and learning outcomes emphasize competencies** that include application and creation of knowledge along with the development of important skills and dispositions.

(2) "District of Innovation" is defined in KRS 156.108(1)(a).

(3) "Eligible employees" is defined in KRS 160.107(3)(b).

(4) "Expanded learning opportunities" means initiatives that provide students additional opportunities for enrichment, personal growth, and engagement outside the traditional school day, and that may include extended day **or/** year initiatives, before- and after-school programs, Saturday, weekend, and summer programs, distance learning, and early childhood education initiatives.

(5) "Innovation" is defined in KRS 156.108(1)(b).

(6) "Innovative strategies" **means[mean]** strategies that provide non-traditional approaches to all areas of curriculum, instruction, assessment, governance, and school operation.

(7) "School of Innovation" is defined in KRS 156.108(1)(c).

### Section 2. Conditions and Areas of Emphasis for Innovation.

(1) Any public school district may submit an application for approval as a district of innovation **in accordance with the application process established in Section 3 of this administrative regulation.** **Any[No]** individual school **shall not[may]** submit an application except as part of a district application.

(2) **[A district may include in its application a request for waiver from any administrative regulation promulgated by the Board of Education or any Kentucky Revised Statute related to public schools except the following:**

(a) **Any health, safety, civil rights, or disability rights requirements in statute or administrative regulation;**

(b) **The compulsory attendance requirements under KRS 158.030 and 158.100;**

(c) **The Kentucky Core Academic Standards outlined in KRS 158.685 and 704 KAR 3:303;**

(d) **The minimum high school graduation requirements set forth in 704 KAR 3:305;**

(e) **The statewide assessment system requirements specified in KRS 158.6453;**

(f) **The financial audit, audit procedures, and audit requirements under KRS 156.265;**

(g) **The criminal background check requirements specified in KRS 160.180 and 161.148;**

(h) **The open records and meetings requirements in KRS Chapter 61;**

(i) **The purchasing requirements and limitations in KRS Chapter 45A, 156.074 and 156.480; or**

(j) **The instructional time requirements in KRS 158.070.** **A district may include in its application a request to implement competency based learning strategies that measure a student's mastery of the curriculum standards, regardless of the amount of instructional time completed.**

(3) A district may incorporate in its application any innovative strategies and models that have been shown to be effective in other districts or states or new innovative strategies or models created by the district or school. Innovative strategies may include:

(a) Moving to a competency based learning system, including development of alternate methods for delivering curriculum **or/and** for measuring mastery of standards and skills;

(b) Creating multiple pathways to graduation, including rigorous career and technical pathways, apprenticeships, early college high schools, early graduation options, **or/and** digital learning opportunities;

(c) Rethinking the times and places that learning occurs, including lengthening or flexing the school day **or/and** school year, moving learning beyond the traditional school building, **or/and** incorporating expanded learning opportunities;

(d) Implementing alternative forms of school governance that include the engagement of teachers, parents, and community members **and** that **does/do** not meet the requirements of KRS 160.345;

(e) Designing learning environments that include the student in the design of learning pathways; **or/and**

(f) Creating additional job classifications for certified **or/and** classified staff beyond the traditional roles of teacher and instructional assistants and compensating staff on schedules other than single salary schedules.

Section 3. Application Process. (1) A district may submit an original or renewal **District of Innovation** Application to the department at any time within the calendar year. **Each implementation of an approved application[All implementations of approved applications] shall begin at the start of a school term and[provided the implementation date is] at least 180 days from the date of submission of the application.**

(2) Pursuant to KRS 160.107(3), a district shall identify and include in its application those schools that have voluntarily chosen to be schools of innovation, any persistently low-achieving schools that the district **chooses to make[is requiring to be]** schools of innovation, and any district operated schools **per KRS 160.345(1)(b)** the district plans to create in its application.

(3) The department shall provide technical assistance to districts prior to application submission.

(4) The application shall include the following components:

(a) An individual school level plan for each school included in the district's innovation plan and for any district-operated school the district plans to create under the application;

(b) A description of how the district's innovation plan will[shall] provide greater improvement in student outcomes, particularly among low-achieving students, than the outcomes the district would expect using its existing instructional programs. The plan shall specifically address how it more effectively improves the multiple measures required under the accountability system, including targets for student achievement, student growth, achievement gap reduction, graduation rate, and college and career readiness;

(c) A description of the district's plan to ensure that capacity exists in both human and fiscal resources to implement the changes needed in the district to ensure a successful implementation of the district's innovation plan;

(d) A description of the district's attendance policy for non-traditional settings and the district's plan to ensure that all students meet attendance requirements;

(e) A plan for developing alternate assessment options and measuring student performance outcomes in non-traditional settings including extended learning opportunities, apprenticeships, private instruction, work-study, study in a foreign country, awarding of competency based learning credit, community service, independent study, or[and] on-line learning opportunities;

(f) A description and rationale for the innovative[innovation] strategies and models chosen to be implemented;

(g) A list of the statutes, administrative regulations, and local board policies from which the local district is seeking a waiver or exemption in order to implement innovative strategies[practices] and an explanation of how the requirements of those authorities are a barrier to that implementation;

(h) Documentation of broad support for innovations including educators, parents, local institutions of higher education, and business and community partners. This documentation shall[may] include:

1. Minutes of local board of education meetings at which[where] the District of Innovation Application was discussed;

2. Transcripts or minutes from stakeholder meetings designed specifically to develop or support the District of Innovation Application;

3. Minutes of school-based decision making (SBDM) councils that include information showing an affirmative vote of at least seventy (70) percent of the eligible employees to participate in the application as well as discussion of the application itself. The vote of the eligible employees shall be conducted based on school council policy related to council elections per KRS 160.345.[and]

4. Letters of support and commitment to adhere to the innovation plan from a variety of local stakeholder groups including parent, community, and business groups; and

5. If the application contains a request[requests] for waiver of sections[any or all] of KRS 160.345, evidence of the two (2) votes required by[for] KRS 160.107(4)(b) for each school requesting the[such a] waiver, specifying the vote from the school-based decision making council and the vote from the teachers and staff in the school;

(i) A detailed budget indicating how the local board of education shall support implementation of the innovation plan over the course of the initial five (5) year innovation period;

(j) Signatures of the superintendent and board chair along with official board minutes documenting the[a] vote to approve submission of the application;

(k) Signatures of the chair of the SBDM council for each school participating in the application;[and]

(l) A description of how the district shall support job-embedded professional learning; and

(m) For each school in the plan that is requesting a waiver of the school council structure outlined in KRS 160.345, a description of the governance model to be used in the school. The new governance model shall ensure that teachers, parents, and staff continue to share leadership responsibilities as outlined in KRS 160.107(4)(d).

(5)(a) A committee designated by the commissioner shall re-

view and recommend approval or denial of a completed application to the Kentucky Board of Education within sixty (60) days from receipt of the completed application based on use of the District of Innovation Application Scoring Rubric.

(b) An incomplete or denied application shall be returned to the district and, if re-submitted, the committee shall review and recommend approval or denial to the Kentucky Board of Education within sixty (60) days of receipt of the re-submitted application.

(6)(a) The Kentucky Board of Education shall make the final decision on approval or denial of the application at its first regularly scheduled meeting following the committee's review of the application and recommendations based on the District of Innovation Application Scoring Rubric[sixty (60) day review period].

(b) A successful application shall be given an initial approval for five (5) years.

(c) A district that is approved and whose application is still active after five (5) years may submit a renewal application using the application process established[outlined] in this administrative regulation. Each renewal of a district of innovation shall not exceed five (5) years.

(7)(a) A district approved as a District of Innovation may amend its plan as needed at any time by submitting a written amendment request to[after the first full year of implementation using a process established by] the department.

The amendment request shall contain the following:

1. The description of the amendment and a justification for the request;

2. How the proposed amendment improves the application's opportunities to be successful; and

3.[and include] All appropriate evidence that the[any] amendment affecting an individual school of innovation was supported[voted on] in a manner similar to that established in subsection (4)(h) of this section[of Education].

(c) The amended plan shall be referred to the committee designated pursuant to subsection (5) of[described in] this section. The committee shall review the amendment request and make a determination for approval within sixty (60) days of the amendment submission.

Section 4. Monitoring of Plan Implementation. (1) District and school innovation plans shall:

(a) Be incorporated within the overall district comprehensive plan; or

(b)[shall] Replace the district comprehensive plan.

(2) At the completion of the second year after plan approval and each year thereafter for the term of the approval status, a district approved as a District of Innovation shall annually provide data to the commissioner that shall include the following:

(a) Number of students served by the innovation plan, total number and by socio-economic status, race or[/] ethnicity, gender, [and] disability, and grade level;

(b) Number of students served by the innovation plan not on track to graduate from high school, total number and by socio-economic status, race or[/] ethnicity, gender, [and] disability, and grade level;

(c) Documentation of student progress toward graduation and college and career readiness;

(d) Total number of certified teachers participating in the innovation plan and their roles and responsibilities;

(e) Documentation of certified and classified staff operating in a non-traditional school environment;

(f) Documentation of any extended learning opportunities in which students in the school of innovation[school] participate for the purposes of earning or recovering credit, including qualifications of instructors, time spent, and student outcomes; and

(g) Other measurable outcomes specific to the district's innovation plan as described in the initial application or through modification of the original plan.

(3) At the end of the second year after plan approval and each year thereafter for the term of the approval status, a district approved as a District of Innovation shall receive an annual site visit from a review team selected and trained by the department[of Education]. The purpose of the visit shall be to monitor progress

and interview staff and students to collect qualitative data on the effect of the innovation plan and for future research needs.

~~[(a) The department][of Education][shall develop a rubric to be used by the site visit team to monitor the implementation of the innovation plan. The rubric and interview questions shall be provided to all innovation districts and posted on the department's][Department of Education][Web site; and~~

~~(b) The department][of Education][shall be responsible for providing training on the use of the rubric to site team members.]~~

Section 5. Probation, Revocation, and Appeal Procedures. (1) After its annual review of a district's implementation report and the report of the site visit team, the Kentucky Board of Education may, on the anniversary of the application approval, determine that a district shall[should] be placed on probation and shall provide the district with a corrective action plan.

(2) Upon the subsequent year's review of the reports, if the Kentucky Board of Education does not believe the district has met the expectations of the corrective action plan, it may revoke a district's approval as a District of Innovation.

(3) Upon notification of probation or revocation of District of Innovation status, the Kentucky Board of Education shall give the district thirty (30) days to appeal the decision in writing and shall rule on the appeal at its next regularly scheduled meeting following the submission of the appeal.

(4) Any district that has had its status as a District of Innovation revoked shall[must] wait one (1) calendar year before re-applying to be a District of Innovation.

Section 6.~~[(4)]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "District[Districts] of Innovation Application", March 2013[November 2012]; and

(b) "District[Districts] of Innovation Application Scoring Rubric", March 2013[November 2012].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of Innovation and Partner Engagement, 1st floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

TERRY HOLLIDAY, Ph.D., Commissioner of Education  
DAVID KAREM, Chairperson

APPROVED BY AGENCY: February 14, 2013

FILED WITH LRC: February 14, 2013 at 3 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 Board of Education**  
**Department of Education**  
**(As amended at ARRS, March 12, 2013)**

**704 KAR 3:095. The Use of Response-to-Intervention in Kindergarten through Grade 3.**

RELATES TO: KRS 158.305[157.200]

STATUTORY AUTHORITY: KRS [156.160(1)(g),] 158.305(2)

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(2) 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 require-

ments 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 and[, that is] provided to all students.

(2) "Differentiated core academic and behavioral 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 instruc-tion[curriculum].

(3) "Evidence-based" means classroom practices for which there is strong evidence of success.

(4) "Implemented with fidelity~~[of implementation]~~" means the accurate and consistent provision or delivery of instruction as it was designed.

(5) "Intensive academic and behavioral 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 appropriate[instructional] interventions provided, in addition to core instruction, if[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. Each local district[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 reduce[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, and writing~~[,]~~ the stu-dent's[students'] behavior~~[,]~~ and any intervention plans and services being delivered.

VOLUME 39, NUMBER 10 – APRIL 1, 2013

Section 3. The response-to-intervention system for Kindergarten through Grade 3 shall coordinate with district-wide interventions required by KRS ~~158.792~~~~[158.742]~~~~[148.792]~~, 158.6453~~(1)(b)~~, 158.6459~~(1)~~, ~~(2)~~, ~~(3)~~, 704 KAR 3:305, ~~Section 1(1)(b)~~, ~~(3)(d)~~, 704 KAR 3:530, ~~Section 2(1)(b)~~, 704 KAR 3:285, ~~Section 3(4)~~, ~~[and]~~ 707 KAR 1:300, ~~Section 1~~, 707 KAR 1:310, ~~Section 1(3)(a)~~, and 707 KAR 1:320.

Section 4. ~~Each~~ local ~~district~~~~[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., Commissioner of Education  
DAVID KAREM, Chair

APPROVED BY AGENCY: February 14, 2013

FILED WITH LRC: February 14, 2013 at 3 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.

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Building Codes Enforcement**  
**(As Amended at ARRS, March 12, 2013)**

**815 KAR 35:060. Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060.**

RELATES TO: KRS ~~[Chapter 13B]~~ 164.772(3), 227A.010, 227A.060, 227A.100, 339.230, 29 C.F.R. 570

STATUTORY AUTHORITY: KRS 227A.040(1), (8), 227A.060, 227A.100(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227A.040 and 227A.060 authorize the ~~Department~~~~[Office]~~ of Housing, Buildings and Construction to promulgate administrative regulations to establish a process for the licensing of electrical contractors, electricians, and master electricians. KRS 227A.100(9) authorizes the department to promulgate administrative regulations governing an inactive license. This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians, and master electricians.

Section 1. Application Procedure. An applicant for licensure pursuant to KRS 227A.060 shall:

(1) Complete an application as required by Section 2 of this administrative regulation;

(2) Pay the application fee required by Section 3 of this administrative regulation;

(3) Provide verifiable evidence of experience and training as ~~established~~~~[specified]~~ in Section 4 of this administrative regulation; and

(4) Provide evidence of passage of the examination required by Section 5 of this administrative regulation.

Section 2. Application Requirements. (1) The applicant shall complete an application form, either Electrical Contractor's License Application, Form BCE-EL-2, or Electrical License Application Form, BCE-EL-3, which shall include ~~[the following information]~~:

- (a) The applicant's name;
- (b) The applicant's home address;
- (c) The applicant's business address;
- (d) The applicant's home and business telephone numbers;
- (e) The applicant's date of birth;
- (f) The applicant's Social Security number or employer identification number;
- (g) The applicant's email address;

(h) The licenses applied for;

(i) For master electrician or electrician, a narrative listing of the applicant's experience in the electrical industry, including:

1. Business name and address;
2. Job title; and
3. Supervisor's name;

(j) For master electrician or electrician, a listing of all approved training or apprenticeship programs the applicant has completed;

(k) A statement confirming that the applicant is not in default on any educational loan guaranteed by the Kentucky Higher Education Assistance Authority in accordance with KRS 164.772(3);

(l) A passport-sized color photograph of the applicant ~~taken within the past six (6) months~~;

(m) For electrical contractor licenses, the name and license number of the master electrician who will be affiliated with the applicant; and

(n) For electrical contractor licenses, the name of the insurer providing the applicant's liability and workers' compensation coverage and the policy number of each coverage.

(2) An applicant for reciprocity shall:

(a) Comply with the requirements ~~established~~~~[set forth]~~ in the reciprocity agreement between Kentucky and the state in which the applicant is licensed; and

(b) Submit a completed Reciprocity Electrical License Application, Form BCE-EL-4, which shall include:

1. A statement confirming that the applicant is not in default on any educational loan guaranteed by the Kentucky Higher Education Assistance Authority in accordance with KRS 164.772(3);

2. A passport-sized color photograph of the applicant ~~taken within the past six (6) months~~;

3. For electrical contractor licenses, proof of compliance with the insurance and workers' compensation requirements established in Section 7 of this administrative regulation; and

4. A copy of the applicant's license from the participating state.

Section 3. Application, Renewal, Reinstatement, and Late Fees. (1) The application and renewal fees shall be:

- (a) \$200 for an electrical contractor's license;
- (b) \$100 for a master electrician's license; or
- (c) Fifty (50) dollars for an electrician's license.

(2) Application, renewal, reinstatement, and late fees shall not be refundable.

(3) The reinstatement fee for any lapsed license pursuant to KRS 227A.100(4) shall be equal to the license renewal fee and shall be paid in addition to the license renewal fee.

(4) The late renewal fee shall be fifty (50) dollars. If all documents required to be submitted for renewal are postmarked on or before the last day of the renewal month, the filing shall be considered timely and a late fee shall not be assessed.

(5) Renewal fees for inactive licenses shall be one-half (1/2) the fee for an active license.

(6) The fee to return a license to an active status from an inactive status shall be the remaining one-half (1/2) renewal fee for that year.

Section 4. Verification of Experience. (1) An applicant shall submit verification of experience for licensure as a master electrician or electrician.

(2) Verification shall be submitted in the form of:

(a) Tax returns or other official tax documents that indicate the applicant's occupation or the nature of the applicant's business activities, including Federal Schedule C, Form W-2, Form 1099, or local occupational tax returns;

(b) A copy of a business license issued by a county or municipal government that did not issue electrical contractors, master electrician's, or electrician's licenses prior to June 24, 2003, if the business license indicates the applicant operated as an electrical contractor or worker;

(c) A sworn affidavit, on the affiant's letterhead, certifying that the affiant has personal knowledge that the applicant has worked as a master electrician or an electrician for at least one (1) of the following:

1. An electrical workers union;
2. A certified electrical inspector; or

VOLUME 39, NUMBER 10 – APRIL 1, 2013

3. An employer that employed the applicant as an electrician or a master electrician; or

(d) ~~[1-] Records of a branch of the United States Armed Forces that indicate the applicant performed a function that primarily involved electrical work. [2-] Experience gained while in the military shall be deemed to have been earned in Kentucky.~~

(3) One (1) year of electrical experience shall consist minimally of 1,600 hours of electrical work in a contiguous twelve (12) month period.

Section 5. Examinations. (1) An applicant for an electrical contractor's license, master electrician's license, or electrician's license shall pass an examination administered by an approved examination provider. A passing score shall be valid for a period of three (3) years.

(2) For an electrical contractor's license, an applicant that is a business entity shall designate a person to take the examination on behalf of the applicant. The designee shall be:

(a) An owner of the applicant's business[applicant];

(b) An officer of the applicant's business[applicant];

(c) A director of the applicant's business[applicant]; or

(d) A full-time employee of the applicant's business[applicant].

(3)(a) If a person designated by an entity as established[provided] in subsection (2) of this section leaves the employment or no longer maintains an interest in that entity, the entity shall designate another person who either:

1. Has passed the examination; or

2. Successfully passes the examination within thirty (30) days.

(b) Failure to have a designee that has passed the examination shall render the licensee no longer qualified to be licensed.

(4) Upon application by a testing agency, a national code group, or by an applicant for certification, the department may recognize another examination as equivalent to an examination administered by an approved examination provider. The person or group submitting the examination shall demonstrate that the examination covers the same material and requires the same level of knowledge as the approved examinations.

Section 6. Appeal Procedure. (1) An applicant denied a license may appeal the decision to the Commissioner of the Department of Housing, Buildings and Construction. The applicant shall submit written notice of the appeal to the Department of Housing, Buildings, and Construction within ten (10) business days of receiving notice that the license application has been denied.

(2) The appeal shall be conducted pursuant to KRS Chapter 13B by a hearing officer appointed by the Commissioner of the Department of Housing, Buildings, and Construction.

Section 7. Proof of Insurance. (1) An applicant for an electrical contractor's license shall provide proof of compliance with liability insurance requirements by providing an insurance certificate showing general liability insurance coverage of at least \$500,000 issued by an insurer authorized to do business in Kentucky and naming the Department of Housing, Buildings, and Construction, Electrical Licensing, as the certificate holder.

(2) The applicant shall provide proof of workers' compensation insurance by providing:

(a) An insurance certificate from an approved insurance provider with the Kentucky Department of Insurance; or

(b) A notarized statement that the applicant is not required to obtain workers' compensation coverage and the reason why the coverage is not required.

(3) Each electrical contractor shall require the contractor's[Electrical contractors shall require their] liability and workers' compensation insurers to provide notice to the Department of Housing, Buildings, and Construction if a policy:

(a) [A policy] is cancelled, terminated, or not renewed; or

(b) Limit is[The policy limits are] lowered.

(4) An electrical contractor[Electrical contractors] shall advise the Department of Housing, Buildings, and Construction of a:

(a) Change in the contractor's[their] insurance coverage, including cancellation or termination of any policy;

(b) Change in the insurer providing the coverage; or

(c) Changed circumstances that require the contractor to obtain coverage.

Section 8. Renewal Requirements. (1) A license shall be valid for one (1) year and shall be renewed on or before the last day of the licensee's birth month. For electrical contractor licenses issued to corporations, partnerships, or business entities without a birth month, the renewal month shall be the month the license was issued.

(2) The Department of Housing, Buildings, and Construction shall issue an initial license to an applicant for a period of up to twenty-three (23) months and shall charge a pro rata initial license fee to reflect the actual term of the initial license. An initial license shall not be issued for less than a twelve (12) month period.

(3) A licensee shall apply for license renewal on Electrical License Renewal Application, Form BCE-EL-5.

Section 9. Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform electrical work requiring a license if the license is inactive.

(2) An electrical contractor licensee in inactive status shall not be required to maintain liability insurance or provide proof to the Department of Housing, Buildings, and Construction of compliance with workers' compensation laws.

(3) A certified electrical inspector may be licensed as an electrical contractor, master electrician, or electrician, but shall maintain that license as inactive while having an active electrical inspection certification.

(4) Performing electrical work that requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee.

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

(a) Form BCE-EL-2, "Electrical Contractor's License Application", March, 2007 edition;

(b) Form BCE-EL-3, "Electrical License Application", May 2011 edition;

(c) Form BCE-EL-4, "Reciprocity Electrical License Application," August 2009 edition; and

(d) Form BCE-EL-5, "Electrical License Renewal Application", August 2009 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings, and Construction, Electrical Licensing, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: January 15, 2013

FILED WITH LRC: January 15, 2013 at 10 a.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, fax (502) 573-1057.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(As Amended at Senate and House Standing Committees on Judiciary, March 4, 2013)

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)(11(3)) of this administrative regulation if:~~

~~(a) An administrative sanction or criminal conviction relating to a controlled substance 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.]~~ 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.]~~ 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;~~

~~e.]~~ 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

~~c.]~~ 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 regula-~~

~~tion;~~] 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.[11.] 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)[10(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, March 12, 2013)

### 902 KAR 55:015. Schedule I substances.

RELATES TO: KRS 218A.010-218A.050, 21 C.F.R. 1308.11

STATUTORY AUTHORITY: KRS 194A.050[194.050],

218A.020, 218A.040, 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS

218A.020 authorizes the Cabinet for Health and Family Services[Human-Resources] to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. After considering the criteria set forth in KRS 218A.020 and 218A.040 and 21 C.F.R. 1308.11[applicable federal regulations], the Cabinet for Health and Family Services[Human-Resources] designates the substances set forth in this administrative regulation as Schedule I controlled substances. This administrative regulation differs from the federal regulation, 21 C.F.R. 1308.11, because it designates substances that are substantially similar to synthetic cannabinoids as Schedule I controlled substances. The Cabinet for Health and Family Services recognizes that synthetic cannabinoids have significant abuse potential and inclusion on Kentucky's Schedule I list will help reduce the risk to public health.

Section 1. Opiates. The Cabinet for Health and Family Services[Human-Resources] hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opiates, including their isomers, optical isomers, esters, ethers, salts, salts of isomers, esters, and ethers, unless specifically excepted, if[whenever] the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alphacetylmethadol (except Levo-alphacetylmethadol LAAM);if:]

(2) Acetyl-alpha-methylfentanyl, N-1-(1-methyl-2-phenethyl)-4-piperidyl-N-phenylacetamide;

(3) Alpha-methylfentanyl, N-1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(4) Alpha-methylthiofentanyl, N-1-methyl-2-(2-thienyl) ethyl-4-piperidyl-N- phenylpropanamide;

(5) Benzylfentanyl, N-1-benzyl-4-piperidyl-N-phenylpropanamide;

(6) Beta-hydroxyfentanyl, N-1-(2-hydroxy-2-phenethyl)-4-piperidyl-N-phenylpropanamide;

# VOLUME 39, NUMBER 10 – APRIL 1, 2013

- (7) Beta-hydroxy-3-methylfentanyl, N-1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl-N-phenylpropanamide;
- (8) Difenoixin;
- (9) 3-Methylfentanyl, N-3-methyl-1-(2-phenylethyl)-4-piperidyl-N-phenylpropanamide;
- (10) 3-methylthiofentanyl N-3-methyl-1-(2-thienyl) ethyl-4-piperidinyl-N-phenylpropanamide;
- (11) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);
- (12) Para-fluorofentanyl, **N-(4-fluorophenyl)-N-1-(2-phenethyl)-4-piperidinylpropanamide[(N-(4-fluorophenyl)-N-1-(2-phenethyl)-4-piperidinylpropanamide)]**;
- (13) 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP);
- (14) Thénylfentanyl, N-1-(2-thienyl) methyl-4-piperidyl-N-phenyl-propanamide;
- (15) Thiofentanyl N-phenyl-N-1-(2-thienyl)ethyl-4-piperidinylpropan-amide; and
- (16) Tilidine.

Section 2. Opium Derivatives. The Cabinet for Health and Family Services[Human Resources] hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opium derivatives, their salts, optical isomers, isomers and salts of isomers, unless specifically excepted, **if[whenever]** the existence of these salts, isomers, optical isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Drotebanol; and
- (2) Etorphine (except hydrochloride salt).

Section 3. Hallucinogenic Substances. The Cabinet for Health and Family Services[Human Resources] hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers **if[, unless specifically excepted, whenever]** the existence of these salts; **if[whenever]** isomers, **including the optical position and geometric isomers;** and salts of isomers is possible within the specific chemical designation: **if[for purpose of this paragraph only, the term "isomer" includes the optical position and geometric isomers:]**

- (1) alpha-ethyltryptamine (alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl)indole);
- (2) 4-bromo-2, 5-dimethoxy-amphetamine (4-bromo-2,5-DMA, 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine);
- (3) 2, 5-dimethoxyamphetamine (2,5-DMA);
- (4) 2, 5-dimethoxy-4-ethylamphetamine (DOET);
- (5) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine, cyclohexamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, PCE);
- (6) 3, 4-methylenedioxymethamphetamine (MDMA);
- (7) 4-methoxyamphetamine (PMA, 4-methoxy-alpha-methylphen-ethylamine, paramethoxyamphetamine);
- (8) 3, 4-methylenedioxy-N-ethylamphetamine (N-ethyl-alpha-methyl-3, 4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);
- (9) N-hydroxy-3, 4-methylenedioxyamphetamine (N-hydroxy-alpha-methyl-3, 4(methylenedioxy)phenethylamine, N-hydroxy MDA);
- (10) Parahexyl (Synhexyl, 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo b,d pyran);
- (11) Pyrrolidine analog of phencyclidine (1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);
- (12) Thiophene analog of phencyclidine (1-(1-(2-thienyl)cyclohexyl)piperidine, TCP, TCPy); and
- (13) 1-1-(2-thienyl) cyclohexylpyrrolidine (TCPy).

Section 4. Depressants. The Cabinet for Health and Family Services[Human Resources] hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers **if[whenever]** the existence of **these[such]** salts, isomers, and salts of isomers is possible within

the specific chemical designation:

- (1) Mecloqualone; and
- (2) Methaqualone.

Section 5. Stimulants. The Cabinet for Health and Family Services[Human Resources] hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers **if[whenever]** the existence of **these[such]** salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Aminorex (aminoxaphen, 2-amino-5-phenyl-2-oxazoline, 4,5-dihydro-5-phenyl-2-oxazolamine);
- (2) Cathinone (2-amino-1-phenyl-1-propanone, alpha-aminopro-piophenone, 2-aminopropiophenone, and norephedrone);
- (3) (±) cis-4-methylaminorex ((±) cis-4,5-dihydro-4methyl-5-phenyl-2-oxazolamine);
- (4) N,N-dimethylamphetamine (N,N-alpha-trimethylbenzeneetha-namine, N,N,alpha-trimethylphenethylamine), its salts, optical isomers and salts of optical isomers;
- (5) N-ethylamphetamine;
- (6) Fenethylamine; and
- (7) Methcathinone (2-(methylamino)-propiofenone, alpha (methylamino)-propiophenone, alpha (methylamino)-propiophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophe-none, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463 and UR1431), its salts, optical isomers and salts of optical isomers.

Section 6. Synthetic Cannabinoids. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any substance, compound, mixture, or preparation which contains any quantity of any synthetic cannabinoid and is not an FDA approved drug, including the following:

- (1) (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144);
- (2) (1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (XLR-11);
- (3) 2-(2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5H-NBOMe);
- (4) 2-(4-iodo-2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5K-NBOMe);
- (5) 2-(4-bromo-2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5B-NBOMe); and
- (6) 2-(4-chloro-2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5C-NBOMe).

MARY REINLE BEGLEY, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 12, 2012

FILED WITH LRC: December 19, 2012 at 9 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of Inspector General**  
**Division of Audits and Investigations**  
**(As Amended at Senate and House Standing**  
**Committees on Judiciary, March 4, 2013)**

**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) [(6)]~~ "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 sub-

section ~~(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)]~~ [(4)] (a) An extension may be granted if:

1. The dispenser suffers a mechanical or electronic failure; or
2. The dispenser cannot meet the deadline established by subsection ~~(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 magnetic tape;~~

~~(d)] Secure File Transfer Protocol;~~

~~(c) [(e)] https protocol; or~~

~~(d) [(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://www.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, phar-**

**macist, 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 KRS 218A.202(6)(f), a hospital or long-term care facility [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 hospital or long-term care facility's [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 hospital or long-term care facility's [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

~~(b)(e) Describes the hospital or long-term care facility's [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)(e)(f), 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 hospital or long-term care facility[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

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

Commissioner's Office

(As Amended at ARRS, March 12, 2013)

#### 907 KAR 3:170. Telehealth consultation coverage and reimbursement.

RELATES TO: KRS ~~[12, 205.510(15),]~~ 194A.060, 194A.125, 205.510(15), 205.559, 205.560, 422.317, 434.840-434.860, 42 C.F.R. 415.174, 415.184, 431.300-431.307, 440.50

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.559(2), (7), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 194A.030(2), 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 205.559 establishes the requirements regarding Medicaid reimbursement of telehealth providers and KRS 205.559(2) and (7) require the cabinet to promulgate an administrative regulation relating to telehealth consultations and reimbursement. This administrative regulation establishes the Department for Medicaid Services' coverage and reimbursement policies[provisions] relating to telehealth consultations in accordance with KRS 205.559. [The coverage policies in this administrative regulation shall also apply to a managed care organization's coverage of Medicaid services for individuals enrolled in the managed care organization for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program services. A managed care organization shall not be required to reimburse the same amount for a telehealth consultation as the department reimburses, but shall be authorized to reimburse as the department reimburses if the managed care organization][it][chooses to do so.]

Section 1. Definitions. (1) "Advanced practice registered nurse"

or "APRN"[practitioner" or "ARNP]" is defined by KRS 314.011(7).

(2) "Certified nutritionist" is defined by KRS 310.005(12).

(3) "Chiropractor" is defined by KRS 312.015(3).

(4) "Community mental health center" or "CMHC" means a facility that provides a comprehensive range of mental health services to Medicaid recipients of a designated area in accordance with KRS 210.370 to 210.485.

(5) ~~["Dentist" is defined by KRS 313.010(10).]~~ "CPT code" means a code used for reporting procedures and services performed by physicians or other licensed medical professionals which is published annually by the American Medical Association in Current Procedural Terminology.]

[(6)] "Department" means the Department for Medicaid Services or its designated agent.

~~[(6)][(7)]~~ "Diabetes self-management training consultation[education]" means the ongoing process of facilitating the knowledge, skill, and ability necessary for diabetes self-care.

~~[(7)][(8)]~~ "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

~~[(8)][(9)]~~ [(8)] "Dietitian" is defined by KRS 310.005(3).

(9) "Encounter" means one (1) visit by a recipient to a telehealth spoke site where the recipient receives a telehealth consultation in real time, during the visit, from a telehealth provider or telehealth practitioner at a telehealth hub site.

~~[(9)][(10)]~~ "Face-to-face" means, except as established in Section 4(4)(g) of this administrative regulation:

(a) In person; and

(b) Not via telehealth.

~~[(10)][(11)]~~ [(40)] "Federal financial participation" is defined in 42 C.F.R. 400.203.

~~[(11)][(12)]~~ [(41)] "GT modifier" means a modifier that identifies a telehealth consultation which is approved by the healthcare common procedure coding system (HCPCS). [(12)] "Health care common procedure coding system" or "HCPCS" means a set of health care procedure codes based on the American Medical Association's Current Procedural Terminology (CPT).]

~~[(12)][(13)]~~ "Health care provider" means a Medicaid provider who is:

(a) Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

(b) Currently participating as a Medicaid provider in accordance with 907 KAR 1:671.

~~[(13)]~~; and

1. Licensed physician;

2. Licensed advanced practice registered nurse;

3. Physician assistant working under a supervising physician;

4. Licensed dentist;

5. Licensed oral surgeon;

6. A psychologist;

a. With a license in accordance with KRS 319.010(5); and

b. With a doctorate degree in psychology;

7. Licensed clinical social worker;

8. Chiropractor;

9. Licensed optometrist; or

10. Community mental health center. [(Medicaid-enrolled provider, in accordance with 907 KAR 1:671 and 907 KAR 1:672, who is a:

(a) Licensed physician;

(b) Licensed advanced registered nurse practitioner;

(c) Certified physician assistant working under physician supervision;

(d) Licensed dentist or oral surgeon;

(e) Community mental health center;

(f) Psychologist with a license in accordance with KRS 319.010(5);

(g) Licensed clinical social worker;

(h) Chiropractor; or

(i) Licensed optometrist.])

[(14)] "Hub site" means a telehealth site:

(a) Where the telehealth provider or telehealth practitioner performs telehealth; and

(b) That is considered the place of service.



~~(14)~~~~(15)~~ ["KenPAC" means the Kentucky Patient Access and Care System.

~~(16)~~ "KenPAC PCCM" means a Medicaid provider who is enrolled as a primary care case manager in the Kentucky Patient Access and Care System.

~~(17)~~ "Legally-authorized representative" means a Medicaid recipient's parent or guardian if a recipient is a minor child, or a person with power of attorney for a recipient.

~~(15)~~~~(16)~~~~(18)~~ "Licensed clinical social worker" means an individual meeting the licensure requirements established in KRS 335.100.

~~(16)~~~~(17)~~~~(19)~~ "Licensed dietitian" is defined by KRS 310.005(11).

~~(17)~~~~(18)~~~~(20)~~ "Licensed marriage and family therapist" is defined by KRS 335.300(2).

~~(18)~~~~(19)~~~~(21)~~ "Licensed professional clinical counselor" is defined by KRS 335.500(3).

~~(19)~~~~(20)~~~~(22)~~ "Medical necessity" or "medically necessary" means a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

~~(20)~~~~(21)~~ "National Provider Identifier" or "NPI" means a standard unique health identifier for health care providers which:

~~(a)~~ Is required by 42 C.F.R. 455.440; and

~~(b)~~ Meets the requirements of 45 C.F.R. 162.406.

~~(21)~~~~(22)~~~~(23)~~ "Occupational therapist" is defined by KRS 319A.010(3).

~~(22)~~~~(23)~~~~(24)~~ "Optometrist" means an individual licensed to engage in the practice of optometry in accordance with KRS 320.210(2).

~~(23)~~~~(24)~~~~(25)~~ "Physical therapist" is defined by KRS 327.010(2).

~~(24)~~~~(25)~~~~(26)~~ "Physician" is defined by KRS 311.550(12).

~~(25)~~~~(26)~~~~(27)~~ "Physician assistant" is defined by KRS 311.840(3).~~(28)~~ "Psychiatric medical resident" means an individual who:

~~(a)~~ Possesses a special faculty license in accordance with KRS 311.550(29);

~~(b)~~ Meets the qualification for licensure requirements established in KRS 311.571(1) or (2); and

~~(c)~~ Is a resident as defined by 42 C.F.R. 415.152.

~~(29)~~ "Psychiatric registered nurse" means a registered nurse who:

~~(a)~~ Has a master of science in nursing with a specialty in psychiatric or mental health nursing;

~~(b)~~ Has a bachelor of science in nursing and at least one (1) year of experience in a mental health setting;

~~(c)~~ Is a graduate of a three (3) year educational program and has at least two (2) years of experience in a mental health setting;

~~(d)~~ Has an associate degree in nursing and at least three (3) years of experience in a mental health setting; or

~~(e)~~ Has any level of education with American Nursing Association (ANA) certification as a psychiatric or mental health nurse.]

~~(26)~~~~(27)~~~~(30)~~ "Psychologist" is defined by KRS 319.010~~(9)~~~~(8)~~.

~~(27)~~~~(28)~~~~(31)~~ "Registered nurse" is defined by KRS 314.011(5).

~~(28)~~~~(29)~~~~(32)~~ "Speech-language pathologist" is defined by KRS 334A.020(3).

~~(29)~~~~(30)~~~~(33)~~ "Spoke site" means a telehealth site where the recipient receiving the telehealth consultation is located.

~~(30)~~~~(31)~~~~(34)~~ "Telehealth consultation" is defined by KRS 205.510(15).~~(1)~~

~~(31)~~ "Telehealth practitioner" means an individual who is:

~~(a)~~ Authorized to perform a telehealth consultation in accordance with this administrative regulation;

~~(b)~~ Employed by or is an agent of a telehealth provider; and

~~(c)~~ Not the individual or entity who:

~~1.~~ Bills the department for a telehealth consultation; or

~~2.~~ Is reimbursed by the department for a telehealth consultation.

~~(32)~~~~(32)~~~~(35)~~ "Telehealth provider" means a health care provider who:

~~(a)~~ Performs;

~~(a)~~ Currently enrolled Medicaid provider in accordance with 907 KAR 1:672;

~~(b)~~ Currently participating Medicaid provider in accordance with 907 KAR 1:671; and

~~(c)~~ Medicaid provider performing a telehealth consultation at a hub site; or

~~(b)~~ Is the employer of or entity that contracts with a telehealth practitioner who performs a telehealth consultation:

~~1.~~ At a hub site; and

~~2.~~ That is billed under the telehealth provider's national provider identifier.

~~(33)~~~~(32)~~~~(33)~~ Medicaid-enrolled provider, in accordance with 907 KAR 1:671 and 907 KAR 1:672, performing a telehealth consultation at a hub site.

~~(36)~~ "Telehealth site" means a hub site or spoke site that has been approved as part of a telehealth network established in accordance with KRS 194A.125.

~~(34)~~~~(33)~~~~(34)~~~~(37)~~ "Telepresenter" means an individual operating telehealth equipment at a spoke site to enable a recipient to receive a telehealth consultation.

~~(35)~~~~(34)~~~~(35)~~~~(38)~~ "Transmission cost" means the cost of the telephone line and related costs incurred during the time of the transmission of a telehealth consultation.

~~(36)~~~~(35)~~~~(36)~~~~(39)~~ "Two (2) way interactive video" means a type of advanced telecommunications technology that permits a real time telehealth consultation to take place between a recipient and a telepresenter at the spoke site and a telehealth provider or telehealth practitioner at the hub site.

Section 2. General Policies. ~~(1)~~~~(a)~~ Except as provided in paragraph (b) of this subsection, the coverage policies established in this administrative regulation shall apply to:

~~1.~~ Medicaid services for individuals not enrolled in a managed care organization; and

~~2.~~ A managed care organization's coverage of Medicaid services for individuals enrolled in the managed care organization for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program services.

~~(b)~~ A managed care organization shall not be required to reimburse the same amount for a telehealth consultation as the department reimburses, but may reimburse the same as the department reimburses if the managed care organization chooses to do so.

~~(2)~~ A telehealth consultation shall not be reimbursed by the department if:

~~(a)~~ It is not medically necessary;

~~(b)~~ The equivalent service is not covered by the department if provided in a face-to-face setting;

~~(c)~~ It requires a face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371;

~~(d)~~ The telehealth provider of the telehealth consultation is:

~~1.~~ Not currently enrolled in the Medicaid program pursuant to 907 KAR 1:672;

~~2.~~ Not currently participating in the Medicaid program pursuant to 907 KAR 1:671;

~~3.~~ Not in good standing with the Medicaid program;

~~4.~~ Currently listed on the Kentucky DMS List of Excluded Providers, which is available at <http://chfs.ky.gov/dms/provEnr>; or

~~5.~~ Currently listed on the United States Department of Health and Human Services, Office of Inspector General List of Excluded Individuals and Entities, which is available at <https://oig.hhs.gov/exclusions/>; or

~~(e)~~ It is provided by a telehealth practitioner or telehealth provider not recognized or authorized by the department to provide the telehealth consultation or equivalent service in a face-to-face setting.

~~(3)~~~~(2)~~~~(a)~~ A telehealth provider shall:

~~1.~~~~(a)~~ Be an approved member of the Kentucky Telehealth Network; and

~~2.~~~~(b)~~ Comply with the standards and protocols established by the Kentucky Telehealth Board.

~~(b)~~ To become/be an approved member of the Kentucky Telehealth Network, a provider shall:

~~1.~~ Send a written request to the Kentucky Telehealth

**Board requesting membership in the Kentucky Telehealth Network; and**

**2. Be approved by the Kentucky Telehealth Board as a member of the Kentucky Telehealth Network.**

**(4)/(3)(a)** A telehealth consultation referenced in Section 3 or 4 of this administrative regulation shall be provided to the same extent and with the same coverage policies and restrictions that apply, **except as established in Section 4(4)(g) and 4(5) of this administrative regulation** to the equivalent service if provided in a face-to-face setting.

(b) If a telehealth coverage policy or restriction is not stated in this administrative regulation but is stated in another administrative regulation within Title 907 of the Kentucky Administrative Regulations, the coverage policy or restriction stated elsewhere within Title 907 of the Kentucky Administrative Regulations shall apply.

**(5)/(4)(a)** A telehealth consultation shall be subject to utilization review for:

1. **(a)** Medical necessity;
2. **(b)** Compliance with this administrative regulation; and
3. **(c)** Compliance with applicable state **and/or** federal law.

**(b) If the department determines that a telehealth consultation is not medically necessary, is not compliant with this administrative regulation, or is not compliant with applicable state or federal law, the department shall not reimburse for the telehealth consultation.**

**(c) If the department determines that a telehealth consultation that it has already reimbursed for was not medically necessary, was not compliant with this administrative regulation, or was not compliant with applicable state or federal law, the department shall recoup the reimbursement for the telehealth consultation from the provider.**

**(6)/(5)** A telehealth consultation shall require:

- (a) The use of two (2) way interactive video;
- (b) A referral by a health care provider; and
- (c) A referral by a recipient's lock-in provider if the recipient is locked in pursuant to:
  1. 42 C.F.R. 431.54; and
  2. 907 KAR 1:677.

Section 3. Telehealth Consultation Coverage in a Setting That is Not a Community Mental Health Center. (1) The policies in this section **[of this administrative regulation]** shall apply to a telehealth consultation provided in a setting that is not a community mental health center.

(2) The following telehealth consultations shall be covered by the department as follows:

(a) A physical health evaluation **or[and]** management consultation provided by:

1. A physician **including a physician:**
  - a. With an individual physician practice;**
  - b. Who belongs to a group physician practice; or**
  - c. Who is employed by a federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center.**

2. An advanced practice registered nurse **including an advanced practice registered nurse:**

- a. With an individual advanced practice registered nurse practice;**
- b. Who belongs to a group advanced practice registered nurse practice; or**
- c. Who is employed by a physician, federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center.**

3. An optometrist; or

4. A chiropractor;

(b) A mental health evaluation **or[and]** management service provided by:

1. A psychiatrist;
2. A physician in accordance with the limit established in 907 KAR 3:005;

3. An APRN in accordance with the limit established in 907 KAR 1:102;

4. A psychologist;

- a. With a license in accordance with KRS 319.010(6)/(5);

b. With a doctorate degree in psychology;

c. Who is directly employed by a psychiatrist; and

d. If:

(i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;

5. A licensed professional clinical counselor;

a. Who is directly employed by a psychiatrist; and

b. If:

(i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed professional clinical counselor is directly employed;

6. A licensed clinical social worker;

a. Who is directly employed by a psychiatrist; and

b. If:

(i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or

7. A licensed marriage and family therapist;

a. Who is directly employed by a psychiatrist; and

b. If:

(i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed marriage and family therapist is directly employed;

(c) Individual or group psychotherapy provided by:

1. A psychiatrist;

2. A physician in accordance with the limit established in 907 KAR 3:005;

3. An APRN in accordance with the limit established in 907 KAR 1:102;

4. A psychologist;

a. With a license in accordance with KRS 319.010(6)/(5);

b. With a doctorate degree in psychology;

c. Who is directly employed by a psychiatrist; and

d. If:

(i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient or recipients during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;

5. A licensed professional clinical counselor;

a. Who is directly employed by a psychiatrist; and

b. If:

(i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient or recipients during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed professional clinical counselor is directly employed;

6. A licensed clinical social worker;

a. Who is directly employed by a psychiatrist; and

b. If:

(i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient or recipients during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or

7. A licensed marriage and family therapist;

a. Who is directly employed by a psychiatrist; and

b. If:

(i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient or recipients during the encounter; and



(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed **marriage and family therapist[dietitian]** is directly employed;

(d) Pharmacologic management provided by:

1. A physician in accordance with the limit established in 907 KAR 3:005;

2. An APRN in accordance with the limit established in 907 KAR 1:102; or

3. A psychiatrist;

(e) A psychiatric, psychological, or mental health diagnostic interview examination provided by:

1. A psychiatrist;

2. A physician in accordance with the limit established in 907 KAR 3:005;

3. An APRN in accordance with the limit established in 907 KAR 1:102;

4. A psychologist;

a. With a license in accordance with KRS 319.010(6)/(5);

b. With a doctorate degree in psychology;

c. Who is directly employed by a psychiatrist; and

d. If:

(i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;

5. A licensed professional clinical counselor;

a. Who is directly employed by a psychiatrist; and

b. If:

(i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed professional clinical counselor is directly employed;

6. A licensed clinical social worker;

a. Who is directly employed by a psychiatrist; and

b. If:

(i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or

7. A licensed marriage and family therapist;

a. Who is directly employed by a psychiatrist; and

b. If:

(i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed **marriage and family therapist[dietitian]** is directly employed;

(f) Individual medical nutrition therapy consultation services provided by a:

1. Licensed dietitian;

a. Who is directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, **a hospital's outpatient department**, or the Department for Public Health; and

b. If the telehealth consultation is billed under the:

(i) NPI of the physician, federally qualified health care center, rural health clinic, **hospital's outpatient department**, or primary care center by whom the licensed dietitian is directly employed; or

(ii) Department for Public Health if the licensed dietitian works for the Department for Public Health; **or**

2. Certified nutritionist;

a. Who is directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, **a hospital's outpatient department**, or the Department for Public Health; and

b. If the telehealth consultation is billed under the:

(i) NPI of the physician, federally qualified health care center, rural health clinic, **hospital's outpatient department**, or primary care center by whom the **certified nutritionist[licensed dietitian]**

is directly employed; or

(ii) Department for Public Health if the certified nutritionist works for the Department for Public Health;

(g) Individual diabetes self-management training consultation if:

1. Ordered by a:

a. Physician;

b. APRN directly employed by a physician; **or**

c. Physician assistant directly employed by a physician;

2. Provided by a:

a. Physician;

b. APRN directly employed by a physician;

c. Physician assistant directly employed by a physician;

d. Registered nurse directly employed by a physician; **or**

e. Licensed dietitian directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, **a hospital's outpatient department**, or the Department for Public Health; and

3. The telehealth consultation is billed under the:

a. NPI of the physician, federally qualified health care center, rural health clinic, **hospital's outpatient department**, or primary care center by whom the **provider[licensed dietitian]** is directly employed; or

b. Department for Public Health if the **provider[certified nutritionist]** works for the Department for Public Health;

(h) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by a physician;

1. If direct physician contact occurs during the evaluation;

2. If the telehealth consultation is billed under the physician's NPI; and

3. In accordance with the limits established in 907 KAR 3:005;

(i) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by **or is an agent of a nursing facility[a hospital's outpatient department]**;

1. If the telehealth consultation is billed under the **nursing facility's[hospital's outpatient department's] NPI**; and

2. In accordance with the limits established in **907 KAR 1:065[907 KAR 10:014]**;

(j) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by **or is an agent of a home health agency**;

1. If the telehealth consultation is billed under the home health agency's NPI; and

2. In accordance with the limits established in 907 KAR 1:030;

(k) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by a physician;

1. If direct physician contact occurs during the evaluation;

2. If the telehealth consultation is billed under the physician's NPI; and

3. In accordance with the limits established in 907 KAR 3:005;

(l) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by **or is an agent of a hospital's outpatient department**;

1. If the telehealth consultation is billed under the hospital's outpatient department's NPI; and

2. In accordance with the limits established in 907 KAR 10:014;

(m) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by **or is an agent of a home health agency**;

1. If the telehealth consultation is billed under the home health agency's NPI; and

2. In accordance with the limits established in 907 KAR 1:030;

(n) **A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by or is an agent of a nursing facility**;

1. **If the telehealth consultation is billed under the nursing facility's NPI; and**

2. **In accordance with the limits established in 907 KAR 1:065;**

(o) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by a physician;

1. If direct physician contact occurs during the evaluation or

treatment:

2. If the telehealth consultation is billed under the physician's NPI; and

3. In accordance with the limits established in 907 KAR 3:005;  
**(p)(e)** A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by **or is an agent of** a hospital's outpatient department:

1. If the telehealth consultation is billed under the hospital's outpatient department's NPI; and

2. In accordance with the limits established in 907 KAR 10:014;

**(q)(e)** A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by **or is an agent of** a home health agency:

1. If the telehealth consultation is billed under the home health agency's NPI; and

2. In accordance with the limits established in 907 KAR 1:030;

**(r)** A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by **or is an agent of** a nursing facility:

1. If the telehealth consultation is billed under the nursing facility's NPI; and

2. In accordance with the limits established in 907 KAR 1:065;

**(s)(g)** A neurobehavioral status examination provided by:

1. A psychiatrist;

2. A physician in accordance with the limit established in 907 KAR 3:005; or

3. A psychologist;

a. With a license in accordance with KRS 319.010(6)(5);

b. With a doctorate degree in psychology; and

c. Who is directly employed by a physician or a psychiatrist;

(i) In accordance with the limits established in 907 KAR 3:005;  
(ii) If the physician or psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and

(iii) If the telehealth consultation is billed under the NPI of the physician or psychiatrist by whom the psychologist is directly employed; or

**(t)(f)** End-stage renal disease monitoring, assessment, **or[and]** counseling consultations for **a** home dialysis **recipient[recipients]** provided by:

1. A physician directly employed by a hospital's outpatient department if the telehealth consultation is billed under the hospital's outpatient department's NPI; or

2. An APRN directly employed by a hospital's outpatient department if the telehealth consultation is billed under the hospital's outpatient department's NPI.

Section 4. Telehealth Consultation Coverage in a Community Mental Health Center.

(1) The policies in this section **[of this administrative regulation]** shall apply to a telehealth consultation provided via a community mental health center.

(2) The limits, restrictions, exclusions, or policies:

(a) Which apply to a service provided face-to-face in a community mental health center shall apply to a telehealth consultation or service provided via telehealth via a community mental health center; and

(b) Established in 907 KAR 1:044 shall apply to a telehealth consultation or service provided via:

1. Telehealth; and

2. A community mental health center.

(3) The department shall not reimburse for a telehealth consultation provided via a community mental health center if:

(a) The consultation is not billed under the community mental health center's national provider identifier; or

(b) The person who delivers the telehealth consultation is not:

1. Directly employed by the community mental health center;

**or**

2. An agent of **the[a]** community mental health center.

(4) The following telehealth consultations provided via a community mental health center shall be covered by the department as follows:

(a) A psychiatric diagnostic interview examination provided:

1. In accordance with 907 KAR 1:044; and

2. By:

a. A psychiatrist; or

b. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and

(ii) Meets the requirements established in 201 KAR 20:057;

(b) A psychological diagnostic interview examination provided:

1. In accordance with 907 KAR 1:044; and

2. By:

a. A psychiatrist; or

b. A psychologist;

**(i)** with a license in accordance with KRS 319.010(6)(5); **and**

**(ii) With a doctorate degree in psychology;** **[or]**

(c) Pharmacologic management provided:

1. In accordance with 907 KAR 1:044; and

2. By:

a. A physician;

b. A psychiatrist; or

c. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and

(ii) Meets the requirements established in 201 KAR 20:057;

**(d) Group psychotherapy provided:**

1. In accordance with 907 KAR 1:044; and

2. By:

a. A psychiatrist;

b. A psychologist;

**(i)** with a license in accordance with KRS 319.010(6)(5);

**and**

**(ii) With a doctorate degree in psychology;**

c. A licensed professional clinical counselor;

d. A licensed marriage and family therapist;

e. A licensed clinical social worker;

f. A psychiatric registered nurse; or

g. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and

(ii) Meets the requirements established in 201 KAR 20:057;

**(e) Mental health evaluation or[and] management emergency services provided:**

1. In accordance with 907 KAR 1:044; and

2. By:

a. A psychiatrist;

b. A psychologist;

**(i)** with a license in accordance with KRS 319.010(6)(5);

**and**

**(ii) With a doctorate degree in psychology;**

c. A licensed professional clinical counselor;

d. A licensed marriage and family therapist;

e. A licensed clinical social worker;

f. A psychiatric medical resident;

g. A psychiatric registered nurse; or

h. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and

(ii) Meets the requirements established in 201 KAR 20:057; **[or]**

**(f) A mental health assessment provided:**

1. In accordance with 907 KAR 1:044; and

2. By a psychologist;

**a.]** with a license in accordance with KRS 319.010(6); **or**

**(g) Individual psychotherapy provided:**

1. In accordance with 907 KAR 1:044 except that "face-to-face" shall include two (2) way interactive video for the purposes of individual psychotherapy provided via a community mental health center; and

2. By:

a. A psychiatrist;

b. A psychologist with a license in accordance with KRS 319.010(6);

c. A licensed professional clinical counselor;

d. A licensed marriage and family therapist;

e. A licensed clinical social worker;

**f. A psychiatric registered nurse; or**

**g. An APRN who:**

**(i) Is certified in the practice of psychiatric mental health nursing; and**

**(ii) Meets the requirements established in 201 KAR 20:057.**

**(5) If a provision established in 907 KAR 1:044 or the material incorporated by reference into 907 KAR 1:044 is in contrast with subsection (4)(g)1. of this section, the policy established in subsection (4)(g)1 of this section shall supersede the contrary statement(5); and**

**b. With a doctorate degree in psychology].**

Section 5.[Telehealth Coverage For Telehealth Not Provided in a Community Mental Health Center. (1)The department shall reimburse for the following telehealth consultations not provided via a community mental health center in accordance with the following provisions:

(a) Wound care with a CPT code of 97601 or 97602 provided by a physician or advanced registered nurse practitioner;

(b) A service, provided by a physician, chiropractor, optometrist, or ARNP, which has an evaluation and management code of 99201 through 99215;

(c) A service, provided by a physician, chiropractor, or ARNP, with an evaluation and management code of 99241 through 99255;

(d) A psychiatric diagnosis or evaluation interview with a CPT code of 90801 through 90802 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician; or

7. An ARNP;

(e) Outpatient individual psychotherapy with a CPT code of 90804 through 90809 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(f) Outpatient individual interactive psychotherapy with a CPT code of 90810 through 90815 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient

during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(g) Inpatient individual psychotherapy with a CPT code of 90816 through 90822 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(h) Inpatient individual interactive psychotherapy with a CPT code of 90823 through 90829 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(i) Other psychotherapy with a CPT code of 90845 through 90846 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(j) Family therapy with a CPT code of 90847 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

3. A psychologist with a license in accordance with KRS

319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(k) Family or group psychotherapy with a CPT code of 90849 through 90857 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(l) Psychiatric medication management with a CPT code of 90862 if provided by:

1. A psychiatrist;

2. A physician not to exceed four (4) encounters per recipient per year; or

3. An ARNP not to exceed four (4) encounters per recipient per year;

(m) Interpretation of data to family or others with a CPT code of 90887 if provided by:

1. A psychiatrist;

2. A physician not to exceed four (4) encounters per recipient per year; or

3. An ARNP not to exceed four (4) encounters per recipient per year;

(n) A dialysis related service with a CPT code of 90918 through 90925 if provided by a physician;

(o) Initial visit with a CPT code of 99304 through 99305 to a new or established patient in a nursing home if provided by a physician or ARNP;

(p) Subsequent visit with a CPT code of 99308 through 99310 to a patient in a nursing home if provided by a physician or ARNP;

(q) Discharge of a patient from a nursing home with a CPT code of 99315 if provided by a physician or ARNP;

(r) Speech therapy evaluation with a CPT code of 92056 if provided by a speech-language pathologist;

(s) Speech therapy treatment with a CPT code of 92057 if provided by a speech-language pathologist;

(t) Occupational therapy with a CPT code of 97003 if provided by an occupational therapist;

(u) Physical therapy with a CPT code of 97001 if provided by a physical therapist;

(v) Individual medical nutrition therapy with an HCPCS code of G0270 or a CPT code of 97802 through 97804 if provided by a licensed dietitian or certified nutritionist;

(w) End stage renal disease services with an HCPCS code of G0308, G0309, G0311, G0314, G0315, G0317, or G0318 if provided by a physician or ARNP;

(x) A neurobehavioral status exam with a CPT code of 96116 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psy-

chiatrist if the psychiatrist also interacts with the recipient during the encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year; or

(y) Patient diabetes self-management education regarding diabetes care planning including nutrition, exercise, medication, or blood glucose testing equipment:

1. If ordered by the physician, advanced registered nurse practitioner, or physician assistant who is managing the recipient's diabetic condition;

2. If provided by a registered nurse or dietician; and

3. With a corresponding:

a. HCPCS code of G0408 or G0409; or

b. CPT code of 97802.

(2) The department shall not reimburse for a telehealth consultation if the consultation:

(a) Is not medically necessary; or

(b) Requires a face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371.

(3) A telehealth consultation shall require:

(a) The use of two (2) way interactive video;

(b) A referral by a health care provider;

(c) A referral by a recipient's KenPAC PCCM if the comparable nontelehealth service requires a KenPAC PCCM referral; and

(d) A referral by a recipient's lock-in provider if the recipient is locked-in pursuant to 42 C.F.R. 431.54 and 907 KAR 1:677.

Section 3. Coverage of Telehealth Provided by a Community Mental Health Center.

(1) The department shall reimburse for the following telehealth consultation provided via a community mental health center in accordance with the following provisions:

(a) A psychiatric diagnosis or evaluation interview with a CPT code of 90801 through 90802 if provided by:

1. A psychiatrist;

2. A physician;

3. A psychologist with a license in accordance with KRS 319.010(5);

4. A licensed marriage and family therapist;

5. A licensed professional clinical counselor;

6. A psychiatric medical resident;

7. A psychiatric registered nurse;

8. A licensed clinical social worker; or

9. An advanced registered nurse practitioner;

(b) Outpatient individual psychotherapy with a CPT code of 90804 through 90809 if provided by:

1. A psychiatrist;

2. A physician;

3. A psychologist with a license in accordance with KRS 319.010(5);

4. A licensed marriage and family therapist;

5. A licensed professional clinical counselor;

6. A psychiatric medical resident;

7. A psychiatric registered nurse;

8. A licensed clinical social worker; or

9. An advanced registered nurse practitioner;

(c) Outpatient individual interactive psychotherapy with a CPT code of 90810 through 90815 if provided by:

1. A psychiatrist;

2. A physician;

3. A psychologist with a license in accordance with KRS 319.010(5);

4. A licensed marriage and family therapist;

VOLUME 39, NUMBER 10 – APRIL 1, 2013

5. A licensed professional clinical counselor;  
6. A psychiatric medical resident;  
7. A psychiatric registered nurse;  
8. A licensed clinical social worker; or  
9. An advanced registered nurse practitioner;  
(d) Inpatient individual psychotherapy with a CPT code of 90816 through 90822 if provided by:  
1. A psychiatrist;  
2. A physician;  
3. A psychologist with a license in accordance with KRS 319.010(5);  
4. A licensed marriage and family therapist;  
5. A licensed professional clinical counselor;  
6. A psychiatric medical resident;  
7. A psychiatric registered nurse;  
8. A licensed clinical social worker; or  
9. An advanced registered nurse practitioner;  
(e) Inpatient individual interactive psychotherapy with a CPT code of 90823 through 90829 if provided by:  
1. A psychiatrist;  
2. A physician;  
3. A psychologist with a license in accordance with KRS 319.010(5);  
4. A licensed marriage and family therapist;  
5. A licensed professional clinical counselor;  
6. A psychiatric medical resident;  
7. A psychiatric registered nurse;  
8. A licensed clinical social worker; or  
9. An advanced registered nurse practitioner;  
(f) Other psychotherapy with a CPT code of 90845 through 90846 if provided by:  
1. A psychiatrist;  
2. A physician;  
3. A psychologist with a license in accordance with KRS 319.010(5);  
4. A licensed marriage and family therapist;  
5. A licensed professional clinical counselor;  
6. A psychiatric medical resident;  
7. A psychiatric registered nurse;  
8. A licensed clinical social worker; or  
9. An advanced registered nurse practitioner;  
(g) Family therapy with a CPT code of 90847 if provided by:  
1. A psychiatrist;  
2. A physician;  
3. A psychologist with a license in accordance with KRS 319.010(5);  
4. A licensed marriage and family therapist;  
5. A licensed professional clinical counselor;  
6. A psychiatric medical resident;  
7. A psychiatric registered nurse;  
8. A licensed clinical social worker; or  
9. An advanced registered nurse practitioner;  
(h) Family or group psychotherapy with a CPT code of 90849 through 90857 if provided by:  
1. A psychiatrist;  
2. A physician;  
3. A psychologist with a license in accordance with KRS 319.010(5);  
4. A licensed marriage and family therapist;  
5. A licensed professional clinical counselor;  
6. A psychiatric medical resident;  
7. A psychiatric registered nurse;  
8. A licensed clinical social worker; or  
9. An advanced registered nurse practitioner;  
(i) Psychiatric medication management with a CPT code of 90862 if provided by:  
1. A psychiatrist;  
2. A physician;  
3. A psychiatric medical resident; or  
4. An ARNP;  
(j) Interpretation of data to family or others with a CPT code of 90887 if provided by:  
1. A psychiatrist;  
2. A physician; or

3. An ARNP; or  
(k) A neurobehavioral status exam with a CPT code of 96116 if provided by:  
1. A psychiatrist; or  
2. A psychologist with a license in accordance with KRS 319.010(5).  
(2) The department shall not reimburse for a telehealth consultation if the consultation:  
(a) Is not medically necessary; or  
(b) Requires a face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371.  
(3) A telehealth consultation shall require:  
(a) The use of two (2) way interactive video;  
(b) A referral by a health care provider;  
(c) A referral by a recipient's KenPAC PCCM if the comparable nontelehealth service requires a KenPAC PCCM referral; and  
(d) A referral by a recipient's lock-in provider if the recipient is locked in pursuant to 42 C.F.R. 431.54 and 907 KAR 1:677.  
Section 4.] Reimbursement. (1)(a) The department shall reimburse a telehealth provider who is eligible for reimbursement from the department, is currently enrolled as a provider in accordance with 907 KAR 1:672, and currently participating in the Medicaid program in accordance with 907 KAR 1:674] for a telehealth consultation an amount equal to the amount paid for a comparable in-person service in accordance with:  
1. 907 KAR 3:010 if the service was provided:  
a. By a physician; and  
b. Not in the circumstances described in subparagraphs 3., 4., 5., or 6. of this paragraph;  
2. 907 KAR 1:104 if the service was provided:  
a. By an advanced practice registered nurse; and  
b. Not in the circumstances described in subparagraphs 3., 4., 5., or 6. of this paragraph;  
3. 907 KAR 1:055 if the service was provided and billed through a federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center;  
4. 907 KAR 1:015 if the service was provided and billed through a hospital outpatient department;  
5. 907 KAR 1:031 if the service was provided and billed through a home health agency; or  
6. 907 KAR 1:065 if the service was provided and billed through a nursing facility[;  
[1.](a)][Except for a telehealth consultation provided by an APRN][ARNP][or CMHC, an amount equal to the amount paid for a comparable in-person service in accordance with 907 KAR 3:010;  
2.](b)][If a CMHC, in accordance with 907 KAR 1:045; or  
3.](c)][If provided by an APRN][ARNP], an amount equal to the amount paid for a comparable in-person service in accordance with 907 KAR 1:104].  
(b)1. Reimbursement for a telehealth consultation provided by a practitioner who is employed by a provider or is an agent of a provider shall be a matter between the provider and the practitioner.  
2. The department shall not be liable for reimbursing a practitioner who is employed by a provider or is an agent of a provider.  
(c) A managed care organization shall not be required to reimburse the same amount for a telehealth consultation as the department reimburses, but may/shall be authorized to reimburse the same amount as the department reimburses if the managed care organization chooses to do so.  
(2) A telehealth provider shall bill for a telehealth consultation using the appropriate [evaluation and management CPT or HCPCS code as specified in Section 2 or 3 of this administrative regulation along with the corresponding two (2) letter "GT" modifier.  
(3) The department shall not require the presence of a health care provider requesting a telehealth consultation at the time of the telehealth consultation unless it is requested by a telehealth provider or telehealth practitioner at the hub site.  
(4) The department shall not reimburse for transmission costs.

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

Section 6.[5-] Confidentiality and Data Integrity. (1) A telehealth consultation shall be performed on a secure telecommunications line or utilize a method of encryption adequate to protect the confidentiality and integrity of the telehealth consultation information.

(2) Both a hub site and a spoke site shall use authentication and identification to ensure the confidentiality of a telehealth consultation.

(3) A telehealth provider or telehealth practitioner of a telehealth consultation shall implement confidentiality protocols that include:

(a) Identifying personnel who have access to a telehealth transmission;

(b) Usage of unique passwords or identifiers for each employee or person with access to a telehealth transmission; and

(c) Preventing unauthorized access to a telehealth transmission.

(4) A telehealth provider's or telehealth practitioner's protocols and guidelines shall be available for inspection by the department upon request.

Section 7.[6-] Informed Consent. (1) Before providing a telehealth consultation to a recipient, a telehealth provider or telehealth practitioner~~[health care provider]~~ shall document written informed consent from the recipient and shall ensure that the following written information is provided to the recipient in a format and manner that the recipient is able to understand:

(a) The recipient shall have the option to refuse the telehealth consultation at any time without affecting the right to future care or treatment and without risking the loss or withdrawal of a Medicaid benefit to which the recipient is entitled;

(b) The recipient shall be informed of alternatives to the telehealth consultation that are available to the recipient;

(c) The recipient shall have access to medical information resulting from the telehealth consultation as provided by law;

(d) The dissemination, storage, or retention of an identifiable recipient image or other information from the telehealth consultation shall comply with 42 U.S.C. 1301 et seq., 45 C.F.R. Parts 160, 162, 164, KRS 205.566, 216.2927, and any other federal law or regulation or state law establishing individual health care data confidentiality ~~policies~~provisions;

(e) The recipient shall have the right to be informed of the parties who will be present at the spoke site and the hub site during the telehealth consultation and shall have the right to exclude anyone from either site; and

(f) The recipient shall have the right to object to the video taping of a telehealth consultation.

(2) A copy of the signed informed consent shall be retained in the recipient's medical record and provided to the recipient or the recipient's legally-authorized representative upon request.

(3) The requirement to obtain informed consent before providing a telehealth consultation shall not apply to an emergency situation if the recipient is unable to provide informed consent and the recipient's legally-authorized representative is unavailable.

Section 8.[7-] Medical Records. (1) A request for a telehealth consultation from a health care provider and the medical necessity for the telehealth consultation shall be documented in the recipient's medical record.

(2) A health care provider shall keep a complete medical record of a telehealth consultation provided to a recipient and follow applicable state and federal statutes and regulations for medical recordkeeping and confidentiality in accordance with KRS 194A.060, 422.317, 434.840 - 434.860, 42 C.F.R. 431.300 to 431.307, and 45 C.F.R. 164.530(j).

(3)(a) A medical record of a telehealth consultation shall be

maintained in compliance with 907 KAR 1:672 and 45 C.F.R. 164.530(j).

(b) A health care provider shall have the capability of generating a hard copy of a medical record of a telehealth consultation.

(4) Documentation of a telehealth consultation by the referring health care provider shall be included in the recipient's medical record and shall include:

(a) The diagnosis and treatment plan resulting from the telehealth consultation and a progress note by the referring health care provider if present at the spoke site during the telehealth consultation;

(b) The location of the hub site and spoke site;

(c) A copy of the document signed by the recipient indicating the recipient's informed consent to the telehealth consultation [signed informed consent form]; [and]

(d) Documentation supporting the medical necessity of the telehealth consultation; and

(e) The referral order and complete information from the referring health care provider who requested the telehealth consultation for the recipient.

(5)(a) A telehealth provider's or telehealth practitioner's diagnosis and recommendations resulting from a telehealth consultation shall be documented in the recipient's medical record at the office of the health care provider who requested the telehealth consultation.

(b) Except as established in paragraph (c) of this subsection, a telehealth provider or telehealth practitioner shall send a written report regarding a telehealth consultation within thirty (30) days of the consultation to the referring health care provider.

(c) If a community mental health center was the referring health care provider and the provider of the telehealth consultation for a recipient, the requirement in paragraph (b) of this subsection shall not apply.

Section 9.[8-] 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 federal financial participation for the policy; or

(2) Disapproves the policy~~[provision established in this administrative regulation shall be effective contingent upon the department's receipt of federal financial participation for the respective provision].~~

Section 10.[9-] Appeal Rights. (1) An appeal of a department determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department determination regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) A provider may appeal a department-written determination as to the application of this administrative regulation in accordance with 907 KAR 1:671.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HANES, Secretary

APPROVED BY AGENCY: January 14, 2013

FILED WITH LRC: January 14, 2013 at 4 p.m.

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

**VOLUME 39, NUMBER 10 – APRIL 1, 2013**  
**ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING**  
**OR RECEIPT OF WRITTEN COMMENTS**

NONE

PROPOSED AMENDMENTS

GENERAL GOVERNMENT CABINET  
Board of Nursing  
(Amendment)

**201 KAR 20:059. Advanced practice registered nurse controlled substances prescriptions.**

RELATES TO: KRS 314.011(8)(c)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.011(8)(c) authorizes the Controlled Substances Formulary Development Committee to make recommendations to the Board of Nursing concerning any limitations for specific controlled substances. This administrative regulation implements that provision.

Section 1. Specific Controlled Substances. The following controlled substances have been identified as having the greatest potential for abuse or diversion:

- (1) Diazepam (Valium), a Schedule IV medication;
- (2) Clonazepam (Klonopin), a Schedule IV medication;
- (3) Lorazepam (Ativan), a Schedule IV medication;
- (4) Alprazolam (Xanax), a Schedule IV medication; and
- (5) Carisoprodol (Soma), a Schedule IV medication[; ~~(6) Combination Hydrocodone products in liquid or solid dosage form, Schedule III medications].~~

Section 2. Limitations. Prescriptions for the medications listed in Section 1 of this administrative regulation shall be limited to a thirty (30) day supply without any refills.

SALLY BAXTER, President

APPROVED BY AGENCY: February 15, 2013

FILED WITH LRC: February 26, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2013 at 1:00 p.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 2013, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business April 30, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: It sets out specific limitations on the prescribing of certain controlled substances that have been identified as having the greatest potential for abuse or diversion.
  - (b) The necessity of this administrative regulation: It is required by statute
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: By setting out the specific controlled substances.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting out

the specific controlled substances and setting the limitations on prescribing.

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

- (a) How the amendment will change this existing administrative regulation: It removes an unnecessary provision which is already in statute.

- (b) The necessity of the amendment to this administrative regulation: It is required by KRS Chapter 13A.

- (c) How the amendment conforms to the content of the authorizing statutes: By removing the unnecessary provision.

- (d) How the amendment will assist in the effective administration of the statutes: It will be in conformity with KRS Chapter 13A.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRN controlled substance prescribers, presently there are approximately 1500.

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

- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is necessary.

- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the statute and regulation.

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

- (a) Initially: There is no additional cost.

- (b) On a continuing basis: There is no additional cost.

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

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

- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

- (9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

- (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

- (c) How much will it cost to administer this program for the first year? No additional cost to agency.

- (d) How much will it cost to administer this program for subsequent years? No additional cost to agency.

Note: If specific dollar estimates cannot be determined, provide



a brief narrative to explain the fiscal impact of the administrative regulation.

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

**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(Amendment)**

**201 KAR 20:400. Delegation of nursing tasks.**

RELATES TO: KRS 311A.170, 314.011, 314.021(2), 314.091(1)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 314. KRS 314.091(1)(d) prohibits a person from negligently or willfully acting in a manner inconsistent with the practice of nursing. This administrative regulation establishes requirements that govern the delegation of a nursing task in a safe, effective manner so as to safeguard the health and welfare of the citizens of the Commonwealth.

Section 1. Definitions. (1) "Board" is defined in KRS 314.011(1).

(2) "Client" means a patient, resident or consumer of nursing care.

(3) "Competence" means performing an act in a safe, effective manner.

(4) "Delegatee" means a person to whom a task is delegated.

(5) "Delegator" means the nurse delegating a task to another person.

(6) "Nurse" is defined in KRS 314.011(3).

(7) "Nursing task" means an act included in the definition of registered nursing practice, advanced practice registered nursing, or licensed practical nursing practice pursuant to KRS 314.011(6), (8), or (10).

(8) "Paramedic" is defined in KRS 311A.010.

(9) "Supervision" means the provision of guidance by a qualified nurse for the accomplishment of a nursing task with periodic observation and evaluation of the performance of the task including validation that the nursing task has been performed according to established standards of practice.

(10) "Unlicensed person" means an individual, other than a nurse, the client, or the client's family, legal guardian, or delegatee, who functions in an assistant or subordinate role to the nurse.

Section 2. Nurse's Responsibility in Delegation. (1) A registered nurse or a licensed practical nurse may delegate a task to an unlicensed person in accordance with ~~this section and Sections 3 and 4 of~~ this administrative regulation.

(2) A registered nurse may delegate a task to a paramedic employed in a hospital emergency department in accordance with KRS 311A.170 and Sections 3 and 4 of this administrative regulation.

(3) Prior to delegating a nursing task, the nurse shall determine the nursing care needs of the client. The nurse shall retain responsibility and accountability for the nursing care of the client, including nursing assessment, planning, evaluation, and assuring documentation.

(4) The nurse, prior to delegation to an unlicensed person, shall have either instructed the unlicensed person in the delegated task or determined that the unlicensed person is competent to perform the nursing task.

(5) A nursing task shall be delegated directly or indirectly. An indirect delegation shall not alter the responsibility of the nurse for appropriately assigning and supervising an unlicensed person.

(6) A nurse who delegates a nursing task in violation of this administrative regulation or participates in the utilization of an unlicensed person in violation of this administrative regulation shall be considered acting in a manner inconsistent with the practice of

nursing.

Section 3. Criteria for Delegation. The delegation of a nursing task shall meet the following criteria:

(1) The delegated nursing task shall be a task that a reasonable and prudent nurse would find is within the scope of sound nursing judgment and practice to delegate.

(2) The delegated nursing task shall be a task that, in the opinion of the delegating nurse, can be competently and safely performed by the delegatee without compromising the client's welfare.

(3) The nursing task shall not require the delegatee to exercise independent nursing judgment or intervention.

(4) The delegator shall be responsible for assuring that the delegated task is performed in a competent manner by the delegatee.

Section 4. Supervision. (1) The nurse shall provide supervision of a delegated nursing task.

(2) The degree of supervision required shall be determined by the delegator after an evaluation of appropriate factors involved including the following:

(a) The stability and acuity of the client's condition;

(b) The training and competency of the delegatee;

(c) The complexity of the nursing task being delegated; and

(d) The proximity and availability of the delegator to the delegatee when the nursing task is performed.

Section 5. Tasks That Shall Not Be Delegated. The following tasks shall not be delegated to unlicensed personnel:

(1) The conversion or calculation of a drug dosage;

(2) The administration of medication via a tube inserted in any body cavity except for:

(a) The administration of a Fleet Bisacodyl or Fleet Phospho-Soda enema; and

(b) The administration of medication via a gastrostomy tube to a student in a school setting;

(3) The administration of antineoplastic drugs; and

(4) The administration of medication via any injectable route except as provided in Section 6 of this administrative regulation.

Section 6. Administration of Insulin or Glucagon. (1) The administration of insulin or glucagon may be delegated in the school setting in accordance with the requirements of this section. The selection of the type of insulin and dosage levels shall not be delegated.

(2) The administration of insulin or glucagon shall not be delegated unless:

(a) The parent or guardian of the child has provided a copy of orders signed by a physician or advanced practice registered nurse (APRN) which specify the timing of insulin administration and provide detailed directions for determining the appropriate dosage of insulin based on blood glucose level, carbohydrate intake, and other appropriate factors. These orders shall also provide information on the timing and dosage for glucagon administration;

(b) The parent or guardian of the child consents in writing to the administration of insulin or glucagon by the delegatee; and

(c) The delegatee receives appropriate training as described in this section.

(3) The orders and authorization described in subsections (2)(a) and (2)(b) of this section shall be valid for not more than one (1) year. Updated orders and authorization shall be provided by the parent within one (1) year or at the beginning of the following school year.

(4) Insulin administration by the delegatee shall only occur when the delegatee has followed the orders and any instructions from the delegator.

(5) The delegatee may administer insulin through insulin injections, the use of an insulin pen, the use of an insulin pump, or by any other insulin delivery means used by the child.

(6) Non-routine, correction dosages of insulin may be given by the delegatee only after:

(a) Following the orders and the instructions of the delegator; and

(b) Consulting with the delegator, parent or guardian, and veri-

lying and confirming the type and dosage of insulin being injected.

(7)(a) The delegatee shall be trained by the delegator, another registered nurse, a physician, or a certified diabetes educator. The person conducting the training shall certify in writing that the delegatee has completed the training and has demonstrated competence in the tasks to be delegated. The delegatee shall receive follow-up training each year.

(b) The board shall develop a standardized initial training program which shall include didactic components and competency validation. The board shall also develop a standardized follow up training program. A nurse who intends to delegate pursuant to this section shall utilize these training programs.

(8) The delegator may delegate to the delegatee the counting of carbohydrates or other tasks necessary for the determination of an insulin dose. These tasks shall be performed in accordance with the orders. The delegatee may consult the delegator prior to any administration of insulin if the delegatee believes a consult is needed.

(9) If the orders state that the child is capable of self-administration, the delegator may delegate to the delegatee the verification of insulin dosage via pump or injection.

(10) The delegator shall supervise the delegatee in the administration of insulin or glucagon in accordance with Section 4 of this administrative regulation. If the delegator determines that physical presence is not required, the delegator shall be available by telephone or other electronic means to the delegatee to answer questions or provide instruction.

SALLY BAXTER, President

APPROVED BY AGENCY: February 15, 2013

FILED WITH LRC: February 26, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2013 at 1:00 p.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 2013, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business April 30, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards for the delegation of nursing tasks to unlicensed assistive personnel by a nurse.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

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

(a) How the amendment will change this existing administrative regulation: It sets out those tasks that cannot be delegated. It also provides for the delegation of the administration of insulin to students in a school.

(b) The necessity of the amendment to this administrative regulation: For safe nursing practice, it is necessary to set out those tasks that are unsafe to delegate. It is also necessary to provide a procedure for the delegation of the administration of insulin in schools. While it would be preferable for insulin to be administered by a nurse, the Board recognizes that there is not a nurse in every school. There needs to be a process whereby the nurse responsible may delegate this activity to a school employee pursuant to KRS 156.502.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set standards.

(d) How the amendment will assist in the effective administration of the statutes: By setting standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School nurses, school systems, students with diabetes, and school employees, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The delegating nurse will have a process to allow a school employee to administer insulin to students in a school setting. The school employee will have to complete a training program developed by the Board. The school system will be responsible for providing the necessary personnel. The student with diabetes that cannot administer insulin himself or herself will have a safe way of obtaining it.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The supervising nurse will have a process to delegate this activity when needed. The students will have a safe mechanism to obtain the administration of their insulin.

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

(a) Initially: There is no significant cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

year? Unknown.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(Amendment)**

**201 KAR 20:500. Nurse licensure compact.**

RELATES TO: KRS 314.470

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.470 adopted the Nurse Licensure Compact. The compact requires the adoption of this administrative regulation.

Section 1. Definitions. (1) "Board" means the party state's regulatory body responsible for issuing nurse licenses.

(2) "Information system" means the coordinated licensure information system.

(3) "Primary state of residence" means the state of a person's declared fixed permanent and principal home for legal purposes or domicile.

(4) "Public" means any individual or entity other than designated staff or representatives of party state boards or the National Council of State Boards of Nursing, Inc.

Section 2. Issuance of a License By a Compact Party State. (1) Effective June 1, 2007, an applicant for initial licensure shall not be issued a compact license granting a multistate privilege to practice, unless the applicant first obtains a passing score on the applicable NCLEX examination or any predecessor examination used for licensure.

(2) A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. That evidence shall include a declaration signed by the licensee. The applicant shall also furnish one (1) of the following:

(a) Driver's license with a home address;

(b) Voter registration card displaying a home address;

(c) Federal income tax return declaring the primary state of residence.

(d) Military form no. 2058 - state of legal residence certificate; or

(e) W2 from the U.S. government or any bureau, division or agency thereof indicating the declared state of residence.

(3) A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license shall be issued by the party state.

(4) A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license.

(5) If a party state issues a license authorizing practice only in that state and not authorizing practice in other party states (i.e. a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance.

(6) A nurse changing primary state of residence, from one (1) party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed ninety (90)~~thirty (30)~~ days.

(7) The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the ninety (90)~~thirty (30)~~ day period in subsec-

tion ~~(6)~~~~(3)~~ of this section shall be stayed until resolution of the pending investigation.

(8) The former home state license shall no longer be valid upon the issuance of a new home state license.

(9) If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days, and the former home state may take action in accordance with that state's laws and rules.

Section 3. Limitations on Multistate Licensure Privilege - Discipline. (1) Home state boards shall include in all licensure disciplinary orders or agreements that limit practice or require monitoring the requirement that the licensee subject to said order or agreement shall agree to limit the licensee's practice to the home state during the pendency of the disciplinary order or agreement.

(2) This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and any other party state boards.

(3) An individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state of adverse action. Once eligible for licensure in the prior state, a multistate license may be issued.

Section 4. Information System. (1) Levels of access.

(a) The public shall have access to nurse licensure information limited to:

1. The nurse's name;

2. Jurisdiction or jurisdictions of licensure;

3. License expiration date or dates;

4. Licensure classifications and statuses held;

5. Public emergency and final disciplinary actions, as defined by contributing state authority; and

6. The status of multistate licensure privileges.

(b) Nonparty state boards shall have access to all information system data except current significant investigative information and other information as limited by contributing party state authority.

(c) Party state boards shall have access to all information system data contributed by the party states and other information as limited by contributing nonparty state authority.

(2) The licensee may request in writing to the home state board to review the data relating to the licensee in the information system. In the event a licensee asserts that any data relating to him or her is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates that claim. The board shall verify and within ten (10) business days correct inaccurate data to the information system.

(3) The board shall report to the information system within ten (10) business days:

(a) Disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring, except agreements and orders relating to participation in alternative programs required to remain nonpublic by contributing state authority;

(b) Dismissal of complaint; and

(c) Changes in status of disciplinary action or licensure encumbrance.

(4) Current significant investigative information shall be deleted from the information system within ten (10) business days upon report of disciplinary action, agreement or order requiring participation in alternative programs or agreements which limit practice or require monitoring or dismissal of a complaint.

(5) Changes to licensure information in the information system shall be completed within ten (10) business days upon notification by a board.

SALLY BAXTER, President

APPROVED BY AGENCY: February 15, 2013

FILED WITH LRC: February 26, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2013 at 1:00 p.m. (EST) in the office of the Kentucky

Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 2013, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business April 30, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It implements the Nurse Licensure Compact, KRS 314.470.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By implementing the compact.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By implementing the compact.

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

(a) How the amendment will change this existing administrative regulation: It changes the time allowed to get a new state license after a nurse changes state of residence from thirty (30) days to ninety (90) days.

(b) The necessity of the amendment to this administrative regulation: The national compact administrators' organization has approved this change. Thirty (30) days determined to be insufficient time in many cases to process the application.

(c) How the amendment conforms to the content of the authorizing statutes: Articles VI(d) and VIII(c) of the statute provide that the Compact Administrators shall adopt uniform rules and regulations to implement the compact.

(d) How the amendment will assist in the effective administration of the statutes: By adopting the new standard.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no additional actions required. The applicant will simply have more time to complete the application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have additional time to complete the application.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional cost to agency.

(d) How much will it cost to administer this program for subsequent years? No additional cost to agency.

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 COMMUNITY AND TECHNICAL COLLEGE SYSTEM Kentucky Board of Emergency Medical Services (Amendment)

##### 202 KAR 7:330. Requirements for examination, certification, and recertification of the advanced emergency medical technician.

RELATES TO: KRS 39, 39A.050, 311A.010, 311A.020, 311A.025[311A.027], 311A.050, 311A.055, 311A.060, 311A.065, 311A.075, 311A.090, 311A.095, 311A.100, 311A.110, 311A.127, 311A.145, 311A.150, 311A.195, 10 U.S.C. 121, 672(b)

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This administrative regulation establishes requirements for examination, certification, and recertification of the AEMT[advanced emergency medical technicians].

Section 1. Certification Requirements. (1) An applicant for initial certification as an AEMT shall complete an educational course that:

(a) Meets or exceeds the National Emergency Medical Services Educational Standards-Instructional Guidelines for an AEMT; and

(b) Meets all educational standards established in 202 KAR 7:601.

(2) An applicant for initial certification as an AEMT in Kentucky

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

shall pass the examination required to obtain the National Registry of Emergency Medical Technicians certification for an AEMT.

(3) An applicant for initial certification as an AEMT shall provide proof that the applicant has:

(a) Completed a college degree; or

(b)1. Obtained a high school diploma; or

2. Successfully taken the General Educational Development (GED) test.

(4) An applicant for AEMT shall complete and submit a signed EMS Responder Application.

(5) An applicant for AEMT shall submit valid evidence of completion of the following courses:

(a) HIV/AIDS training required by KRS 311A.110; and

(b) Pediatric Abusive Head Trauma required by KRS 311A.127.

(6) An applicant for AEMT shall pay to KBEMS the fee established in 202 KAR 7:030 for certification as an AEMT.

(7) An applicant for AEMT shall submit to KBEMS an unexpired cardiopulmonary resuscitation (CPR) card or other current evidence of completion of a CPR course that:

(a) Meets all standards of the American Heart Association Basic Life Support for Healthcare Provider course; and

(b) Includes a psychomotor examination component and a cognitive assessment.

(8) An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check required shall be:

(a) National in scope for an applicant not currently certified at any level in Kentucky;

(b) Statewide in scope for an applicant with current certification in Kentucky;

(c) Less than six (6) months old when the applicant submits to KBEMS all requirements for certification; and

(d) Provided by a vendor that has been contracted through KBEMS or an official federal entity.

(9) An applicant shall not directly submit a background check. The background check shall be submitted to the Kentucky Board of Emergency Medical Services by the company or federal entity that conducts the background check.

(10) An applicant shall have two (2) years from the completion date appearing on the course completion form for the applicant's AEMT course to:

(a) Pass the National Registry exam for AEMT certification; and

(b) Fulfill all requirements for certification as an AEMT established in this section.

**Section 2. Scope of Practice.** (1) An AEMT shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model.

(2) In addition to the skills and procedures in the National EMS Scope of Practice Model, KBEMS places within the scope of practice of a Kentucky AEMT the following procedures:

(a) Quantitative and qualitative capnography and capnometry;

(b) Bilevel Positive Airway Pressure and Continuous Positive Airway Pressure (BIPAP/CPAP) devices;

(c) End tidal Carbon Dioxide (ETCO<sub>2</sub>) Detection;

(d) Acquisition of a non-interpretive twelve (12) lead electrocardiogram (ECG);

(e) Transmission of a non-interpretive twelve (12) lead electrocardiogram (ECG); and

(f) Establish and maintain adult intraosseous infusion.

(3) Eligibility to perform the supplemental procedures shall require an AEMT to complete education on and training for the skill performed. The supplemental curriculum required shall consist of:

(a) Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device – Application of 12 lead electrocardiogram electrodes and monitor;

(b) Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device – Application and interpretation of quantitative capnography and end tidal carbon dioxide monitoring;

(c) Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using Bilevel Positive Airway Pressure and

Continuous Positive Airway Pressure Devices; and

(d) Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using intraosseous infusion in the adult.

(4) An AEMT shall adhere to the protocols the employing service's medical director submitted to KBEMS for approval. Deviation from the protocols shall only occur if:

(a) The AEMT's medical director or designated on-line medical control orders otherwise;

(b) Compliance with approved protocols is not in the patient's medical best interest; or

(c) The AEMT does not have the equipment or medication to adhere to the protocol.

(5) An AEMT shall document deviation from an approved protocol as part of the patient care report.

(6) If providing emergency medical services during a disaster or emergency that qualifies as part of the Emergency Management Assistance Compact, pursuant to KRS 39A.050 or if acting pursuant to another agreement made pursuant to KRS Chapter 39, an AEMT certified in another state may perform the skills and procedures approved by the certifying state.

**Section 3. Expiration of Certification.** (1) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If an AEMT's certification lapses or expires, the AEMT shall cease provision of emergency medical services.

(3) If the AEMT has chosen to maintain certification at the EMT level, the AEMT shall apply for renewal of EMT certification prior to the expiration date.

(4) An AEMT who has allowed all levels of certification to lapse or expire shall be required to reinstate certification pursuant to Section 7 of this administrative regulation.

**Section 4. Renewal of Certification and Continuing Education Requirements.** (1) To be eligible for renewal of certification, an AEMT shall submit to the board:

(a) A completed and signed EMS Responder Application; and

(b) The fee established in 202 KAR 7:030.

(2) The applicant shall maintain written evidence of:

(a) Current training in HIV/AIDS treatment and recognition required by Section 1(5)(a) of this administrative regulation; and

(b) Current training in Pediatric Abusive Head Trauma as required by KRS 311A.127.

(3) An applicant for renewal of certification as an AEMT shall maintain evidence of:

(a) Current certification by the National Registry of Emergency Medical Technicians as an AEMT; or

(b) Completion of the AEMT continuing education requirement of forty-eight (48) total instructional hours. The forty-eight (48) instructional hours shall be composed of twelve (12) elective hours in subject areas chosen by the AEMT and thirty-six (36) hours that include the following minimum contact hours for the following subject areas:

1. Twelve (12) hours in airway, breathing, and cardiology;

2. Six (6) hours in medical emergencies, excluding cardiology;

3. Five (5) hours in trauma;

4. Six (6) hours in obstetrics;

5. Six (6) hours in pediatrics; and

6. One (1) hour in disaster management.

(c) The twelve (12) elective hours required for an AEMT to recertify shall not include more than four (4) hours in a single category in the list provided in paragraph (b)1. through 6. of this subsection.

(4) To be used for renewal of certification, the AEMT's continuing education hours shall be certified as valid by:

(a) The course's instructor, medical director, training officer, coordinator, or provider that offered the hours; or

(b) A medical director, service director, or training officer of the AEMT's ambulance service, first response agency, fire department, rescue squad, or other medical employer.

(5) An applicant for AEMT shall not be eligible for renewal of certification if the applicant does not complete all hours required by the end of the AEMT's certification period.

(6) An applicant's certification that is based upon completion of continuing education hours that are subsequently proven untrue,

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

inaccurate, or fraudulent through a board audit shall be invalid pursuant to KRS 311A.140(4) and 311A.050(2)(b).

(7) An applicant who is subject to pending administrative action pursuant to KRS 311A.050 through 311A.090 shall be eligible to renew certification unless the applicant:

(a) Is temporarily suspended pursuant to KRS 311A.075;

(b) Has failed to perform an action ordered by the board pursuant to KRS 311A.055 or 311A.060; or

(c) Is delinquent on fines or fees owed to the board pursuant to KRS 311A.055, 311A.060, or 202 KAR 7:030.

(8) A certified AEMT who is not undergoing disciplinary action with the board and who is a member of a branch of the United States military or a National Guard or military reserve unit shall be eligible for an extension of the time limit to renew certification if the AEMT:

(a)1. Is called to federal active duty by presidential order pursuant to 10 U.S.C. 121 and 673b during the current certification period; or

2. Is called to state active duty for an extended period of time by order of the governor pursuant to KRS 38.030;

(b) Because of the call to active duty, is unable to complete the continuing education hours required for renewal of certification; and

(c) Submits a written request for an extension within thirty (30) days prior to or sixty (60) days after release from active duty.

(9) The extension granted pursuant to subsection (8) of this administrative regulation shall not exceed one (1) year beyond the effective date of release from active duty for the AEMT. The AEMT shall be required to provide a DD 214 or other relevant federal documents as proof of the release date.

(10) If asked by the office of the board to provide the documentation of continuing education hours an AEMT used as a basis for renewal of certification, the AEMT shall submit the documentation within ten (10) business days of receipt of the board's request.

(11) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

Section 5. AEMT Reciprocity. (1) An individual who is certified by the NREMT as an AEMT shall be eligible for direct reciprocity for initial certification as an AEMT in Kentucky if the applicant submits a completed and signed EMS Responder Application and proof of:

(a) The applicant's unrestricted NREMT certification as an AEMT; and

(b) Completion of current training in:

1. HIV/AIDS training required by KRS 311A.110;

2. Pediatric Abusive Head Trauma training required by KRS 311A.127; and

3. CPR that meets the requirements of Section 1(7) of this administrative regulation; and

(c) Submission of the Kentucky Required Mandatory Supplemental Curriculum for AEMT Initial Training Verification Report.

(2) An applicant shall pay the fee required for initial certification through reciprocity pursuant to 202 KAR 7:030.

(3) An applicant for AEMT direct reciprocity shall undergo a national background check and have the results submitted to the board. Background checks that are older than six (6) months shall not be considered current, and the applicant shall be required to undergo another national background check prior to approval of certification through reciprocity.

(4) An AEMT certified pursuant to Section 6 of this administrative regulation shall not perform any procedures or skill on which the AEMT has not been trained. An AEMT who performs a skill for which the AEMT does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.060.

(5) An AEMT certified pursuant to Section 6 of this administrative regulation shall complete the Kentucky supplemental AEMT curricula for the procedures listed in Section 2(3) of this administrative regulation within six (6) months of receiving certification through direct reciprocity.

(6) Verification of competency on the supplemental curricula procedures in Section 2(3) of this administrative regulation shall be submitted to the board within six (6) months of receiving certification.

Failure to submit verification shall result in revocation of AEMT certification, and the board shall issue a new certificate at the level of EMT for the remaining certification period.

(7) If an AEMT certified pursuant to this section fails to supply verification of competency as required by subsection (6) of this section and the AEMT's certificate is reissued at the EMT level of certification, the AEMT shall be ineligible to apply for and receive AEMT reciprocity certification until the applicant has submitted verification of competency in the supplemental procedures in Section 2(3) of this administrative regulation.

Section 6. Exemptions from AEMT Administrative Regulations. Certification requirements for an AEMT shall not apply to:

(1) United States military members, state National Guard personnel, or employees of the United States government if the individual provides emergency medical services:

(a)1. On land owned by the United States government; or

2. In facilities owned by the United States government; or

(b)1. In the performance of official duties under federal law; or

2. As part of assistance for a mass casualty or disaster incident pursuant to federal law or official state assistance request; or

(2) An AEMT certified in another state or territory of the United States who:

(a) Enters Kentucky with a patient being transported to a medical facility or other final destination in Kentucky; or

(b) Travels through Kentucky during the course of a patient transport from an out-of-state location to a destination outside of Kentucky.

Section 7. Reinstatement of Certification. (1) An AEMT whose Kentucky certification has lapsed shall be eligible for reinstatement of certification if:

(a) The lapse in certification has not exceeded a period of three (3) years; and

(b) The applicant submits:

1. A completed and signed EMS Responder Application; and

2. Evidence of:

a. Current certification at the AEMT level or higher with the National Registry; or

b. Current training in:

(i) HIV/AIDS training required by KRS 311A.110;

(ii) Pediatric Abusive Head Trauma as required by KRS 311A.127; and

(iii) Healthcare CPR as required by Section 1(7) of this administrative regulation.

(2) The applicant shall pay the fee pursuant to 202 KAR 7:030.

(3) The applicant shall undergo a national background check and have the results presented to the office of the board. If the background check is older than six (6) months, the applicant shall be required to undergo and have new results submitted to the board.

(4) The applicant for reinstatement of certification shall bear the burden of proof of previous certification in Kentucky if the previous certification is in issue or dispute.

(5) An applicant for reinstatement of an AEMT certification shall submit evidence of formal completion of continuing education hours as required in Section 4 of this administrative regulation. Completion of the hours shall have occurred within the twelve (12) months preceding application for reinstatement of the AEMT.

(6)(a) The forty-eight (48) instructional hours as required in Section 4 of this administrative regulation shall be composed of twelve (12) elective hours in subject areas chosen by the AEMT and thirty-six (36) hours that include the following minimum contact hours for the following subject areas:

1. Twelve (12) hours in airway, breathing, and cardiology;

2. Six (6) hours in medical emergencies, excluding cardiology;

3. Five (5) hours in trauma;

4. Six (6) hours in obstetrics;

5. Six (6) hours in pediatrics and

6. One (1) hour in disaster management.

(b) The twelve (12) elective hours required for an AEMT to recertify shall not include more than four (4) hours in a single category in the list in this subsection.

(7) An applicant for reinstatement of a lapsed certification shall

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

provide evidence of current skills by completing and submitting validation of those skills on the Kentucky Advanced EMT Skills Verification Report.

(8) An AEMT whose certification has lapsed for longer than three (3) years shall not be eligible for reinstatement but shall be considered an initial certification and shall meet all requirements in Section 1 of this administrative regulation.

(9) An applicant ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.

### Section 8. AEMT certification through previous pilot projects.

(1) An AEMT who obtained certification as an AEMT through training in a pilot project previously approved by the board shall maintain certification until the end of the current certification period without the completion of additional requirements.

(2) An AEMT certified through a previously approved pilot project who applies for renewal at the end of the current certification period shall meet all requirements for renewal of certification in Section 4 of this administrative regulation.

(3) An applicant certified as an AEMT in a previously approved pilot project and who meets the requirements for renewal of certification as an AEMT in Section 4 of this administrative regulation shall not be limited to the geographic boundaries established in the original pilot project but shall be considered fully certified and geographically unrestricted to practice as an AEMT in the state of Kentucky.

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

(a) "National Emergency Medical Services Education Standards-Instructional Guidelines", National Highway Traffic Safety Administration, DOT HS 811 077A, January 2009;

(b) "EMS Responder Application", KBEMS E-1, September 2012;

(c) "American Heart Association's Basic Life Support for Healthcare Providers Course", American Heart Association, 2011;

(d) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;

(e) "Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device – Application of 12 lead electrocardiogram electrodes and monitor", KBEMS E-29, March 2013;

(f) "Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device – Application and interpretation of quantitative capnography and end tidal carbon dioxide monitoring", KBEMS E-30, March 2013;

(g) "Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using Bilevel Positive Airway Pressure and Continuous Positive Airway Pressure Devices", KBEMS E-32, March 2013;

(h) "Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using intraosseous infusion in the adult", KBEMS E-31, March 2013;

(i) "Kentucky Required Mandatory Supplemental Curriculum for AEMT Initial Training Verification Report", KBEMS E-26, March 2013; and

(j) "Kentucky Advanced EMT Skills Verification Report", KBEMS E-28, March 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, KCTCS, 300 N. Main Street, Versailles, Kentucky 40383, Monday through Friday, 8 a.m. to 4:30 p.m. [Definition. "Advanced emergency medical technician" or "AEMT" means the intermediate level of emergency medical technicians.

Section 2. Student Eligibility. Individuals shall be eligible to enroll as a student in an AEMT training program if the applicant:

(1) Is at least eighteen (18) years of age;

(2) Holds a current unrestricted certification as a Nationally Registered Emergency Medical Technician-Basic or unrestricted certification as a Kentucky Emergency Medical Technician – Basic;

(3) Holds a college degree, high school diploma, GED, or equivalent;

(4) Understands, reads, speaks, and writes 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;

(5) Is not subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification;

(6) Meets any additional requirements established by the EMS-TEI; and

(7) Holds a valid motor vehicle operators' license from a state or territory in the United States.

Section 3. Certification Requirements. (1) Individuals desiring initial certification as an AEMT shall:

(a) Meet all of the requirements of Section 1 of this administrative regulation;

(b) Successfully complete a training program which utilized the United States Department of Transportation, National Highway Traffic Administration, 1985 or 1999 National Standard Curriculum for Emergency Medical Technician – Intermediate or the United States Department of Transportation, National Highway Traffic Administration Scope of Practice Model-based curriculum for Advanced Emergency Medical Technician as the curriculum for education;

(c) Obtain National Registry of Emergency Medical Technicians registration as a Registered EMT Intermediate/85, Registered EMT Intermediate/99, or Registered Advanced Emergency Medical Technician;

(d) Submit a signed "Application for Advanced Emergency Medical Technician Initial Certification";

(e) Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(f) Pay the fee required by 202 KAR 7:030; and

(g) Present written evidence of completion of current training in cardiopulmonary resuscitation that shall:

1. Be taught by an individual who holds one (1) of the following instructor certification approved by the board at an appropriate level from:

a. The American Red Cross;

b. The American Heart Association;

c. The National Safety Council;

d. The American Health and Safety Institute; or

e. Another board approved organization; and

2. Provide instruction and testing in:

a. One (1) rescuer cardiopulmonary resuscitation;

b. Two (2) rescuer cardiopulmonary resuscitation;

c. Techniques of changing from one (1) to two (2) rescuers during the performance of cardiopulmonary resuscitation;

d. Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;

e. Techniques for relief of obstruction of the airway;

f. Cardiopulmonary resuscitation of infants and small children;

g. Barrier-to-mouth, barrier-to-nose, barrier-to-stomach resuscitation for adults, small children, and infants;

h. Use of oral and nasal airways;

i. Use of bag-valve-mask or other ventilation device;

j. Use of supplemental oxygen; and

k. Use and operation of an AED.

(2) An applicant for certification as an Advanced Emergency Medical Technician shall successfully complete all National Registry testing and become Kentucky-certified within two (2) years after the completion date of the applicant's AEMT course.

Section 4. Expiration of Certification. (1) Initial certification periods shall be for a minimum of twelve (12) but shall not exceed twenty-four (24) months.

(2) Subsequent recertification shall be for twenty-four (24) months and shall expire on December 31 of subsequent recertification cycles.

(3) Upon expiration of certification, an AEMT shall not practice as an AEMT or perform a procedure authorized for a certified AEMT, or hold himself or herself out to be an AEMT, in accordance with KRS 311A.050.

Section 5. Recertification and Continuing Education Require-



## VOLUME 39, NUMBER 10 – APRIL 1, 2013

ments. (1) A Kentucky-certified AEMT shall be eligible for recertification if the applicant submits to the Board:

(a) A signed "Universal Application for Renewal";

(b) Written evidence of completion of current training in cardiopulmonary resuscitation meeting the requirements as outlined in Section 2 of this administrative regulation;

(c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110; and

(d) The fee established in 202 KAR 7:030.

(2) The applicant shall maintain evidence of either:

(a) Current registration by the National Registry of Emergency Medical Technicians as an AEMT, EMT-Intermediate/85 or EMT-Intermediate/99; or

(b) Successful completion of the AEMT continuing education requirement that includes forty-eight (48) total contact hours of which twelve (12) hours may be in subject areas chosen by the AEMT and the remaining thirty-six (36) hours shall include the following minimum contact hours and topics:

1. Five (5) hours in preparatory;

2. Five (5) hours in airway management and ventilation;

3. Twelve (12) hours in medical, including cardiology;

4. Eight (8) hours in trauma;

5. Four (4) hours in special considerations; and

6. Two (2) hours in operations.

(3) The training shall be validated by:

(a) The instructor, medical director, training officer, course coordinator, or provider of the continuing education offering; or

(b) A medical director, service director, or training officer of the AEMT's ambulance service, first response agency, fire department, rescue squad or other medical employer.

(4) An application for renewal of certification shall be denied if:

(a) Prior to the certification expiration date, the AEMT applicant has not met the applicable requirements of this section; or

(b) The applicant has been subjected to disciplinary action that prevents recertification at the time of application.

(5) A certified AEMT, in good standing, who is a member of any branch of the United States military or a National Guard or a military reserve unit and is called to active duty by presidential order pursuant to 10 U.S.C. 121 and 673b may be given an extension for a period up to one (1) year after release from active duty to meet the applicable requirements for recertification listed in this administrative regulation. The AEMT shall submit a written request for this extension within sixty (60) days of release of active duty.

(6) The KBEMS office may audit an AEMT's continuing education and continuing education records.

(7) The AEMT shall maintain documentation of all continuing education for four (4) years from the date of completion.

**Section 6. AEMT Reciprocity.** (1) A person certified in another state or territory of the United States or member of the United States military who is registered by the NREMT as an Advanced EMT shall be eligible for direct reciprocity for initial Kentucky certification as an AEMT if the individual:

(a) Is at least eighteen (18) years of age;

(b) Holds current unrestricted registration as a NREMT-B;

(c) Has successfully completed a training program which utilized the United States Department of Transportation, National Highway Traffic Administration, 1985 or 1999 National Standard Curriculum for Emergency Medical Technician - Intermediate or the United States Department of Transportation, National Highway Traffic Administration Scope of Practice Model-based curriculum for Advanced Emergency Medical Technician as the curriculum for education, which shall not be satisfied by the completion of refresher or transition courses alone;

(d) Holds a college degree, high school diploma, GED or equivalent; and

(e) Holds a valid motor vehicle operators license from a state or territory in the United States.

(2) The individual shall:

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

(b) Submit a completed and signed "Application for Advanced

Emergency Medical Technician-Initial Certification";

(c) Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(d) Present written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;

(e) Pay the fee required by 202 KAR 7:030;

(f) Not have been convicted of, or entered a guilty plea or Alford plea to a felony offense, or have completed a diversion program for a felony offense; and

(g) Not have been subjected to discipline that would prevent reciprocity at the time of application.

**Section 7. Exemptions from AEMT Administrative Regulations.** Certification requirements for an AEMT shall not apply to:

(1) United States military personnel or state National Guard or employees of the United States government while providing services on a United States government owned or operated facility, while engaged in the performance of their official duties under federal law or while providing assistance in a mass casualty or disaster type situation; or

(2) An AEMT certified in another state or territory of the United States who:

(a) Comes into Kentucky to transport a patient from another state into Kentucky; or

(b) Is transporting a patient from an out-of-state location through the state of Kentucky to an out-of-Kentucky location.

**Section 8. Reinstatement of Certification.** (1) An AEMT whose certification has lapsed for a period not exceeding five (5) years, may reinstate his or her certificate by submitting:

(a) A completed and signed "Advanced Emergency Medical Technician Certification Reinstatement Application";

(b) Written evidence of completion of current training in CPR meeting the requirements as outlined in Section 2 of this administrative regulation;

(c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(d) Payment of the fee established in 202 KAR 7:030;

(e) Evidence of previous certification as an AEMT in Kentucky;

(f) Evidence of successful completion within twelve (12) months preceding the application for reinstatement of the AEMT continuing education requirement as outlined in Section 5(2)(b) of this administrative regulation; and

1. Five (5) hours in preparatory;

2. Five (5) hours in airway management and ventilation;

3. Twelve (12) hours in medical, including cardiology;

4. Eight (8) hours in trauma;

5. Four (4) hours in special considerations; and

6. Two (2) hours in operations; and

(g) Evidence of validation of skills maintenance by completing the "Advanced EMT Recertification Report".

(2) An AEMT, whose certification has lapsed for a period that exceeds five (5) years, may reinstate his or her certificate by complying with Sections 1 and 2 of this administrative regulation.

(3) An application for reinstatement of certification shall not be considered if:

(a) The applicant is subject to disciplinary action pursuant to KRS Chapter 311A;

(b) The applicant is an individual who has been convicted of, or entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; or

(c) The applicant has been subjected to discipline that would prevent reinstatement at the time of application.

**Section 9. Public Notice of Negative Action.** The KBEMS office shall cause to be published, in the KBEMS News or similar publication of the board, or otherwise disseminate the name of an AEMT that is fined, is placed on probationary status, is placed on a restricted status, is suspended, or has had his or her certification revoked.

**Section 10. Temporary Certificate.** (1) KBEMS staff may issue a temporary certificate to an individual who:

**VOLUME 39, NUMBER 10 – APRIL 1, 2013**

~~(a) Submits a completed "Application for Temporary Certificate";~~

~~(b) Is at least eighteen (18) years of age;~~

~~(c) Understands, reads, speaks, and writes 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;~~

~~(d) Provides proof of being currently certified or licensed in another state or territory of the United States or is currently registered by the NREMT as an AEMT, EMT-Intermediate/85, or EMT-Intermediate/99;~~

~~(e) Presents written evidence of completion of current HIV/AIDS training required by KRS 311A.110;~~

~~(f) Presents written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;~~

~~(g) Pays the fee required by 202 KAR 7:030;~~

~~(h) Provides the board with a copy of a statewide criminal background check from the individual's state of residence;~~

~~(i) Is not an individual who has been convicted of, or entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; and~~

~~(j) Has not been disciplined by or has action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States.~~

~~(2) A temporary certificate may be issued for a period which shall not exceed six (6) months and shall not be reissued or renewed.~~

~~Section 11. Except for individuals that have completed a board-approved Advanced EMT pilot program and who meet the requirements of Section 2 of this administrative regulation, the requirements of this administrative regulation shall apply on January 31, 2009.~~

~~Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) United States Department of Transportation, National Highway Traffic Administration, "1985 or 1999 National Standard Curriculum for Emergency Medical Technician-Intermediate", 1985 or 1999 Edition;~~

~~(b) United States Department of Transportation, National Highway Traffic Administration, "Scope of Practice Model based curriculum for Advanced Emergency Medical Technician", February 2007;~~

~~(c) "Application for Advanced Emergency Medical Technician Initial Certification", July 2008;~~

~~(d) "Universal Application for Renewal", July 2008;~~

~~(e) "Advanced EMT Recertification Report", October 2008;~~

~~(f) "Advanced Emergency Medical Technician Certification Reinstatement Application", July 2008; and~~

~~(g) "Application for Temporary Certificate", July 2008.~~

~~(2) This material may be inspected, copied, or subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, KCTCS, 300 N. Main Street, Versailles, Kentucky 40383, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

MIKE POYNTER, Executive Director

APPROVED BY AGENCY: March 15, 2013

FILED WITH LRC: March 15, 2013 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2013 at 10:00 a.m. Eastern Time at the Kentucky Community and Technical College System, 300 North Main Street, Versailles, Kentucky 40383. Individuals interested in being heard at this hearing shall notify the Kentucky Board of Emergency Medical Services in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made un-

less 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 April 30, 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: Pamela Duncan, Legal Counsel, Kentucky Board of Emergency Medical Services, KCTCS, 300 North Main Street, Versailles, Kentucky 40383, phone (859) 256-3217, fax (859) 256-3127.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Pamela Duncan

(1) Provide a brief summary of:

(a) What this administrative regulation does: 202 KAR 7:330 establishes the requirements for the certification of Advanced Emergency Technicians (AEMTs) in Kentucky. The regulation sets the requirements for initial certification, continuing education, renewal, and reciprocity for AEMTs.

(b) The necessity of this administrative regulation: This regulation is mandated by KRS 311A.025 which requires the Kentucky Board of Emergency Medical Services to create levels of certification or licensure for individuals providing EMS to patients in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms with KRS 311A.025 which authorizes the board to set standards for certification and licensure of EMS personnel and also to promulgate regulations that establish training requirements, eligibility for certification, and also renewal and certification requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.025 requires the Kentucky Board of EMS establish levels of certification, including but not limited to, the levels that are listed in KRS 311A.025(1)(a)-(l). This administrative regulation creates a level of certification that is an intermediate step for EMTs to become paramedics. AEMTs will have an expanded scope of practice from EMTs but shall not be fully capable of performing all procedures available to paramedics through their scope of practice.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes student eligibility requirements and temporary certification. It provides for federal reciprocity and other out of state EMS personnel to assist in times of disaster or emergency. Additionally, new standards based on current medical standards for the provision of EMS.

(b) The necessity of the amendment to this administrative regulation: This amendment updates medical standards and educational requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment creates a level of certification that is allowed in the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A provides a statutory mechanism for the provision of EMS in Kentucky. KRS 311A.030 grants authority for the Board to create levels of certification, and this regulation provides for the requirements of a particular level of certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

(a) Any ground ambulance services licensed in Kentucky will be able to hire AEMTs based upon their needs for an intermediate level of care. When paramedics are not necessary for a call but a higher level of patient care than an EMT can provide is called for, services may use an AEMT to provide better patient care;

(b) EMS personnel will benefit from this level of certification because those individuals who have not yet satisfied the requirements to become a paramedic may qualify for AEMT and will therefore be employable at a higher level and be capable of providing a higher standard of care for their patients;

(c) County and City Governments who fund EMS will have the benefit of providing services with a reduced overhead because

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

AEMTs will not command the salaries that paramedics must be paid. However, AEMTs, when appropriate to use, will be able to supply a higher level of care than EMTs; and

(d) All residents and citizens who receive EMS in Kentucky will have the benefit of increased numbers of higher skilled EMS providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: EMS Personnel, EMS Ambulance Providers, and County and City Governments will all benefit from the amended regulation because it will provide increased numbers of employable EMS providers, increase the level of care that may be available in geographic areas where providers are in short demand, and allow counties and cities to staff with higher skilled but potentially less expensive EMS providers.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: EMS personnel who are already certified as EMTs shall be required to meet the obligations and requirements set forth in this administrative regulation to obtain, maintain, and renew certification as AEMTs. Services have no obligations or standards to meet pursuant to this regulation; nor do counties or cities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance for EMS personnel to obtain, maintain, or renew certification as an AEMT will be the cost of education which is set by individual training institutions and may vary and the fees as outlined in 202 KAR 7:030. County and city governments will actually see a savings in the operation of government run ambulance services because the cost of employing an AEMT is lower than the cost of employing a paramedic. The savings will depend upon the level of service the ambulance service is licensed to provide.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Potential employment for EMS personnel will expand due to the increased use of AEMTs. Personnel will also have another level of certification that is available to them, giving them higher education, better skills, and greater flexibility in employment. Ambulance Services will have a wider spectrum of employees and certification levels available to meet their staffing requirements. Local ambulance services will have a reduction in personnel costs while still providing high level care for their residents.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: KBEMS will have an increased workload for certifying and licensing more levels of EMS personnel. However, the agency does not foresee a need for increased staffing numbers, increased hours of work, or any increased costs.

(a) Initially: The above paragraph is accurate for initial costs; and

(b) On a continuing basis: The continuing costs will not increase.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBEMS is a state agency that receives its annual budget from the state government and any increased costs associated with this new level of certification will be covered in the allotted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: AEMTs began as a pilot program and certification was originally through an emergency regulation that later became permanent. However, the certification of AEMTs has not been ongoing. Consequently, the number of AEMTs in Kentucky is extremely low. A fee already appears in 202 KAR 7:030 and applies as is to anyone seeking certification as an AEMT.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation did not establish any fees. The fee for AEMT certification and renewal are in 202 KAR 7:030.

(9) TIERING: Is tiering applied? Tiering was used in this ad-

ministrative regulation which creates a new level of certification thereby making EMS personnel positions more flexible and more available. Personnel who have previously had no other options but EMT-Basic or EMT-Paramedic shall now have a bridge between the two certification and licensure levels. This bridge shall provide a broader workforce and more highly skilled personnel from which the ambulance services may draw.

### 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 regulation will relate to any County or City owned ambulance service or any ambulance service operated on behalf of a City or County.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.010, 311A.030, 311A.035. No federal statutes necessitate this amendment.

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 fiscal effect of this administrative regulation will be positive because the overall personnel costs may be reduced for certain types of ambulance service runs. AEMTs will not command a salary that is as high as paramedics.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the subsequent years? The regulation will supply revenue to the state or local government entities by providing a new level of certification that will operate at a higher level of care and will have a positive impact on budgets as well as ambulance run reimbursements.

(c) How much will it cost to administer this program for the first year? In the first year, this administrative regulation will not impose any new need for expenditures or revenue outlay by the governmental entities involved.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the amendment will not cost any revenues above and beyond what is currently being expended.

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 COMMUNITY AND TECHNICAL COLLEGE SYSTEM Kentucky Board of Emergency Medical Services (Amendment)

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

RELATES TO: KRS 311A.010, 311A.030(2), 311A.035, 311A.055, 311A.060, 311A.155(3), 311A.190, 2 C.F.R. 215-225

STATUTORY AUTHORITY: KRS 311A.155(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.115(3) authorizes the Kentucky Board of Emergency Medical Services to promulgate administrative regulations concerning the receiving and disposing of grant funds. KRS 311A.155 authorizes the Kentucky Board of Emergency Medical Services to maintain a block grant fund program for the purpose of assisting units of local government in the provision of emergency medical services. This administrative regulation establishes standards and criteria governing the allocation of emergency medical services funding assistance to eligible applicants.

**VOLUME 39, NUMBER 10 – APRIL 1, 2013**

Section 1. Eligibility to Receive EMS Grant Funding. (1) A county in the Commonwealth of Kentucky shall be eligible to apply for and may receive emergency medical services (EMS) grant funding if the applicant county meets the requirements in this administrative regulation.

(2) A merged government shall not lose eligibility pursuant to this administrative regulation and may apply for and receive EMS grant funding if the applicant meets all requirements of this administrative regulation.

(3) Nothing in this administrative regulation shall be construed to grant an agency licensed pursuant to 202 KAR 7:501 the authority to apply for or receive EMS grant funding independent of the county.

(4) A county or merged government that applies for EMS grant funding shall maintain, within its boundaries and for the benefit of its inhabitants, one (1) or more agencies that provide primary EMS 911 response and transport service.

(5) A county or merged government shall be considered to maintain EMS 911 level of service by:

(a) Holding the license for and operating a county-owned Class I ground ambulance service;

(b) Holding the license for a Class I ground ambulance service but contracting with a licensed service to operate within the county;

(c) Allowing an agency or multiple agencies to operate within the county to provide EMS 911 level of service for the benefit of the inhabitants of that area; or

(d) Not holding the license for, but bearing the responsibility of, operating or allowing the operation of, an agency or multiple agencies within the county to provide EMS 911 level of service for the benefit of the inhabitants of that area.

(6) A county or merged government shall be eligible to receive EMS grant funding only for agencies licensed as Class I. Other classes of service shall not be eligible.

(7) A county or merged government shall not disperse funds to a licensed agency that cannot provide evidence of compliance with KBEMS' data collection requirements pursuant to KRS 311A.190 and 202 KAR 7:540.

(8) An agency that is not compliant with data collection requirements in KRS 311A.190 and 202 KAR 7:540 may submit a plan for correction for approval by the executive director. A plan shall include at least:

(a) A detailed outline of measures that shall be taken to achieve compliance;

(b) Proof of equipment necessary to achieve compliance;

(c) Deadlines that shall be met in achieving compliance that shall not extend beyond two (2) years from the approval of the plan of correction; and

(d) A stipulation that an agreed percentage of awarded grant funds shall be used in taking measures that shall achieve compliance with data collection requirements in KRS 311A.190 and 202 KAR 7:540.

(9) An agency that is following an approved plan of correction for data collection compliance pursuant to KRS 311A.190 and 202 KAR 7:540 may be eligible to obtain block grant funds from an applicant county or merged government.

(10) An agency undergoing disciplinary action pursuant to KRS 311A.060 shall be eligible to receive funds if in compliance with board-recommended disciplinary action.

Section 2. Eligibility for Authorized Expenditures. (1) A county or merged government eligible to receive EMS grant funding shall be authorized to spend funds based upon a tiered level of compliance with 202 KAR Chapter 7.

(2) An eligible county or merged government shall meet the requirements for one (1) of the following tiers:

(a) A Tier I applicant shall be an agency that maintains a primary EMS 911 ground ambulance service that is substantially compliant with 202 KAR 7:501 but has documented violations requiring on-going plans of correction that are addressed and may be eliminated by the award of EMS grant funds;

(b) A Tier II applicant shall be an agency that maintains a primary EMS 911 ground ambulance service that has operated free of documented violations requiring on-going plans of correction for one (1) inspection cycle;

(c) A Tier III applicant shall be an agency that maintains a primary EMS 911 ground ambulance service that has operated free of violations for two (2) or more inspection cycles; and

(d) A Tier IV applicant shall consist of a group of Tier III applicants eligible to combine EMS grant funds for the common good of their primary EMS 911 ground ambulance services.

(3) A county or merged government may request reconsideration of the tier into which the county or merged government has been placed, and each request shall be acted upon within forty-five (45) days of the office's receipt of the request for reconsideration the time limits established in this administrative regulation.

(4)(a) If the office of the board denies changing an applicant's tier, the applicant may appeal the decision to the board.

(b) The board's decision after appeal shall be final.

Section 3. Application Requirements. (1) An applicant for EMS grant funds shall fully complete all portions of the County Application, Kentucky Ambulance Grant, KBEMS G-1, and the Agency Application, Kentucky Ambulance Grant, KBEMS-G2.

(2) Each application shall be received by January 31 of each year. An applicant shall not receive EMS grant funds if the application is not filed on or before January 31.

(3) Each application shall include an itemized list of items intended to be purchased with EMS grant funds and a narrative justification for the purchase of those items. An application that does not include the itemized list or the narrative justification shall be returned by the board office and shall not be timely filed if the applicant does not resubmit the revised application by the filing deadline established in subsection (2) of this section.

(4) Each applicant shall identify on the application which agency or agencies will receive the EMS grant funds sought in the application process.

(5) If the applicant intends for more than one (1) agency to receive funds, the applicant shall specifically identify every agency to which funds shall be dispersed.

(6) The service director or ambulance board chair of an agency receiving funds from an applicant shall certify that the agency:

(a) Is a licensed Class I ground ambulance service in the state of Kentucky;

(b) Acknowledges, understands, and agrees to comply with the requirements and duties of KRS 311A.155 and this administrative regulation;

(c) Has not made a false statement or misrepresentation on the application and that falsely certifying shall subject the agency to reimbursement of funds to KBEMS and sanctions pursuant to KRS 311A.060; and

(d) Shall not misuse funds and that doing so shall require the agency to reimburse those funds to KBEMS and shall subject the agency to sanctions pursuant to KRS 311A.060.

(7) An applicant county or merged government shall submit the County Application, Kentucky Ambulance Grant, KBEMS G-1, with the county judge executive's signature or an agent duly authorized by the applicant. A duly authorized agent may include, for example, a chief administrative officer for the applicant, but shall not include a person unable to legally bind the applicant.

(8) An applicant shall certify on the County Application, Kentucky Ambulance Grant, KBEMS G-1 that the county or merged government:

(a) Acknowledges, understands, and agrees to comply with the requirements and duties of KRS 311A.155 and this administrative regulation;

(b) Has not made a false statement or misrepresentation on the County Application, Kentucky Ambulance Grant, KBEMS G-1, and that falsely certifying shall subject the applicant to reimbursement of funds to KBEMS and sanctions pursuant to KRS 311A.060;

(c) Shall not misuse funds and that doing so shall subject the applicant to reimbursement of those funds to KBEMS and sanctions pursuant to KRS 311A.155(5) and 311A.050; and

(d) Shall be jointly responsible for ensuring that all purchases and expenditures of block grant funds are authorized and allowable pursuant to KRS 311A.155 and this administrative regulation.

(9) County Application, Kentucky Ambulance Grant, KBEMS G-1, for block grant funds that designates for receipt of funds an

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

agency that is currently undergoing or is the subject of proposed sanctions pursuant to KRS 311A shall be voted on by the board for approval or disapproval.

Section 4. Application for Change of Items. (1) An applicant wishing to spend awarded funds on items not approved in the agency application shall submit the Substitute Item Form, KBEMS-G3, to remove the approved items and substitute different items for purchase.

(2) A substituted item purchased without notification to and approval from KBEMS shall be misuse of grant funds and shall subject the applicant to sanctions pursuant to KRS 311A.060.

(3) Authorization for substitute items shall not be approved retroactively. An approval for a substitution shall be sought prior to purchase.

(4) The County Application, Kentucky Ambulance Grant, KBEMS G-1, for approval shall contain signatures of the agency to which the funds were dispersed as well as the applicant's authorized agent.

Section 5. Funds Management. (1) Upon award of block grant funds, the applicant, the receiving agencies, and KBEMS shall execute a grant agreement that outlines the relevant statutory and regulatory requirements, duties, and obligations of all parties.

(2) Every grant agreement shall bear the signatures of the applicant's authorized agent, the service director or ambulance board chair of each agency receiving the funds from the applicant, and the executive director of KBEMS.

(3) Funds shall not be dispersed until the grant agreement is signed and dated by the parties required in this section of this administrative regulation.

(4) The grant agreement shall require that the applicant and the receiving agency authorize KBEMS to conduct an audit of records relevant to use of the awarded funds.

Section 6. Allowable Expenditures. (1) Awarded funds shall only be spent on authorized purchases.

(2) Authorized purchases shall be determined by the tier for which the receiving agencies are eligible.

(3) Authorized purchases for the tiers are as follows:

(a) Tier I services shall be authorized to spend awarded funds on items, equipment, and training for personnel only if those purchases are necessary for the agencies to meet the minimum requirements of 202 KAR 7:501;

(b) Tier II services shall be authorized to spend awarded funds on any items, equipment, or training for personnel that fall under Tier I. In addition, Tier II eligible services shall be authorized to spend awarded funds on pre-approved educational tools and items;

(c) Tier III services shall be authorized to spend awarded funds on an item from Tier I or II, plus outside EMS related class registrations, items appearing on the Federal Emergency Management Agency Approved Equipment List, and additional items if applied for and approved by the board based on current applicability to EMS standards of medical practice and promotion of public health and safety; or

(d) Tier IV services may organize as a cooperative of agencies consisting of services that qualify for Tier III. Cooperative agencies shall be allowed to pool awarded funds for the purchase of items beneficial to multiple counties within the cooperative.

(4) If seeking reimbursement for the conduct of authorized educational courses, only expenses directly related to courses or training shall be authorized. Block grant funds shall not be used for reimbursement of participants' travel, food, gas, lodging, or incidental expenses related to EMS classes.

Section 7. Cooperative of Agencies. (1) A cooperative of agencies shall consist of a minimum of two (2) agencies.

(2) Each agency within a cooperative shall have on file current mutual aid agreements that existed prior to and extend past the current grant award period. An agency that does not have a current and ongoing relationship shall not be allowed to enter into a cooperative agreement.

(3) Items or equipment purchased with the grant funds

awarded to an agency within a cooperative shall benefit each member agency of that cooperative.

(4) Each applicant shall agree that the agencies to which they disperse money may enter into the cooperative of agencies for the benefit of the inhabitants within the county or area of the merged government.

(5) Each agency included in a cooperative of agencies shall enter into and submit to KBEMS a cooperative agreement approved by the board that includes, at a minimum:

(a) Where ownership of the equipment shall reside;

(b) Who shall maintain and repair the equipment;

(c) Certification that all parties to the cooperative of agencies shall have access to the equipment;

(d) An agreed and approved protocol for the possession, access, use, and replenishment of items or equipment obtained with grant funds;

(e) A narrative justification for the purchase of the equipment;

(f) A process for discarding the equipment if it becomes obsolete;

(g) An agreed statement of liability distribution; and

(h) The signatures and certifications of truthfulness of each party to the cooperative of agencies, the applicant counties or merged governments, and the chair of KBEMS.

(6) In addition to the agency application, representatives of the cooperative of agencies and the applicant counties or merged governments shall appear at a regular meeting of the board to present an explanation of and justification for the use of combined funds.

(7) Tier IV cooperatives shall not be authorized without affirmative vote of the board.

Section 8. Accountability. (1) Each applicant that receives funds and each agency to which the applicants disperse funds shall be jointly accountable for use of the money.

(2) Each applicant and agency shall submit a Grant Accountability of Funds, KBEMS-G4, that includes at a minimum:

(a) Itemization of all purchases;

(b) Attached receipts for all purchases; and

(c) Included packing slips or invoices.

(3) If an applicant or agency maintains carry-over funds in accordance with KRS 311A.155(5), the applicant or agency shall submit proof of the continued availability of those funds. Proof may include, for example, a bank statement, a letter from the designated county or government official, a budgetary line-item, or other evidence sufficient to account for the unused, carry-over funds.

(4) Failure to submit documents accounting for grant funds by the deadline established in Section 9 of this administrative regulation shall subject the applicant or agency to being ineligible for further award of block grant funds.

(5) The board may request documentation of purchases and expenditures during the grant cycle. Failure to comply with this request shall make an applicant or agency ineligible for further award of grant funds.

(6) An agency that fails to comply with subsections (4) or (5) of this section shall also be subject to discipline pursuant to KRS 311A.060.

Section 9. Time limits and Deadlines for Block Grant Funds Awards. (1) Agency application for block grant funds shall be postmarked or received by January 31 of each year.

(2) Accounting required pursuant to Section 8 of this administrative regulation shall be postmarked or received by March 15 of each calendar year.

(3) The office of the board shall supply notification to the applicants and agencies of their grant award no later than April 30 of each calendar year.

(4) The office of the board shall make payment of grant funds to applicants no later than August 31 of each calendar year.

Section 10. Review of Grant Applications. (1) A grant application shall be subject to review by the office of the board and other entities relevant to the award process.

(2) Review of applications shall include:

(a) Level One Review, which shall determine completeness of

the application. An incomplete application shall be rejected, and if still within the deadline for application, the incomplete areas may be cured and resubmitted. If outside the application deadline, resubmission shall not be accepted; and

(b) Level Two Review, which shall determine regulatory compliance and appropriateness of expenditures.

(3) Approval authority for grant applications and purchase authorization shall be the:

(a) Executive director for Tier I and II applicants;

(b) Executive director for Tier III applicants who request purchases or expenditures at the Tier I or II level;

(c) Board for Tier III applicants with request for purchases or expenditures at the Tier III level; and

(d) Board for Tier III applicants that fall within the Tier IV Cooperative of Agencies level.

(4) All Tier I or II purchases shall be consistent with Section 6(3)(c) of this administrative regulation and approved prior to purchase. Exemption from or waiver of pre-approval shall not be permitted.

(5) Tier III and IV applications and purchase authorizations may be recommended for:

(a) Full approval;

(b) Approval with modifications; or

(c) Denial.

(6) Tier III and IV applicants may request reconsideration of approval with modifications by submitting new evidence of justification for their request at the next regular board meeting or at a meeting specially called by the chair of the board.

(7) Tier III and IV applicants may request reconsideration of denial by submitting new evidence of justification for their request at the next regular board meeting or at a specially called meeting.

(8) New proposals, if applicable, shall be considered during a request for reconsideration.

(9) A second denial of a Tier III or IV application or authorization for purchases shall be final and shall result in a default to Tier I or II purchases or expenditures that shall meet all requirements of this administrative regulation.

Section 11. Grant Program Management. (1) Implementation and management of the grant program may include employment of an individual with primary responsibility of managing the block grant fund program.

(2) Other responsibilities shall include:

(a) Research of and application for additional EMS grant sources and funding streams that benefit KBEMS' regulatory obligations to licensed and certified agencies; and

(b) Assistance to licensed EMS agencies in their efforts to locate and obtain other EMS grants.

(3) Employment of the grant management employee shall be dependent upon the availability of budgetary funds.

Section 12. Statewide Initiatives. (1) The board shall reserve a portion of the block grant funds appropriated to it by the legislature if a unanimous vote of the board determines:

(a) That a statewide initiative is necessary to further one (1) or more of the statutory functions of the board in KRS 311A.035; or

(b) A portion of the funds shall be distributed to assist agencies in meeting a federal or state mandate relevant to EMS.

(2) KBEMS shall not reserve funds for statewide initiatives in consecutive years.

(3) Notification of reservation of funds shall be sent to all eligible applicants and agencies by September 1 of the calendar year prior to the grant cycle.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "County Application, Kentucky Ambulance Grant", KBEMS-G1, 1/2013;

(b) "Agency Application, Kentucky Ambulance Grant", KBEMS-G2, 1/2013;

(b) "Ambulance Grant Substitute Item Form", KBEMS-G3, 1/2013; and

(c) "Grant Accountability of Funds", KBEMS-G4, 1/2013.

(2) This material may be inspected, copied, or obtained, sub-

ject to applicable copyright law, at the Kentucky Board of Emergency Medical Services, 300 North Main Street, Versailles, Kentucky 40383, Monday through Friday, 8:30 a.m. to 4:30 p.m. (Application for Funding Assistance. (1) An applicant may apply to the board for funding assistance for the purchase of a vehicle or equipment in accordance with KRS 311A.155.

(2) An application shall be made on a Block Grant Funding Application, incorporated by reference.

(3) An entity is eligible to apply for funding if the entity is:

(a) Licensed as a Class I ground ambulance service; and

(b) Not subject to pending or proposed disciplinary action by the board in the current fiscal year.

(4) An applicant who has been awarded a grant shall execute a memorandum of agreement with the board.

Section 2. Allocation of Funds. (1) Funds may be expended for the purchase or lease of one or more of the following:

(a) A new or used vehicle that meets the requirements of 202 KAR 7:580, 202 KAR 7:582, and 202 KAR 7:584, if the provider demonstrates the need for a replacement vehicle because an existing vehicle:

1. Is totally inoperable; or

2. Is at least five (5) years old and:

a. Has been driven in excess of 70,000 miles, if it has a gasoline engine and is in poor condition; or

b. Has been driven in excess of 100,000 miles, if it has a diesel engine and is in poor condition;

(b) A monitor/defibrillator or automatic external defibrillator;

(c) An ambulance cot or stretcher costing more than \$250 per unit;

(d) An item of nondisposable equipment required by administrative regulation for a ground ambulance service, that exceeds \$250 per unit; or

(e) A training mannequin or dysrhythmia generator that exceeds \$250 per unit.

(2) A vehicle purchased with grant funds shall not:

(a) Be more than three (3) model years older than the most current model year vehicle; and

(b) Have an odometer reading in excess of 40,000 miles.

(3) Grant funds may be used for personnel training, education, and related expenses.

Section 3. Verification of Expenditures. (1) The applicant shall provide documentation on an annual basis, or more frequently, as requested by a representative of the board, to verify that grant funds have been expended:

(a) As stipulated by the memorandum of agreement allocating the block grant funds; and

(b) Within the designated time frame.

(2) The board shall not approve or provide additional funding until the applicant provides documentation required in satisfaction of subsection (1) of this section.

Section 4. Title, Use, and Disposition of Vehicles and Equipment. (1) Legal title to a vehicle or equipment purchased pursuant to this administrative regulation shall vest in the applicant and not in any organization contracting with the applicant.

(2) The applicant shall maintain a record for each vehicle and item of equipment purchased with EMS block grant funds.

(3) An applicant shall not dispose of a vehicle or item of equipment purchased with EMS block grant funds within three (3) years of the date of purchase, unless the applicant seeks, and the board provides, prior written approval to dispose of the item.

Section 5. Fund Management and Scheduling—Block Grant Funds. (1) An application for consideration shall be postmarked by December 31. Failure to meet the postmark deadline shall render the applicant ineligible for that funding cycle.

(2) If funds are available from the Commonwealth, the board shall notify the grantees by March 1.

Section 6. Emergency Funding of Vehicles and Equipment. (1) A request for emergency funding of a vehicle, equipment, or both, may be made to the board at any time using the Application for

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

Emergency Funding, incorporated by reference:

- (2) The board shall award emergency grant funds based upon:
  - (a) Review of the application; and
  - (b) Availability of funds.

~~Section 7. Discretion of the Board. (1) The board may reduce, but not increase, the amount of funding requested by an applicant.~~

~~(2) Except as provided by Section 6 of this administrative regulation, the awarding, reduction, or denial of a grant application under KRS 311.155 and this administrative regulation is within the sole discretion of the board.~~

~~Section 8. Incorporation by Reference. (1) The following forms are incorporated by reference:~~

- ~~(a) Block Grant Funding Application (2002); and~~
- ~~(b) Application for Emergency Funding (2002).~~

~~(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

MIKE POYNTER, Executive Director

APPROVED BY AGENCY: March 15, 2013

FILED WITH LRC: March 15, 2013 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2013 a.m. Eastern Time at the Kentucky Community and Technical College System, 300 North Main Street, Versailles, Kentucky 40383. Individuals interested in being heard at this hearing shall notify the Kentucky Board of Emergency Medical Services in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 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: Pamela Duncan, Legal Counsel, Kentucky Board of Emergency Medical Services, KCTCS, 300 North Main Street, Versailles, Kentucky 40383, phone (859) 256-3217, fax (859) 256-3127.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Pamela Duncan

- (1) Provide a brief summary of:

(a) What this administrative regulation does: 202 KAR 7:520 establishes the requirements for the Emergency Services Block grant funds Program. The regulation sets the conditions for eligibility and the authorized expenditures.

(b) The necessity of this administrative regulation: This regulation is mandated by KRS 311A.155 which creates the program for distribution of state grant funds to fiscal courts and the EMS agencies that operate for emergency response in the counties involved.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms with KRS 311A.155 which establishes a grant fund for the promotion and assistance of EMS in Kentucky and creates a partnership between county governments and the ambulance services that operate for 911 calls within the county's geographic area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.155 requires the Kentucky Board of EMS to set eligibility requirements for the legislatively approved block grant funds. Additionally, the statute requires a management and oversight plan for those funds. This regulation assists the Board by ensuring a consistent mechanism for application, review, and oversight exists in dispersing and using public funds.

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

tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The current amendment is a revision that is necessary due to the long lapse in intervening revisions. Because this regulation has not been amended in years, the eligibility requirements for services and the types and costs of equipment have drastically changed. This regulation attempts to create a more current mechanism for managing the grant program.

(b) The necessity of the amendment to this administrative regulation: Without this amendment, the current regulation will continue to restrict the appropriate expenditure of monies earmarked by the legislature for assistance to counties in obtaining the most responsive and highest quality EMS care possible.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute – KRS 311A – grants power to KBEMS to administer the block grant funds distributed to KBEMS for award to county ambulance services in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: 202 KAR 7:520 provides the foundation for a block grant program that will carefully and more thoughtfully administer public funds in order to bolster EMS in Kentucky, particularly in rural areas where EMS can often lack the resources necessary to provide patient care.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

(a) All ground ambulance services in Kentucky who are licensed to provide Class I emergency care to individuals within their geographic service area;

(b) EMS personnel who will benefit from the use of funds to further their EMS education and training;

(c) County and City Governments who fund EMS within their governmental boundaries; and

(d) All residents and citizens who receive EMS 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: EMS Personnel, EMS Ambulance Providers, and County and City Governments will all benefit from the amended regulation because it will update and expand the types of expenditures authorized and will allow for cooperative use of funds.

(a) List 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 regulated entities – services, county and city governments, and personnel – shall meet applicable block grant requirements, including the need to follow application procedures, follow through with approval requirements, provide accounting of funds expended, and all other requirements necessary to obtain and appropriately use public funds provided pursuant to the block grant for EMS.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance will be no greater than it has been under the previous version of the regulation. The cost is simply whatever resources are used to apply for and manage the grant funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit because the regulation provides a much clearer and more organized management mechanism for the block grant funds. Additionally, counties and their citizens will benefit because the EMS agencies in their areas that provide services will be better equipped due to the expanded range of approved expenditures.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: KBEMS will not incur any additional costs. However, the time that already employed staff members spend managing the new system may increase because the new requirements need closer review and have a potentially more detailed approval process.

(a) Initially: The above paragraph is accurate for initial costs.

(b) On a continuing basis: The continuing costs may decline as the system becomes more streamlined and most applications become electronically submitted.

(6) What is the source of the funding to be used for the imple-



mentation and enforcement of this administrative regulation: KBEMS is a state agency that receives its annual budget from the state government as well as the block grant funds that originated with SB 66.

(7) Provide an assessment of whether an 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 funds will be necessary. The program already exists and there is currently, nor will there be in the future, any fee associated with the application for and approval of the block grant funds.

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

(9) TIERING: Is tiering applied? Tiering was used in this administrative regulation to encourage compliance with regulations by permitting expanded use of grant funds for those services that have obtained and maintained compliance. Additionally, the mechanism for awarding funds allows EMS providers to regionally pool grant money when a generalized area is in need of equipment or other life-saving tools that might not be available due to the expense. Each tier must meet compliance or exceed compliance to be eligible to purchase certain items.

#### 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 regulation will relate to any County or City owned ambulance service or any ambulance service operated on behalf of a City or County but only if those services are licensed as Class I agencies which means that they respond to E-911 calls within their designated area.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.010, 311A.030(2), 311A.055, 311A.060, 311A.155(3), KRS 311A.155. No federal statutes necessitate this amendment.

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) The grant program is already in place, and the sums available will continue to be available to parties who meet the requirements and fulfill all statutory and regulatory obligations in the first year.

(b) The regulation will continue to supply revenue to the state or local government entities eligible for the block grant funds and could increase the amount that they are entitled to receive in subsequent years.

(c) In the first year, because this grant program is already in place with relatively little burden placed on the counties or merged governments involved, this administrative regulation will not impose any new need for expenditures or revenue outlay by the governmental entities involved.

(d) In subsequent years, the amendment will not cost any revenues above and beyond what is currently being expended to administer the block grant program.

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

#### TOURISM, ARTS AND HERITAGE CABINET Kentucky Department of Fish and Wildlife Resources (Amendment)

#### 301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.

RELATES TO: KRS 150.010, 150.170, 150.370, 150.399, 150.400, 150.410, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply statewide or to a limited area. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes exceptions to statewide small game and furbearer regulations on public areas.

Section 1. Definitions. (1) "Adult" means a person who is at least eighteen (18) years of age.

(2) "Upland bird" means a grouse or northern bobwhite.

(3) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

(4) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

Section 2. This administrative regulation shall establish exceptions to the statewide requirements established in 301 KAR 2:122, 2:251, and 3:010.

Section 3. On a Wildlife Management Area owned or managed by the department:

(1) A person shall wear hunter orange clothing if a firearm is allowed for deer hunting, as established in 301 KAR 2:172.

(2) The hunter orange clothing requirement in subsection (1) of this section shall not apply to a person hunting:

(a) Waterfowl; or

(b) Raccoon or opossum at night.

(3) There shall be a free youth small game hunting week for seven (7) consecutive days beginning on the Saturday after Christmas, a youth may take small game without a hunting license.

(4) There shall be a free youth trapping week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may trap without a trapping license.

Section 4. Exceptions on Specific Public Areas. (1) Barren River Wildlife Management Area.

(a) The WMA shall be considered to be entirely within the Eastern Zone, as established in 301 KAR 2:122.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person shall not hunt with a breech-loading firearm.

(2) Beaver Creek WMA, including private inholdings.

(a) Grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(3) Big South Fork National River and Recreation Area, McCreary County.

(a) Grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(4) Cane Creek WMA, including private inholdings.

(a) Grouse season shall be open from October 1 through De-

**VOLUME 39, NUMBER 10 – APRIL 1, 2013**

ember 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(5) Cedar Creek Lake WMA.

(a) Rabbit season shall be closed after December 31.

(b) Squirrel season shall coincide with the statewide season.

(c) The area shall be closed to all other small game and furbearer hunting.

(6) Clay WMA.

(a) The area shall be closed for four (4) consecutive days beginning on the first Friday in December to all hunting except archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.

(b) Rabbit season shall be closed after December 31.

(c) Grouse and northern bobwhite hunting shall be restricted to quota hunt dates established in Section 5 of this administrative regulation.

(d) Pheasant may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.

1. Any person with a valid hunting license may take a pheasant.

2. The daily limit per hunter shall be three (3) birds of either sex.

(e) Quota fox hunting field trials.

1. There shall be a maximum of two (2) four (4) day events per calendar year.

2. Each event shall be limited to 250 participants.

3. The area shall be closed to nonparticipants.

4. A participant shall:

a. Wear a laminated identification badge issued by the department during the event.

b. Return the laminated badge at the close of the event.

(7) Curtis Gates Lloyd WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) A person shall not allow a dog to be unleashed from April 1 until the third Saturday in August except if squirrel hunting.

(8) Dix River WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Grouse season shall be open from October 1 through December 31.

(9) Fleming WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Grouse season shall be open from October 1 through December 31.

(10) Green River Lake WMA.

(a) The area shall be closed to all hunting for four (4) consecutive days beginning on the third Friday in November except for archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) Pheasant.

1. Beginning on the Tuesday following the pheasant quota hunt through December 31, any person with a valid hunting license may take a pheasant.

2. The daily limit per hunter shall be three (3) birds of either sex.

(d) The area shall be closed to grouse hunting and trapping.

(11) Higginson-Henry WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(12) Kleber WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(13) Lake Cumberland WMA.

(a) Grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(14) Mill Creek WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(15) Miller-Welch Central Kentucky WMA.

(a) Small game and furbearer hunting seasons shall be closed,

except that squirrel season shall be open.

(b) A person shall not allow a dog to be unleashed:

1. From April 1 until the third Saturday in August.

2. On a Monday, Wednesday, or Friday during the remainder of the year, except:

a. If a person is hunting squirrels during an open season; or

b. If a person is participating in an authorized field trial.

(16) Mullins WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(17) Nolin Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(18) Otter Creek Outdoor Recreation Area.

(a) Except as authorized by the department, a person shall not enter the area during a deer quota hunt without a valid quota hunt confirmation number.

(b) Northern bobwhite season shall be closed.

(c) Rabbit hunting season shall be from December 1 through December 31.

(d) Trapping season shall be from January 1 through the last day in February.

(e) A person who traps on the area shall:

1. First obtain prior authorization from the area manager; and

2. Only trap in department designated areas.

(f) Except during deer quota hunts, a person shall not use the following to take furbearers:

1. A rifle;

2. Ball ammunition; or

3. Slug ammunition.

(g) A person shall not use a rimfire gun to take small game, except during a deer quota hunt.

(19) Paul Van Booven WMA. The area shall be closed to vehicle access from one (1) hour after sunset until one (1) hour before sunrise.

(20) Peabody WMA.

(a) Northern bobwhite hunting on the Sinclair Unit shall:

1. Have shooting hours between 7:30 a.m. and 3:00 p.m.; and

2. Be closed on Sunday.

(b) A northern bobwhite hunter on the Sinclair Unit shall:

1. Check in and check out at the Peabody WMA office; and

2. Visibly display a hunting log on the dashboard of the hunter's vehicle.

(21) Pennyrile Forest WMA.

(a) Grouse season shall be open from December 1 through December 31.

(b) The daily limit shall be two (2).

~~(22)~~~~(21)~~ Pioneer Weapons WMA. A person shall not hunt with a breech-loading firearm.

~~(23)~~~~(22)~~ Robinson Forest WMA.

(a) Hunting shall not be permitted on the Main Block.

(b) The remainder of the WMA shall be open under statewide requirements.

~~(24)~~~~(23)~~ Taylorsville Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

~~(25)~~~~(24)~~ Tradewater WMA.

(a) Grouse season shall be open from December 1 through December 31.

(b) The daily limit shall be two (2).

~~(26)~~~~(25)~~ West Kentucky WMA.

(a) A person shall check in daily at a designated check station prior to using an "A" tract.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31 on Tracts 2, 3, 6, and 7.

(c) Northern bobwhite and rabbit seasons shall be open on Tracts 1, 4, 5, and "A" beginning one-half (1/2) hour before sunrise until 1:00 p.m. local time from January 1 through January 10., except if harvest limits are reached prior to January 10;

1. A hunter shall report harvest numbers and total hours hunted to the area supervisor on a daily basis.

2. If a tract is closed prior to January 10, a sign indicating closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(d) A person shall not:

1. Use a rifle, ball, or slug ammunition;

2. Operate a vehicle on Tract 6 from February 1 through April

16; or

3. Allow a dog to be unleashed from April 1 until the third Saturday in August, except while squirrel hunting.

~~(27)~~~~[(26)]~~ Yellowbank WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Pheasant may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.

(c) A person shall:

1. Possess a valid hunting license to take pheasant, unless exempt pursuant to KRS 150.170; and

2. Not take more than three (3) pheasants of either sex.

Section 5. Pheasant Quota Hunts. (1) There shall be a pheasant quota hunt on:

(a) Green River Wildlife Management Area for three (3) consecutive days beginning the third Friday in November.

(b) Clay Wildlife Management Area for three (3) consecutive days beginning the first Friday in December.

(c) Yellowbank Wildlife Management Area for three (3) consecutive days beginning on the second Friday in December.

(2) There shall be a one (1) day clean-up hunt immediately following each of the hunts for pheasant quota hunters drawn for that particular WMA.

(3) Hunt hours for each day shall be from 9:00 a.m. to 4:00 p.m.:

(a) Eastern time for the Green River Wildlife Management Area and Clay Wildlife Management Area hunts; and

(b) Central time for the Yellowbank Wildlife Management Area hunt.

(4) During a quota hunt of clean-up hunt, a person shall wear orange clothing as specified in 301 KAR 2:172.

(5) The daily bag limit per hunter shall be two (2) birds of either sex, except there shall be a daily bag limit of three (3) birds of either sex during the one (1) day clean-up hunt.

(6) Pheasant quota hunt procedures.

(a) A person selected for a pheasant quota hunt may hunt on the one (1) day clean-up hunt for that area.

(b) A person applying for a pheasant quota hunt shall:

1. Not apply more than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

2. Not apply as a group of more than five (5) people.

(c) A person who is drawn to hunt shall pay the pheasant quota hunt permit fee established in 301 KAR 3:022, prior to the hunt.

Section 6. Northern Bobwhite and Upland Bird Quota Hunts.

(1) There shall be one (1) day northern bobwhite quota hunts on one (1) tract~~two (2) tracts~~ of Peabody WMA on the following days:

(a) The fourth Saturday in November, which shall only be a youth-mentor hunt;

(b) The Tuesday following the fourth Saturday in November;

(c) The Tuesday following the third Saturday in December;

(d) The first Saturday in January;

(e) The second Saturday in January; and

(f) The Tuesday following the third Saturday in January.

(2) There shall be one (1) day~~one day~~ upland bird quota hunts on Clay WMA on the following days:

(a) On the Wednesday following the first Saturday in November;

(b) The third Sunday in November;

(c) The second Sunday in December; and

(d) The third Tuesday in December.

(3) A person participating in a quota hunt shall:

(a) Only hunt from one-half (1/2) hour before sunrise to 2:00~~two (2)~~ p.m.;

(b) Wear hunter orange clothing pursuant to 301 KAR 2:172; and

(c) Not take more than four (4) northern bobwhite on a daily basis.

(4) A person who participates in an upland bird quota hunt:

(a) Shall not take more than four (4) grouse daily; and

(b) May take woodcock pursuant to the requirements established in 301 KAR 2:225.

(5) A person applying for a northern bobwhite or upland bird

quota hunt shall:

(a) Not apply more than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

(b) Not apply as a group of more than three (3) people.

(6) A person selected for a quota hunt shall only hunt the species identified on the permit.

Section 7. General Quota Hunt Requirements. (1) A person applying for a pheasant, northern bobwhite, or upland bird quota hunt shall:

(a) Call the toll-free number listed in the current Fall Hunting and Trapping Guide from a touch tone phone between September 1 and September 30;

(b) Enter each applicant's Social Security number;

(c) Indicate a choice of days to hunt; and

(d) Pay a three (3) dollar application fee for each applicant prior to the drawing by:

1. Check;

2. Money order;

3. Visa; or

4. MasterCard.

(2) A person, prior to participating in a quota hunt, shall be required to show:

(a) A department-issued quota hunt permit;

(b) A valid Kentucky hunting license or proof of exemption; and

(c) A hunter education card, if required.

(3) A person or group participating in a northern bobwhite or upland bird quota hunt shall submit a hunting log within seven (7) days after the hunt.

(4) A youth-mentor quota hunt party shall have a minimum of one (1) youth as a member of the party.

(5) A person shall comply with all quota hunt requirements or be ineligible to apply for any other quota hunt during the following year, except for an elk quota hunt.

(6) A youth shall only apply as part of a party that has at least one (1) adult.

(7) The department may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(8) A quota hunt applicant who is not selected and applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(9) A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(10) A person shall forfeit all accumulated points if, in a given year, the person does not apply for the hunt in which points were earned.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: March 11, 2013

FILED WITH LRC: March 13, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 2013, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by April 30, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

Lane, Frankfort, Kentucky 40601 phone (502) 564-7109, ext. 4507, fax (502) 564-9136, email [fwpubliccomments@ky.gov](mailto:fwpubliccomments@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes exceptions to statewide small game and furbearer regulations on public areas.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage small game and furbearer populations, and to provide reasonable hunting and trapping opportunity on public lands.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department to promulgate administrative regulations establishing open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply statewide or to a limited area. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of lands it has acquired for public recreation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the administration of the statutes by establishing small game and furbearer hunting and trapping seasons and regulating hunting opportunity on public lands.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow northern bobwhite quail hunting during the regular season on the Sinclair Unit of Peabody WMA. Previously, there were only quota hunts for the species.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide more opportunity for northern bobwhite hunters on Sinclair Unit, and to regulate bobwhite population numbers by limiting shooting hours and closing Sunday hunting.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is currently unknown how many hunters will be affected by this amendment, but overall hunting opportunity will be increased on the area.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hunters will need to comply with the provisions of this amendment when using the Sinclair Unit of Peabody WMA for bobwhite hunting.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation amendment does not directly increase any cost for hunters.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunting opportunity will increase for those individuals choosing to hunt the area.

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

(a) Initially: The cost for implementing this administrative regulation amendment initially is minimal.

(b) On a continuing basis: There will be a minimal cost to administer on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not used because all hunters must comply with 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? The Department's Divisions of Wildlife and Law Enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) and KRS 150.620

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be an additional cost to implement this administrative regulation amendment during the first year.

(d) How much will it cost to administer this program for subsequent years? There will not be an additional cost to implement this new administrative regulation in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

#### 301 KAR 2:122. Seasons, methods, and limits for small game.

RELATES TO: KRS 150.340, 150.360, 150.370, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. This administrative regulation establishes seasons, bag limits, and methods of take for small game~~[establish hunting seasons, to regulate bag and possession limits, the methods of taking, and the devices used to take wildlife. This administrative regulation is necessary to conserve small game wildlife populations and to provide recreational hunting and trapping opportunity for the public].~~

Section 1. Definitions. (1) "Eastern Zone" means the third through the ninth wildlife districts as established in 301 KAR 4:010.

(2) "Grouse Zone" means the area consisting of Adair, Bath, Bell, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Law-

**VOLUME 39, NUMBER 10 – APRIL 1, 2013**

rence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe Counties.

(3) "Modern gun deer season" means the season established by 301 KAR 2:172.

(4) "Rabbit" means an eastern cottontail rabbit, swamp rabbit, or Appalachian cottontail rabbit.

(5) "Small game" means squirrels, rabbits, northern bobwhite or ruffed grouse.

(6) "Squirrel" means a gray squirrel or fox squirrel.

(7) "Western Zone" means the first and second wildlife districts as established in 301 KAR 4:010.

Section 2. Methods of Harvest for Small Game. (1) A person shall use any of the following to take small game:

- (a) Rimfire gun;
- (b) Shotguns no larger than 10-gauge;
- (c) Muzzle-loading gun;
- (d) .22 caliber handgun;
- (e) Bow and arrow;
- (f) Crossbow;
- (g) The following caliber air-guns with pellets:

- 1. .177;
- 2. .20[or]
- 3. .22; or
- 4. .25[.]

(h) Dogs;

(i) Falconry, pursuant to 301 KAR 2:195; or

(j) Trapping, pursuant to Section 5 of this administrative regulation, for:

- 1. Rabbits; or
- 2. Squirrel.

(2) A person shall not use the following to take small game:

(a) A shotgun shell containing a shot size larger than number two (2); or

(b) Single projectile shotgun ammunition.

Section 3. Small Game Hunting Seasons. (1) Except as specified in 301 KAR 2:049 or 2:125, a person shall not take small game except during the dates specified in this section.

(2) Small game taken by falconry: September 1 through March 30.

(3) Squirrel:

(a) The third Saturday in May through the third Friday in June; and

(b) The third Saturday in August through the last day of February, except the season shall be closed during the first two (2) days of modern gun deer season.

(4) Rabbit and northern bobwhite:

(a) Western Zone: the third day of modern gun deer season through[until] February 10.

(b) Eastern Zone: November 1 until January 31, except the season shall be closed during the first two (2) days of modern gun deer season.

(5) Ruffed Grouse: November 1 through the last day of February in the Grouse Zone, except the season shall be closed during the first two (2) days of modern gun deer season.

(6) There shall not be a closed season for chasing rabbits during daylight hours for sport and not to kill.

(7) Free youth week. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may take small game without a hunting or trapping license, but shall be in compliance with all other statewide requirements. [~~Statewide requirements and bag limits apply.~~]

Section 4. Limits and Other Requirements. (1) The small game possession limits shall be twice the daily bag limits.

(2) Daily bag limits:

- (a) Squirrel: six (6);
- (b) Rabbit: four (4);
- (c) Northern bobwhite: eight (8); and
- (d) Ruffed grouse: four (4).

(3) A falconer hunting outside any of the dates specified in

Section 3(2) through (4) of this administrative regulation shall not take more than two (2) small game animals per day.

(4) A person shall hunt small game during daylight hours only.

Section 5. Trapping for Squirrel and Rabbit. A person trapping for squirrel or rabbit shall: (1) Comply with the requirements of [~~Trap in accordance with~~] 301 KAR 2:251[~~, Section 7~~].

(2) Only trap when the small game hunting season and trapping season overlap;

(3) Possess a trapping license;

(4) Comply with [~~Adhere to~~] daily bag and possession limits pursuant to Section 4 of this administrative regulation; and

(5) Harvest squirrel and rabbits upon capture, except for a person possessing a valid [~~the appropriate~~] captive wildlife permit, pursuant to 301 KAR 2:081 and 3:022.

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: March 11, 2013

FILED WITH LRC: March 13, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held April 24, 2013, at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by April 30, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email [fwpubliccomments@ky.gov](mailto:fwpubliccomments@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes statewide seasons, bag limits, and methods of take for small game.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly conserve and manage small game species in Kentucky and provide ample recreational hunting opportunity to small game hunters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply statewide or to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the administration of the statute by establishing small game hunting seasons, limiting take and possession of small game, and restricting the methods of take in order to conserve and protect small game species, while providing reasonable hunting opportunity.

(2) If 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 expands the methods of take for small game by authorizing the use of .25 caliber air rifles.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to authorize the use of

.25 caliber air rifles.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those people wishing to use .25 caliber air rifles to hunt small game species in the Commonwealth may be affected. There are approximately 200,000 small game hunters in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Small game hunters will be authorized to use a .25 caliber air rifle to harvest small game.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost associated with the implementation of this amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Small game hunters who wish to use a .25 caliber air rifle will benefit.

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

(a) Initially: There will be no cost for the Kentucky Department of Fish and Wildlife Resources to administer initially.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees were established, and no fees were increased.

(9) TIERING: Is tiering applied? Tiering was not used because all hunters in Kentucky will need to comply equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs 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 additional costs to implement this

administrative regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Amendment)

##### 503 KAR 1:170. Career Development Program.

RELATES TO: KRS 15.310

STATUTORY AUTHORITY: KRS 15.330(1)(d), (h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(d) authorizes the Kentucky Law Enforcement Council (KLEC) to establish and prescribe minimum standards and qualifications for voluntary career development programs for certified peace officers and public safety dispatchers[telecommunicators]. This administrative regulation establishes a Career Development Program for Kentucky certified peace officers and public safety dispatchers[telecommunicators].

Section 1. Definitions. (1) "Chief executive" means the highest level position in a law enforcement agency with direct operational and administrative responsibility for the policies and performance of the agency.

(2) "Conceptual skills course" means a course that emphasizes planning, organization, goal setting abilities, strategic orientation, or provides material related to higher order abstractions that force conceptual thinking.

(3) "Executive" means a position in the immediate line of authority under the chief executive who has the delegated responsibility for operational and administrative functions of the agency or division.

(4) "Human skills course" means a course relating to cultural diversity, problem solving, leadership, interpersonal communication, group communication, or training abilities.

(5) "KLEC" means the Kentucky Law Enforcement Council.

(6) "Manager" means a position within law enforcement or public safety dispatch[telecommunications]:

(a) Between the executive and supervisor positions; and

(b) Which is responsible for the supervision of supervisory employees, and possibly involving planning, organization, public relations, discipline, or general administrative work.

(7) "Supervisor" means a position which is responsible:

(a) For the direct supervision of nonsupervisory personnel; and

(b) Possibly for line duties in law enforcement or public safety dispatch[telecommunications].

(8) "Technical skills course" means a course relating to operational or tactical abilities.

Section 2. Skill Area Determination. (1) Based on the definitions in Section 1 of this administrative regulation, the KLEC shall determine whether a law enforcement or public safety dispatch[telecommunications] course should be categorized as a:

(a) Conceptual skills course;

(b) Human skills course; or

(c) Technical skills course.

(2) If a new course is approved or recognized by the KLEC, pursuant to 503 KAR 1:090 and 503 KAR 1:120, the council shall categorize the course in accordance with subsection (1) of this section.

(3) A law enforcement or public safety dispatch[telecommunications] course may be categorized in up to two (2) different categories.

Section 3. Application for Career Development Program. A peace officer or public safety dispatcher[telecommunicator] who wishes to apply for a particular career step certificate shall:



## VOLUME 39, NUMBER 10 – APRIL 1, 2013

(1) Complete a "Form 1[GDP-4] Participant Commitment Form", which shall include the following:

- (a) Applicant's name and agency;
- (b) Social Security number and date of birth;
- (c) Current rank and full time employee status;
- (d) The program to which the applicant wishes to commit;
- ~~(e)[(d)]~~ Signature of the applicant; and
- ~~(f)[(e)]~~ Signature of the applicant's agency head;

(2) Submit one (1) of the following application forms for the specific career development step for which the participant wishes to apply:

- (a) Intermediate Law Enforcement Officer;
- (b) Advanced Law Enforcement Officer;
- (c) Law Enforcement Officer Investigator;
- (d) Law Enforcement Traffic Officer;
- (e) Advanced Deputy Sheriff;
- (f) Law Enforcement Supervisor;
- (g) Law Enforcement Manager;
- (h) Law Enforcement Executive;
- (i) Intermediate Public Safety Dispatcher~~[Basic Telecommunicator];~~
- (j) Advanced Public Safety Dispatcher~~[Intermediate Telecommunicator];~~
- (k) Public Safety Dispatcher Supervisor~~[Advanced Telecommunicator];~~
- (l) Public Safety Dispatcher~~[Telecommunications]~~ Manager/Director;
- (m) Law Enforcement Chief Executive~~[Training Officer];~~
- (n) Law Enforcement Training Officer~~[Chief Executive];~~
- (o) Law Enforcement Officer Advanced Investigator;
- (p) Crime Scene Processing Officer;
- (q) Communications Training Officer; ~~or~~ ~~[Telecommunications Supervisor];~~
- (r) Crime Scene Technician~~[Communications Training Officer];~~

(3) Include the following information on the application form:

- (a) Applicant's name and agency;
- (b) Social Security number and date of birth;
- (c) Date of employment with current agency;
- (d) Current rank or title and date of promotion to that position;
- (e) Employment history;
- (f) Training history;
- (g) Educational history;
- (h) Signature of program applicant; and
- (g) College and training credit hours applied to the requirements of the particular program to which the applicant wishes to apply; and

(4) Submit an official copy of a transcript or other documentation showing that the applicant has successfully completed required:

- (a) KLEC-approved or recognized courses; and
- (b) College courses.

Section 4. In-service Training, College, Out-of-state Work Experience, Retroactive Credit. (1) The KLEC shall approve in-service training before it is applied toward a career development step.

(2) A program participant shall not receive more than one (1) program credit for an in-service training course.

(3) Retroactivity. Participants in the Career Development Program may be granted credit for college courses and KLEC-approved training received prior to the implementation of the program.

(4) Fifteen (15) hours of KLEC-approved classroom training may be substituted for one (1) hour of college credit by program participants.

(5) A program participant may apply out-of-state work experience toward the requirements of a career development step. To receive credit, the participant shall submit a written request describing the past experience and any supporting documentation to the KLEC for approval.

Section 5. Intermediate Law Enforcement Officer Certificate. To demonstrate proficiency in the Intermediate Law Enforcement Officer Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:

(a) Sixty (60) percent (ninety-six (96) hours) shall be in technical skills development; and

(b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and a bachelor's degree;

(b) Four (4) years of experience and an associate's degree;

(c) Four (4) years of experience and ninety-five (95) hours of college credit;

(d) Five (5) years of experience and eighty (80) hours of college credit;

(e) Six (6) years of experience and sixty-five (65) hours of college credit;

(f) Seven (7) years of experience and fifty (50) hours of college credit; or

(g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 6. Advanced Law Enforcement Officer Certificate. To demonstrate proficiency in the Advanced Law Enforcement Officer Career Step, a peace officer shall:

(1) Complete the Intermediate Law Enforcement Career Step;

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:

(a) Forty (40) percent (sixty-four (64) hours) shall be in technical skills development;

(b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and

(c) Twenty (20) percent (32 hours) shall be in conceptual skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;

(b) Six (6) years of experience and a bachelor's degree;

(c) Eight (8)~~[Nine (9)]~~ years of experience and an associate's degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 7. Law Enforcement Supervisor Certificate. To demonstrate proficiency in the Law Enforcement Supervisor Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Earn a minimum of 160 additional hours of KLEC-approved or recognized in-service training as follows:

(a) Forty (40) hours of technical skills development courses;

(b) Forty (40) hours of conceptual skills development courses; and

(c) Eighty (80) hours in one (1) of the following options of courses:

1. Academy of Police Supervision;

2. The forty (40) hour basic supervisor's course and forty (40) hour advanced supervisor's course; or

3. A KLEC-approved or recognized equivalent course; and

(3) Have one (1) of the following combinations of full-time supervisory law enforcement experience and credits from an accredited college or university:



dited college or university, recognized by the Kentucky Council on Postsecondary Education:

- (a) Two (2) years of experience and a master's degree;
- (b) Four (4) years of experience and a bachelor's degree;
- (c) Six (6) years of experience and an associate's degree;
- (d) Six (6) years of experience and ninety-five (95) hours of college credit;
- (e) Seven (7) years of experience and eighty (80) hours of college credit;
- (f) Eight (8) years of experience and sixty-five (65) hours of college credit; or
- (g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 8. Law Enforcement Manager Certificate. To demonstrate proficiency in the Law Enforcement Manager Career Step, a peace officer shall:

- (1) Have active peace officer certification in accordance with KRS 15.386(2);
- (2) Complete the:
  - (a) Department of Criminal Justice Training Criminal Justice Executive Development Course;
  - (b) Department of Criminal Justice Training School for Strategic Leadership;
  - (c) Federal Bureau of Investigation (FBI) National Academy;
  - (d) University of Louisville Southern Police Institute Administrative Officers Course;
  - (e) Northwestern University School of Police Staff and Command;
  - (f) Police Executive Leadership College; or
  - (g) Another ~~management~~[executive] leadership course recognized and approved by the KLEC as equal to one (1) of the above courses; and
- (3) Have one (1) of the following combinations of full-time law enforcement management experience and credits from an accredited College or University, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Two (2) years of experience and a master's degree;
  - (b) Four (4) years of experience and a bachelor's degree;
  - (c) Six (6) years of experience and an associate's degree;
  - (d) Six (6) years of experience and ninety-five (95) hours of college credit;
  - (e) Seven (7) years of experience and eighty (80) hours of college credit;
  - (f) Eight (8) years of experience and sixty-five (65) hours of college credit; or
  - (g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 9. Law Enforcement Executive Certificate. (1) To demonstrate proficiency in the Law Enforcement Executive Career Step, a peace officer shall:

- (a) Have active peace officer certification in accordance with KRS 15.386(2);
- (b) Successfully complete:
  - 1. Orientation for New Chiefs, offered by the Department of Criminal Justice Training;
  - 2. Mandatory Duties of the Sheriff, offered by the Department of Criminal Justice Training;
  - 3. Department of Criminal Justice Training School for Strategic Leadership;
  - 4. Three (3) Police Executive Command courses, offered by the Department of Criminal Justice Training;
  - 5. Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or
  - 6. Another executive leadership course recognized and approved by the KLEC as equal to one (1) of the courses listed above[An executive level course as offered by the:
    - a. Federal Bureau of Investigation (FBI);
    - b. University of Louisville Southern Police Institute;
    - c. Northwestern University School of Police Staff and Command;
    - d. Institute of Police Technology and Management; or
    - e. Institute for Law Enforcement Administration];

(c) Successfully complete one (1) of the following:

- 1. 120 hours of training in conceptual or human skills development; or
- 2. Law Enforcement Management Career Step, plus forty (40) hours training in conceptual or human skills development; and
- (d) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - 1. Two (2) years of experience and a bachelor's degree;
  - 2. Three (3) years of experience and sixty (60) hours of college credit; or
  - 3. Four (4) years of experience and thirty (30) hours of college credit.
- (2) Points earned from in-service training courses shall not be used to substitute for college credit in the Law Enforcement Executive Career Step.

Section 10. Law Enforcement Chief Executive Certificate. (1) To demonstrate proficiency in the Law Enforcement Chief Executive Career Step, a peace officer shall:

- (a) Successfully complete:
  - 1. Orientation for New Chiefs, offered by the Department of Criminal Justice Training;
  - 2. Mandatory Duties of the Sheriff, offered by the Department of Criminal Justice Training;
  - 3. Department of Criminal Justice Training School for Strategic Leadership;
  - 4. Three (3) Police Executive Command courses, offered by the Department of Criminal Justice Training;
  - 5. Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or
  - 6. Another executive leadership course recognized by the KLEC as equal to one (1) of the above courses[An executive level course as offered by the:
    - a. Federal Bureau of Investigation (FBI);
    - b. University of Louisville Southern Police Institute;
    - c. Northwestern University School of Police Staff and Command;
    - d. Institute of Police Technology and Management; or
    - e. Institute for Law Enforcement Administration];
  - (b) Successfully complete one (1) of the following:
    - 1. 120 hours of training in conceptual or human skills development; or
    - 2. Law Enforcement Management Career Step, plus forty (40) hours training in conceptual or human skills development; and
    - (c) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
      - 1. Two (2) years of experience and a bachelor's degree;
      - 2. Three (3) years of experience and sixty (60) hours of college credit; or
      - 3. Four (4) years of experience and thirty (30) hours of college credit.
  - (2) Points earned from in-service training courses shall not be used to substitute for college credit in the Law Enforcement Chief Executive Career Step.

Section 11. Law Enforcement Officer Investigator Certificate. To demonstrate proficiency in the Law Enforcement Investigator Career Step, a peace officer shall:

- (1) Have active peace officer certification in accordance with KRS 15.386(2);
- (2) Complete 200 hours of KLEC-approved or recognized in-service training, consisting of:
  - (a) Eighty (80) hour Criminal Investigations I course or KLEC-approved or recognized equivalent; and
  - (b) 120 training hours in investigative courses identified by the KLEC; and
- (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

- (a) Four (4) years of experience and a master's degree;
- (b) Six (6) years of experience and a bachelor's degree;
- (c) Eight (8)~~[Nine (9)]~~ years of experience and an associate's degree;
- (d) Eight (8) years of experience and 110 hours of college credit;
- (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
- (f) Ten (10) years of experience and eighty (80) hours of college credit;
- (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
- (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 12. Law Enforcement Traffic Officer Certificate. To demonstrate proficiency in the Law Enforcement Traffic Career Step, a peace officer shall:

- (1) Have active peace officer certification in accordance with KRS 15.386(2);
- (2) Complete 200 hours of in-service training, consisting of:
  - (a) Forty (40) hour Collision Investigation Techniques~~[Eighty (80) hour basic accident investigation]~~ course or a KLEC-approved equivalent; and
  - (b) 160~~[120]~~ training hours in traffic courses identified by the KLEC; and
- (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and a master's degree;
  - (b) Six (6) years of experience and a bachelor's degree;
  - (c) Eight (8)~~[Nine (9)]~~ years of experience and an associate's degree;
  - (d) Eight (8) years of experience and 110 hours of college credit;
  - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
  - (f) Ten (10) years of experience and eighty (80) hours of college credit;
  - (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
  - (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 13. Advanced Deputy Sheriff Certificate. To demonstrate proficiency in the Advanced Deputy Sheriff Career Step, a peace officer shall:

- (1) Have active peace officer certification in accordance with KRS 15.386(2);
- (2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:
  - (a) Eighty (80) hours shall be in topics specific to sheriffs' responsibilities;
  - (b) Forty (40) hours shall be in technical skills development; and
  - (c) Forty (40) hours shall be in human skills development; and
- (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4)~~[Two (2)]~~ years of experience and a master's~~[bachelor's]~~ degree;
  - (b) Six (6)~~[Four (4)]~~ years of experience and a~~[an]~~ bachelor's~~[associate's]~~ degree;
  - (c) Eight (8)~~[Four (4)]~~ years of experience and an associate's degree~~[ninety-five (95) hours of college credit]~~;
  - (d) Eight (8)~~[Five (5)]~~ years of experience and 110~~[eighty (80)]~~ hours of college credit;
  - (e) Nine (9)~~[Six (6)]~~ years of experience and ninety-five (95)~~[sixty-five (65)]~~ hours of college credit;
  - (f) Ten (10)~~[Seven (7)]~~ years of experience and eighty (80)~~[fifty (50)]~~ hours of college credit; ~~[or]~~
  - (g) Eleven (11)~~[Eight (8)]~~ years of experience and sixty-five

- ~~(65)~~[thirty-five (35)] hours of college credit; or
- ~~(h) Twelve (12) years of experience and fifty (50) hours of college credit.~~

~~Section 14. Basic Telecommunicator Certificate. To demonstrate proficiency in the Basic Telecommunications Career Step, a person shall:~~

- ~~(1) Have active certification as a:~~
  - ~~(a) CJIS telecommunicator in accordance with KRS 15.565; or~~
  - ~~(b) Non-CJIS telecommunicator in accordance with KRS 15.560; and~~
- ~~(2) Successfully complete the following courses:~~
  - ~~(a) Twenty-four (24) hours of emergency medical dispatch;~~
  - ~~(b) Forty (40) hours of basic telecommunications;~~
  - ~~(c) Eight (8) hours of Crisis Negotiation;~~
  - ~~(d) Eight (8) hours of family violence;~~
  - ~~(e) Spanish for the Telecommunicator; and~~
  - ~~(f) Incident command.~~

~~Section 15. Communications Training Officer Certificate. To demonstrate proficiency in the Communications Training Officer Career Step, a person shall:~~

- ~~(1) Have active certification as a:~~
  - ~~(a) CJIS telecommunicator in accordance with KRS 15.565; or~~
  - ~~(b) Non-CJIS telecommunicator in accordance with KRS 15.560;~~
- ~~(2) Complete the Basic Telecommunications Career Step;~~
- ~~(3) Complete the following courses:~~
  - ~~(a) Forty (40) hour Communications Training Officer course;~~
  - ~~(b) Sixteen (16)~~~~[Eight (8)]~~ hour Communications Training Officer: Developing a Training Program~~[professional development]~~ course;
  - ~~(c) Eight (8) hour Ethics course~~~~[Twenty-four (24) hours of elective courses from any telecommunications course approved by the KLEC, which shall include the sixteen (16) hour Communications Training Officer program if the course in paragraph (a) of this subsection is completed after January 1, 2011]; and~~
  - ~~(d) A sixteen (16) hour Cultural Awareness course~~~~[An eight (8) hour KLEC-approved telecommunications ethics course, unless previously completed for Intermediate Telecommunicator certificate]; and~~
  - ~~(3)~~~~[4]~~ Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
    - (a) Four (4) years of experience and forty-five (45) hours of college credit;
    - (b) Five (5) years of experience and forty (40) hours of college credit;
    - (c) Six (6) years of experience and thirty-five (35) hours of college credit;
    - (d) Seven (7) years of experience and thirty (30) hours of college credit;
    - (e) Eight (8) years of experience and twenty-five (25) hours of college credit; or
    - (f) Nine (9) years of experience and twenty (20) hours of college credit.

~~Section 15. Intermediate Public Safety Dispatcher~~~~[Telecommunicator]~~ Certificate. To demonstrate proficiency in the Intermediate Public Safety Dispatcher~~[Telecommunications]~~ Career Step, a person shall:

- (1) Have active certification as a:
  - (a) CJIS telecommunicator in accordance with KRS 15.565; or
  - (b) Non-CJIS telecommunicator in accordance with KRS 15.560;
- (2) Complete fifty-six (56) hours of KLEC-approved public safety dispatch courses~~[the Basic Telecommunications Career Step];~~
- (3) Complete the following courses:
  - (a) Eight (8) hours of customer service;
  - (b) Eight (8) hours of teambuilding;
  - (c) An eight (8) hour KLEC-approved telecommunications ethics course;
  - (d) Sixteen (16) hours of cultural awareness;

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

(e) Sixteen (16) hours of elective courses from any telecommunications course approved by the KLEC; and

(3)(4) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Three (3) years of experience and thirty (30) hours of college credit;

(b) Four (4) years of experience and twenty-five (25) hours of college credit;

(c) Five (5) years of experience and twenty (20) hours of college credit;

(d) Six (6) years of experience and fifteen (15) hours of college credit;

(e) Seven (7) years of experience and ten (10) hours of college credit; or

(f) Eight (8) hours of experience and five (5) hours of college credit.

Section 16[17]. Advanced Public Safety Dispatcher[Telecommunicator] Certificate. To demonstrate proficiency in the Advanced Public Safety Dispatcher[Telecommunications] Career Step, a person shall:

(1) Have active certification as a:

(a) CJIS telecommunicator in accordance with KRS 15.565; or

(b) Non-CJIS telecommunicator in accordance with KRS 15.560;

(2) Complete the Intermediate Public Safety Dispatcher[Telecommunications] Career Step;

(3) Complete fifty-six (56) hours of KLEC-approved public safety dispatch courses[the following courses]:

(a) Sixteen (16) hour Emergency Medical Dispatch (EMD) Advanced course;

(b) Twenty-four (24) hour Fire/HAZMAT Incident course; and

(c) Sixteen (16) hour tactical dispatch course;

(4) Complete twenty-four (24) hours of elective courses from any telecommunications course approved by the KLEC; and

(4)(5) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and forty-five (45) hours of college credit;

(b)(e) Five (5) years of experience and forty (40) hours of college credit;

(c)(d) Six (6) years of experience and thirty-five (35) hours of college credit;

(d)(e) Seven (7) years of experience and thirty (30) hours of college credit;

(e)(f) Eight (8) years of experience and twenty-five (25) hours of college credit; or

(f)(g) Nine (9) years of experience and twenty (20) hours of college credit.

Section 17[18]. Public Safety Dispatcher[Telecommunications] Supervisor Certificate. To demonstrate proficiency in the Public Safety Dispatcher[Telecommunications] Supervisor Career Step, a person shall:

(1) Have active certification as a:

(a) CJIS telecommunicator in accordance with KRS 15.565; or

(b) Non-CJIS telecommunicator in accordance with KRS 15.560;

(2) Complete the Advanced Public Safety Dispatcher[Basic Telecommunications] Career Step;

(3) Successfully complete Leadership 911 or eighty (80) hours of KLEC-approved public dispatch leadership courses[- (a) The forty (40) hour Telecommunications Executive Development course;

(b) Sixteen (16) hours of supervision training approved by the KLEC;

(c) An eight (8) hour KLEC-approved telecommunications ethics course, if the telecommunicator has not previously completed the intermediate telecommunicator certificate; and

(d) Thirty-two (32) hours of elective course in supervision train-

ing approved by the KLEC]; and

(4) Have one (1) of the following combinations of full-time public safety dispatch[telecommunications] experience in a supervisory position and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and an associate's degree;

(b) Three (3) years of experience and fifty-five (55) hours of college credit;

(c) Four (4) years of experience and fifty (50) hours of college credit;

(d) Five (5) years of experience and forty-five (45) hours of college credit;

(e) Six (6) years of experience and forty (40) hours of college credit;

(f) Seven (7) years of experience and thirty-five (35) hours of college credit; or

(g) Eight (8) years of experience and thirty (30) hours of college credit.

Section 18[19]. Public Safety Dispatcher[Telecommunications] Manager/Director Certificate. To demonstrate proficiency in the Public Safety Dispatcher[Telecommunications] Manager/Director Career Step, a person shall:

(1) Have active certification as a:

(a) CJIS telecommunicator in accordance with KRS 15.565; or

(b) Non-CJIS telecommunicator in accordance with KRS 15.560;

(2) Obtain the Public Safety Dispatcher[Telecommunications] Supervisor Certificate;

(3) Successfully complete Telecommunications Executive Development I, II, and III or 120 hours of KLEC-approved public dispatch leadership courses[- (a) The forty (40) hour Telecommunications Executive Development course II;

(b) The forty (40) hour telecommunications executive development III course; and

(c) Forty (40) hours of elective supervisory or management courses approved by the KLEC]; and

(4) Have one (1) of the following combinations of full-time telecommunications experience in a management position and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and a bachelor's[bachelors] degree;

(b) Four (4) years of experience and an associate's degree;

(c) Five (5) years of experience and sixty (60) hours of college credit;

(d) Six (6) years of experience and fifty-five (55) hours of college credit;

(e) Seven (7) years of experience and fifty (50) hours of college credit;

(f) Eight (8) years of experience and forty-five (45) hours of college credit;

(g) Nine (9) years of experience and forty (40) hours of college credit; or

(h) Ten (10) years of experience and thirty-five (35) hours of college credit.

Section 19[20]. Law Enforcement Training Officer. To demonstrate proficiency in the Law Enforcement Training Career Step, a peace officer shall have:

(1) Active peace officer certification in accordance with KRS 15.386(2);

(2) Have successfully completed the following:

(a) Intermediate Law Enforcement Officer Certificate;

(b) Advanced Law Enforcement Officer Certificate; and

(c) 120 hours of in-service training, which shall include:

1. Police Training Officer course;

2. Field Instructor course; and

3. Crisis Intervention Training or Law Enforcement Response to Special Needs Population; and

(3) One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

- (a) Four (4) years of experience and a master's degree;
- (b) Six (6) years of experience and a bachelor's degree;
- (c) Eight (8)~~Nine (9)~~ years of experience and an associate's degree;
- (d) Eight (8) years of experience and 110 hours of college credit;
- (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
- (f) Ten (10) years of experience and eighty (80) hours of college credit;
- (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
- (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 20~~24~~. Law Enforcement Officer Advanced Investigator. To demonstrate proficiency in the Law Enforcement Officer Advanced Investigator Career Step, a peace officer shall have:

- (1) Active peace officer certification in accordance with KRS 15.386(2);
- (2) Successfully completed the following:
  - (a) Law Enforcement Officer Investigator Certificate; and
  - (b) 160 hours of electives in investigations courses approved or recognized by the Kentucky Law Enforcement Council; and
- (3) One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and a master's degree;
  - (b) Six (6) years of experience and a bachelor's degree;
  - (c) Eight (8)~~Nine (9)~~ years of experience and an associate's degree;
  - (d) Eight (8) years of experience and 110 hours of college credit;
  - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
  - (f) Ten (10) years of experience and eighty (80) hours of college credit;
  - (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
  - (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 21~~22~~. Crime Scene Processing Officer. To demonstrate proficiency in the Crime Scene Processing Officer career step, a peace officer shall have:

- (1) Active peace officer certification in accordance with KRS 15.386(2);
- (2) Successfully completed the Kentucky Criminalistics Academy or the National Forensic Academy~~:- (a) 200 hours of in-service training, which shall include:~~
  - 1. Crime Scene Investigations;
  - 2. Digital Photography; and
  - 3. Advanced Latent Fingerprints; and
- (b) One (1) of the following:
  - 1. ~~Eighty (80) hours of electives in investigations courses offered by the Department of Criminal Justice Training; or~~
  - 2. ~~The Kentucky Criminalistics Academy or the National Forensic Academy~~]; and
- (3) One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and a master's degree;
  - (b) Six (6) years of experience and a bachelor's degree;
  - (c) Eight (8)~~Nine (9)~~ years of experience and an associate's degree;
  - (d) Eight (8) years of experience and 110 hours of college credit;
  - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
  - (f) Ten (10) years of experience and eighty (80) hours of college credit;
  - (g) Eleven (11) years of experience and sixty-five (65) hours of

college credit; or

- (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 22. Crime Scene Technician. To demonstrate proficiency in the Crime Scene Technician career step, a peace officer shall have:

- (1) Active peace officer certification in accordance with KRS 15.386(2);
- (2) Successfully completed the Crime Scene Technician portion of the Kentucky Criminalistics Academy or have completed any of the following courses to equal not less than 200 hours:
  - (a) Bloodstain Pattern Recognition;
  - (b) Forensic Mapping;
  - (c) CAD Zone;
  - (d) Fingerprint Pattern Recognition and Comparison Techniques;
  - (e) Digital Photography;
  - (f) Advanced Latent Fingerprints;
  - (g) Crime Scene Investigation; or
  - (h) Any KLEC-approved course equivalents; and
- (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and a master's degree;
  - (b) Six (6) years of experience and a bachelor's degree;
  - (c) Eight (8) years of experience and an associate's degree;
  - (d) Eight (8) years of experience and 110 hours of college credit;
  - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
  - (f) Ten (10) years of experience and eighty (80) hours of college credit;
  - (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
  - (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 23. Certificate of Completion. The KLEC shall issue a certificate and uniform lapel pin to a peace officer or telecommunicator upon completion of a career development step.

Section 24. Maintenance of Records. All training records shall be maintained in accordance with applicable provisions of KRS Chapter 171.

Section 25. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Career Development Program Participant Commitment Form," Form 1, February 2013~~[KLEC Form CDP-1, June 2010];~~
- (b) "Intermediate Law Enforcement Officer", Form 2, February 2013~~[KLEC Form CDP-2, November 2008];~~
- (c) "Advanced Law Enforcement Officer", Form 3, February 2013~~[KLEC Form CDP-3, November 2008];~~
- (d) "Law Enforcement Officer Investigator", Form 4, February 2013~~[KLEC Form CDP-4, November 2008];~~
- (e) "Law Enforcement Traffic Officer", Form 5, February 2013~~[KLEC Form CDP-5, November 2008];~~
- (f) "Advanced Deputy Sheriff", Form 6, February 2013~~[KLEC Form CDP-6, November 2008];~~
- (g) "Law Enforcement Supervisor", Form 7, February 2013~~[KLEC Form CDP-7, November 2008];~~
- (h) "Law Enforcement Manager", Form 8, February 2013~~[KLEC Form CDP-8, November 2008];~~
- (i) "Law Enforcement Executive", Form 9, February 2013~~[KLEC Form CDP-9, November 2008];~~
- (j) "Basic Telecommunicator", KLEC Form CDP-10, November 2008;
- (k) ~~(j)~~ "Intermediate Public Safety Dispatcher", Form 11, February 2013~~[Telecommunicator, KLEC Form CDP-11, July 2010];~~
- (l) ~~(k)~~ "Advanced Public Safety Dispatcher", Form 12, February 2013~~[Telecommunicator, KLEC Form CDP-12, June 2010];~~
- (m) "Public Safety Dispatcher", KLEC Form CDP-13, June 2010;

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

visor", Form 13, February 2013[KLEC Form CDP-13, June 2010];  
(m) "Public Safety Dispatcher[(n) "Telecommunications] Manager/Director", Form 14, February 2013[KLEC Form CDP-14, June 2010];

(n)[(o)] "Law Enforcement Chief Executive", Form 15, February 2013[KLEC Form CDP-15, November 2008];

(o)[(p)] "Law Enforcement Training Officer", Form 16, February 2013[KLEC Form CDP-16, November 2008];

(p)[(q)] "Law Enforcement Officer Advanced Investigator", Form 17, February 2013[KLEC Form CDP-17, November 2008];

(q)[(r)] "Crime Scene Processing Officer", Form 18, February 2013[KLEC Form CDP-18, November 2008; and]

(r)[(s)] "Communications Training Officer", Form 19, February 2013; and

(s) "Crime Scene Technician," Form 20, February 2013[KLEC Form CDP-19, June 2010].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Criminal Justice Training, Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH R. CAIN, Chair

APPROVED BY AGENCY: March 14, 2013

FILED WITH LRC: March 14, 2013 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2013 at 9:00 a.m. in Room 211, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 2013, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 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: Dana M. Todd, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana M. Todd

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the Kentucky Law Enforcement Council Career Development Program.

(b) The necessity of this administrative regulation: KRS 15.330(1)(d) authorizes the establishment of voluntary career development programs for peace officers and telecommunications. The administrative regulation is necessary to set out the requirements of participating in and completing the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirements of KRS 15.330(1)(d), which authorizes the establishment of voluntary career development programs by the Kentucky Law Enforcement Council.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 15.330(1)(d) authorizes the establishment of voluntary career development programs for peace officers and telecommunications. The administrative regulation establishes the requirements of the career development program in compliance with KRS 15.330(1)(d).

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

(a) How the amendment will change this existing administrative regulation: This amendment creates an additional certificate that may be earned, changes three of the career step titles, eliminates

one career certificate, and amends education and experience requirements for ten (10) certificates. Further, one new form has been created and others have been updated to reflect these proposed amendment changes.

(b) The necessity of the amendment to this administrative regulation: To add an additional certificate with its eligibility requirements and to update career step title changes and eligibility requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.330(1)(d) authorizes the establishment of voluntary career development programs for peace officers and telecommunications by the Kentucky Law Enforcement Council.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will expand the available certificates and list of courses that may be applied for credit toward the career development program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Although this program is voluntary and not all will participate, this administrative regulation could benefit all law enforcement and telecommunications personnel in the Commonwealth, which is approximately 9,000 in number.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have one new certificate which can be earned and some new participants shall have amended eligibility requirements for current certificates.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Participation is voluntary and free of charge.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have one additional specialty for which they can receive credit.

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

(a) Initially: There should not be any new costs above that currently incurred to administer the Career Development Program, which was originally implemented in 2003 and cost approximately \$2,000.

(b) On a continuing basis: Approximately \$1,000 per year.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### FISCAL NOTE ON STATE AND 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? For those who choose to participate, this administrative regulation will affect city and county police departments, sheriffs' offices, and telecommunications. This administrative regulation is intended to provide a

means by which local law enforcement officers and telecommunications can work toward a "career track" in their specialized field of law enforcement.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330(1)(d).

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 program was originally implemented in 2003 and cost approximately \$2,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$1,000.

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.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**(Amendment)**

**702 KAR 4:160. Capital construction process.**

RELATES TO: KRS Chapter 45A, 156.074, 156.076, 156.496, 156.670[156.160(1)(f) and (m)], 157.420(4), 157.450, 157.455, 160.160, 160.476[162.060, 162.065], 162.070, 322.010, 323.010, 323A.010, 371.405(7), 371.410, 424.260[160.160, 322.360(1)]

STATUTORY AUTHORITY: KRS 156.070, 156.160, [157.420,] 162.060, 162.065, 322.360, 323.033

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 establishes the general powers and duties of the Kentucky Board of Education. KRS 156.160 authorizes[requires] the Kentucky Board of Education [(KBE)] to promulgate administrative regulations establishing standards that school districts shall meet in operational performance, including construction of public school buildings and the use of uniform forms.[KRS 157.420 requires each school district's capital outlay to be utilized in accordance with the district's facility plan.] KRS 162.060 requires that the chief state school officer shall examine or cause to be examined all plans and specifications for public school buildings in accordance with administrative regulations promulgated by the Kentucky Board of Education[approval of all school building plans and specifications by the chief state school officer]. KRS 162.065 requires the Kentucky Board of Education[KBE] to prescribe administrative regulations governing construction managers.[KRS 162.070 requires school construction contracts to be awarded to the lowest and best responsible bidder.] KRS 322.360 and 323.033 require[requires] a school district, when engaged in the construction of any public work involving architecture or engineering, to utilize an architect or engineer to directly supervise the preparation of plans and specifications, estimates, and the execution of construction.[KRS 323.033 requires the services of an architect for new buildings and additions or alterations to existing buildings classified as educational use group, including the administration of construction contracts.] This administrative regulation establishes the procedures and criteria for the construction of public school buildings.

Section 1. Definitions. (1) "AIA" means the American Institute of Architects.

(2)"Architect" means any design professional licensed in the

Commonwealth of Kentucky under KRS Chapter 322, 323, or 323A, which includes architects, engineers, and landscape architects.

(3)"Board" means the local board of education.

(3) "Change event" means a contiguous or similar action regarding a change order.

(4) "Construction documents" means the written and graphic documents prepared or assembled for communicating the project design for construction and for administering the construction contract, and consists of bidding requirements, contract forms, contract conditions, contract modifications, addenda, specifications, drawings, and record documents.

(5)[(4)] "Construction manager" or "CM" means a qualified and experienced contracting organization which provides the services of construction management and possesses a general trades workforce, staff and equipment, financial base, insurance coverage, bonding capability, a minimum of three (3) years of [years] construction management experience on projects of \$2,000,000 or more, and the ability to provide the services required.

(6) "Contractor" means an individual, corporation, estate, trust, partnership, limited liability company, association, joint venture, or any other legal entity performing construction and having a contract with a board.

(7) "Design professional" means a person licensed in the Commonwealth of Kentucky under KRS Chapter 322, 323, or 323A, which includes architects, engineers, and landscape architects providing services within their respective practice areas.

(8) "Emergency" means a situation which creates a threat or impending threat to public health, welfare, or safety that may arise by reason of fires, floods, tornadoes, other natural or man-caused disasters, epidemics, riots, enemy attack, sabotage, theft, explosion, power failure, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates, or similar unforeseen events, and results in the loss of use of the physical facilities.

(9)[(5)] "Contract documents" means the owner-contractor agreement, conditions of the contract (general, supplementary, and other conditions), purchase orders, drawings, specifications, addenda issued prior to execution of the owner-contractor agreement, other documents listed in the owner-contractor agreement, and modifications issued after the execution of the agreement.

(6) "Division" means the Division of Facilities Management, Kentucky Department of Education (KDE).

(7) "Emergency" means the loss of use of physical facilities resulting from an unforeseen occurrence which requires prompt action:

(8)"Fixed equipment" means furnishings or equipment that:

(a) Are secured to the wall, floor, or ceiling to operate or function in the manner intended by the product manufacturer; and

(b) May include bleachers, student lockers, casework with sinks, or plumbing fixtures.

(10) "Guaranteed energy savings contract" or "GES" is defined by KRS 45A.345(28).

(11) "KBE" means the Kentucky Board of Education.

(12) "Major renovation" means a project at a permanent center including three (3) or more building systems and an estimated cost of twenty (20) percent of the current replacement cost of the building, or portion thereof, and the building or building systems shall be a minimum of twenty (20) years old or twenty (20) years shall have passed since its last major renovation with the exception of:

(a) The restructuring of an open space school for conventional classrooms; or

(b) The replacement of one (1) of the following single building systems that is within fifteen (15) years of its original installation, or if required by a change in regulation or code:

1. Heating, ventilation, and air conditioning systems and controls;

2. Systems to provide full use of a facility by the physically handicapped and to bring a facility into compliance with state and federal law;

3. Life safety and security systems; or

4. Roofing systems, flashings, and accessories.

(13) "Minor project" means a project for expansion of a permanent center to include a maximum of four (4) classrooms, campus

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

enlargement, renovation of buildings and building systems with a budget of less than \$25,000, or construction of support space at permanent centers, or renovation not defined as major renovation.

(14)(9) "KERA" means Kentucky Education Reform Act.

(10) "Moveable equipment" means any furnishings or equipment not considered fixed equipment.

(11) "Owner" means the local board of education or financing corporation established for the purpose of financing school construction.

(15) "Qualified provider" is defined by KRS 45A.345(29).

(16)(12) "Record documents[drawings]" means a set of reproducible drawings or electronic digital files revised to indicate significant changes in the work during construction, including addenda, change orders, and construction change directives.

(17)(13) "Superintendent" means the superintendent of the local school district or an authorized designee of the [employee the] superintendent [has] selected to represent the board regarding construction issues.

Section 2. Construction Project Application. (1) The board shall submit an application on the [Form BG-1;] BG-1 Project Application Form (BG-1 Form), to the department[division] for approval of a proposed construction project.

(2) An application shall be submitted for each[any] project that is:

(a) Funded by Support Education Excellence in Kentucky (SEEEK) capital outlay funds, Facility Support Program of Kentucky (FSPK) funds as provided by KRS 157.620, School Facilities Construction Commission (SFCC) funds, or building funds as provided by KRS 160.476; [or]

(b) Proposing construction of a new building, addition, or alteration of an existing building that requires design by a design professional[an architect] for a building or building system;

(c) Proposing a guaranteed energy savings contract;

(d) Proposing a minor project; or

(e) Proposing a major renovation.

(3) [To initiate a project listed in its facility plan or a minor project permitted in subsection (8) of this section, a vote by the board approving the project shall be required.

(4)(a) If SFCC funds are included in the financing plan, projects shall be selected in prioritized order from the District Facility Plan created pursuant to 702 KAR 4:180.

(b) If restricted funds other than SFCC are [funding is not] included in the financing plan, the board may select any[a] project in any priority used to determine district need.

(c) Projects not used to determine district need shall only be funded as defined by the General Assembly.

(4) The BG-1 Form shall be approved by the board.

(5) The department shall take action on the BG-1 Form within thirty (30) calendar days of receipt.

(6) If an emergency occurs, impacting an activity for which a BG-1 Form is required:

(a) The superintendent shall:

1. Proceed with corrective actions, as needed;

2. Notify the department of the emergency and request approval to continue with the plans and corrective action;

3. Advise the board to declare an emergency in accordance with the district's officially adopted procurement method under KRS 424.260 or 45A.380; and

4. Submit to the department:

a. BG-1 Form; and

b. The board order declaring the emergency; and

(b) The department shall process the emergency BG-1 Form request within seven (7) calendar days of receipt[on its facility plan without regard to priority number.

(5) The Form BG-1 shall be accompanied by:

(a) A copy of the board's action, either by official board minutes or an unofficial excerpt signed by the board secretary verifying authenticity, approving the application; and

(b) A narrative justification of the construction project selection, including its priority over other projects relative to district goals and maximization of funding and benefits to students.

(6) Within sixty (60) days of receiving the completed application documents, the Form BG-1 shall be approved by the division,

if justified pursuant to the following criteria:

(a) The proposed project is on the facility plan or conforms to the minor project criteria established in subsection (8) of this section;

(b) The SFCC funding does not exceed the SFCC maximum budget established for the project;

(c) The application has original signatures;

(d) A board order was issued; and

(e) The narrative justification was submitted as required by subsection (5)(b) of this section.

(7) The Division of District Operations, KDE, may give tentative approval based on a review of the board's ability to support the financing plan for the proposed construction budget.

(8) The board may submit a Form BG-1 for minor projects not listed in the facility plan if the project meets the following criteria:

(a) Expansion of a permanent center or functional center to include a maximum of four (4) classrooms if documentation to support the request is provided for either student population growth or curriculum changes;

(b) Campus enlargement, minor renovation of buildings and building systems, or construction of an additional support space at permanent or functional centers if its need can be documented and justified; or

(c) Projects to comply with statutes and administrative regulations of other agencies having jurisdiction.

(9) If action is not taken by the board within one (1) year from the date of Form BG-1 approval, the approval shall no longer be effective.

(10) If the division considers the architect, CM, or board to be nonresponsive or causing undue delays in the design schedule, it may request the chief state school officer to revoke the Form BG-1 approval.

(11) If an emergency requiring the submission of a Form BG-1 occurs:

(a) The emergency shall be declared in accordance with KRS 424.260 or 45A.380, whichever is applicable; and

(b) The board shall:

1. Notify the division and request approval to proceed with the plans and corrective action;

2. Submit to the division:

a. Form BG-1;

b. Copy of the board order declaring the emergency; and

c. Copy of the written determination as required by KRS 45A.380 for those districts that have adopted the Model Procurement Code].

Section 3. Local Board Oversight Responsibilities. (1) Site acquisition for new sites shall be conducted in compliance with 702 KAR 4:050.

(2) An easement, property lease, property lease purchase or property lease with an option to purchase by a board for fixed equipment, capital construction, or an alteration to an existing building or building system shall require the submittal of plans and specifications and lease documents to the department for review and approval based on compliance with the requirements in 702 KAR 4:090.

(3) Construction files and records shall be maintained by the superintendent, organized and accessible for review. Construction files and records shall include:

(a) Board orders;

(b) Proposals (bids);

(c) Contracts, construction documents, and record documents;

(d) Copy of each certificate of required liability insurance for the design professional, the design professional's consultants, and CM or qualified provider of GESC services, if used;

(e) Correspondence; and

(f) Financial documents.

(4) The board shall provide oversight of the design professional services as established in this subsection.

(a) The board's attorney shall review the design professional's proposed contract for compliance with the law.

(b) The board shall submit the proposed board-approved design professional contract to the department for approval.

(c) The board shall submit to the department for review:

1. Copy of each KDE Non-Collusion Affidavit for the design

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

professional and the design professional's consultants:

2. Copy of each required certificate of liability insurance; and
3. Copy of the signed design professional contract.

(5) The board shall provide oversight of the CM services as established in this subsection.

(a) The board's attorney shall review the CM's proposed contract for compliance with the law.

(b) The board shall submit the proposed board-approved CM contract to the department for approval.

(c) The board shall submit to the department for review:

1. Copy of the CM's KDE Non-Collusion Affidavit;
2. Copy of each required certificate of liability insurance;
3. Copy of the performance and payment bond; and
4. Copy of the signed CM contract.

(6) The board shall provide oversight of the qualified provider of GESC services as established in this subsection.

(a) The board's attorney shall review the qualified provider's proposed contract for compliance with the law.

(b) The board shall submit the proposed board-approved GESC contract to the department for approval.

(c) The board shall submit to the department for review:

1. Copy of the qualified provider's KDE Non-Collusion Affidavit;
2. Copy of each required certificate of liability insurance;
3. Copy of the performance and payment bond; and
4. Copy of the signed GESC contract.

(7) The board shall prepare an educational specification which complies with 702 KAR 4:170, Facility Programming and Construction Criteria, and 702 KAR 4:180, Implementation Guidelines – Kentucky School Facilities Planning Manual.

(8) During the design phases of a new school building project, areas shall comply with the model program of spaces established in 702 KAR 4:180.

(9) If the design professional for general contractor delivery projects or the design professional and CM for CM delivery projects determine additional funding is justified or a reduction of physical scope of the project is needed and the board concurs, the board shall forward a revised board-approved BG-1 Form to the department for approval.

(10) During the bidding phase of the construction project, the board shall:

(a) Conduct the bid process in accordance with the district's officially adopted procurement method under KRS 424.260 or Chapter 45A;

(b) Prior to advertising, receive written approval from the department of the bidding documents;

(c) Hold possession of the bidding documents;

(d) Approve and submit each successful bidder's documents to the department for review and approval of each proposed contract and the financial plan;

(e) Submit a revised board-approved BG-1 Form for funding changes after bidding; and

(f) Have in its possession prior to signing the construction contract:

1. Unsigned contractor's performance and payment bond;
2. Certificates of required insurance;

3. Property insurance policy including insurance written on a builder's risk "all-risk" or equivalent policy in the amount of the initial total construction cost, plus the value of subsequent contract modifications and the cost of materials supplied and installed by others, comprising total value for the entire project at the site on a replacement cost basis without optional deductibles;

4. The department's written approval to sign each owner contractor agreement; and

5. Bids accepted for the bond sale.

(11) The board shall provide oversight of construction administration and construction contract closeout and submit a revised board-approved BG-1 Form if construction contingency is exceeded.

(12) If a lien is filed with a court and the board is given notice of the lien, the board shall:

(a) Notify the board attorney;

(b) Notify the department; and

(c) Proceed in accordance with the contract documents.

Section 4. Architectural Services. (1) The board shall advertise for architectural services utilizing the KDE Request for Proposals for Architectural/Engineering Services or shall evaluate and select a minimum of three (3) architectural firms who have submitted a letter of interest. Advertisement and evaluation of three (3) firms shall not be required if:

(a) The total construction cost of the project is estimated at less than \$1,000,000; or

(b) The project is the continuation of phased construction at the same site.

(2) The board and design professional shall negotiate a contract for services required, using either:

(a) AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect - KDE Version; or

(b) AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition - KDE Version.

(3) A letter of agreement stating services, terms, and conditions that have been approved by the board shall be acceptable in lieu of AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect - KDE Version for a project with an estimated construction cost of less than \$50,000.

(4) The design professional shall:

(a) Provide professional liability insurance;

(b) Complete a KDE Non-Collusion Affidavit;

(c) Provide construction documents and cost estimates, as required by the contract;

(d) If requesting reimbursements or additional service fees, provide a detailed listing of each charge on the payment request; and

(e) Request payment of the construction phase fee at the same proportionate percentage as the construction's completion.

(5) The department shall review and approve the board-approved design professional's contract based on the following criteria:

(a) Compliance of the fee to KDE Architect/Engineer Fee Guidelines for Basic Services;

(b) Required certificates of liability insurance as stated in the AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect - KDE Version or the AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition - KDE Version;

(c) Compliance with applicable laws for modifications to the contract; and

(d) Consistency with the scope of work and anticipated cost approved on the BG-1 Form.

(6) The design professional shall prepare and provide documents and services required by contract, laws, and AIA documents incorporated by reference in this administrative regulation. The department shall request clarification, as needed, on documentation which does not comply.

Section 5. Construction Management Services. (1) A CM shall not be employed on a project estimated at less than \$2,000,000 for construction cost. The department may approve exceptions if the:

(a) Project is a phase of a phased project and the CM is to be employed on all subsequent phases; or

(b) Project's complexity or fiscal soundness requires it.

(2) The board shall advertise for CM services utilizing the KDE Request for Proposals for Construction Management Services or shall evaluate and select a minimum of three (3) CM firms who have submitted a letter of interest.

(3) The board and CM shall negotiate a contract for services required using AIA Document C132-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser - KDE Version.

(4) The CM shall:

(a) Prior to the board signing the construction contracts, provide a 100 percent performance and payment bond, AIA Document A312-2010, Performance Bond and Payment Bond - KDE Version, in the amount of the CM fee and in compliance with KRS 45A.435;

(b) Provide professional liability insurance;

(c) Provide construction cost estimates in conjunction with the design professional's design at the end of each phase for schemat-



ic design documents, design development documents, and construction documents;

(d) Complete a KDE Non-Collusion Affidavit;

(e) Request approval by the owner's representative for reimbursement or an additional service fee prior to the service being rendered or expenditure being made;

(f) If requesting reimbursement or an additional service fee, provide a detailed listing of each charge on the payment request; and

(g) Request payment of the construction phase fee at the same proportionate percentage as the construction's completion.

(5) The department shall review and approve the board-approved CM contract based on the following criteria:

(a) Compliance of the fee to KDE Construction Manager Fee Guidelines for Basic Services;

(b) Required certificates of liability insurance as stated in the AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition - KDE Version;

(c) Required performance and payment bond as stated in the AIA Document A312-2010, Performance Bond and Payment Bond - KDE Version;

(d) Compliance with applicable laws for modifications to the contract; and

(e) Consistency with the scope of work and anticipated cost approved on the BG-1 Form.

(6) The CM shall provide all documents and services required by contract, laws, and AIA documents incorporated by reference in this administrative regulation. The department shall request clarification, as needed, on documentation which does not comply.

Section 6. Project Documents for General Construction and Construction Management. (1) After the department has issued written approval of the BG-1 Form, the department shall notify the board of required submissions for the project.

(a) The design professional shall prepare schematic design documents of the proposed construction from written educational program specifications which are in compliance with 702 KAR 4:170 and 702 KAR 4:180.

(b) The board shall submit the board-approved schematic design documents and a copy of the educational program specifications to the department for review and approval.

(c) The department shall review and approve the schematic design documents based on:

1. The schematic design documents and a copy of the educational program specifications, approved by board order;

2. The site plan demonstrating compliance with 702 KAR 4:170;

3. Proposed floor elevation which is a minimum of one (1) foot above the 100-year flood plain elevation for new construction and the proposal of no state funds for renovation below the 100-year flood plain elevation;

4. Floor plans demonstrating:

a. The number, type, and size of the planned spaces, including support spaces;

b. The educational program specifications;

c. Maximum gross areas in compliance with 702 KAR 4:170 and 702 KAR 4:180, with:

(i) An elementary school limited to 115 percent of the total gross area of the model program of spaces; or

(ii) A middle or high school limited to 120 percent of the total gross area of the model program of spaces; and

d. Building efficiency (the percent of net program area to gross building area) meeting or exceeding the guidelines of 702 KAR 4:180;

5. Functional aspects demonstrating:

a. The distribution of functions;

b. Program space educational suitability; and

c. The appropriateness for the needs of the facility; and

6. The budget documenting the estimated construction cost (gross building area multiplied by the cost per square foot, plus site development costs) in relation to the BG-1 Form total construction cost. If the estimated construction cost exceeds the BG-1 Form total construction cost, the board shall approve either an increase

in the budget or a decrease in the physical scope of the project.

(2) After receiving the department's written approval of the schematic design documents, the design professional shall prepare the design development documents.

(a) The board shall submit to the department for review and approval:

1. Board-approved design development documents;

2. BG-2 Outline Specifications Energy Design Criteria (BG-2 Form); and

3. BG-3 Statement of Probable Cost (BG-3 Form).

(b) The board shall submit to the department a copy of the signed letter of transmittal sent to the Kentucky Transportation Cabinet or other agency having jurisdiction regarding proposed entrance and right-of-way improvements.

(c) The department shall review and approve design development documents, which incorporate all previous schematic design documents review comments, based on:

1. Site plan (proper siting of the building with respect to vehicular and pedestrian circulation, separation of bus loading area, student play areas, athletic fields, utility construction, and site drainage, with details appropriately developed);

2. Floor plan (number, type, and size of the planned spaces consistent with each approved schematic plan);

3. Enlarged plans and details (appropriate to describe the design intention);

4. Budget (the total project cost on the BG-3 Form is within the approved BG-1 Form total project cost budget; if the BG-3 Form total project cost exceeds the BG-1 Form total project cost, the board shall approve an increase in the budget or a decrease in the physical scope of the project); and

5. BG-2 Form (properly completed and conforms to the educational program specifications).

(3) After receiving the department's written approval of design development documents, the design professional, and the CM if utilized, shall prepare the completed construction documents for bidding.

(a) The board shall submit to the department:

1. Board-approved completed drawings and project manual; and

2. Proof of submission of completed bidding documents to other agencies having jurisdiction.

(b) The department shall review and approve the completed construction documents based on:

1. Compliance with state laws regarding the seal, signature, and date of the documents by design professionals;

2. Compliance with the requirement that documents be of sufficient detail and complexity that they may be used:

a. To obtain a building permit;

b. As instruments in the competitive bidding process; and

c. By contractors to construct the project;

3. Compliance with the requirement that BG-3 Form total project cost be less than or equal to 110 percent of the approved BG-1 Form total project cost;

4. Compliance with the requirement that documents be appropriate to industry standards for general construction or construction management, including:

a. AIA Document A701-1997, Instruction to Bidders - KDE Version;

b. KDE Form of Proposal;

c. AIA Document A310-2010, Bid Bond;

d. KDE Purchase Order;

e. AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum - KDE Version;

f. AIA Document A201-2007, General Conditions of the Contract for Construction - KDE Version;

g. AIA Document A132-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition - KDE Version;

h. AIA Document A232-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition - KDE Version;

i. AIA Document A312-2010, Performance Bond and Payment Bond - KDE Version;

**VOLUME 39, NUMBER 10 – APRIL 1, 2013**

j. AIA Document G702-1992, Application and Certification for Payment;  
k. AIA Document G732-2009, Application and Certification for Payment, Construction Manager-Adviser Edition;  
l. AIA Document G701-2001, Change Order;  
m. AIA Document G701/CMA-1992, Change Order, Construction Manager-Adviser Edition;  
n. KDE Change Order Supplemental Information Form;  
o. AIA Document G704-2000, Certificate of Substantial Completion;  
p. AIA Document G704/CMA-1992, Certificate of Substantial Completion, Construction Manager-Adviser Edition;  
q. AIA Document G707A-1994, Consent of Surety to Reduction in or Partial Release of Retainage;  
r. AIA Document G706-1994, Contractor's Affidavit of Payment of Debts and Claims;  
s. AIA Document G706A-1994, Contractor's Affidavit of Release of Liens; and  
t. AIA Document G707-1994, Consent of Surety to Final Payment; and  
5. Inclusion of letter of transmittal to state and local agencies having jurisdiction over issues related to construction projects, including:  
a. Department of Housing, Buildings and Construction:  
(i) Division of Building Codes Enforcement; and  
(ii) Division of Plumbing;  
b. Division of Water;  
c. Division of Air Quality;  
d. Local health department; and  
e. Local building inspector.  
(4) The board shall receive written approval of the completed construction documents and authorization to advertise from the department prior to advertisement for bids.

Section 7. Guaranteed Energy Savings Contracts. (1) The board shall submit to the department a letter of intent to issue a request for proposal for a GESC.

(2) The department shall notify the board of required submissions for the GESC project.

(3) The board shall advertise for qualified providers to propose energy conservation measures utilizing the KDE Request for Proposals for Guaranteed Energy Savings Contracts in compliance with KRS 45A.352(1) and (5) for a GESC.

(4) The board and qualified provider shall negotiate a contract for services required using:

(a) AIA Document A141-2004, Standard Form of Agreement Between Owner and Design-Builder - KDE Version;

(b) AIA Document A141-2004, Exhibit A, Terms and Conditions - KDE Version;

(c) AIA Document A141-2004, Exhibit C, Insurance and Bonds - KDE Version; and

(d) Other exhibits as required to define the agreement.

(5) The qualified provider shall:

(a) Complete a KDE Non-Collusion Affidavit;

(b) Provide each required certificate of liability insurance; and

(c) Provide a 100 percent performance and payment bond, AIA Document 312-2010, Performance Bond and Payment Bond - KDE Version, in compliance with KRS 45A.435.

(6) The board shall submit to the department:

(a) A board-approved proposal from the selected provider; and

(b) BG-1 Form.

(7) The department shall review and approve the project based on compliance with KRS 45A.352(9) and (10).

(8) After written approval of the project is received from the department, the qualified provider shall incorporate review comments and prepare the project scope documents. The board shall submit to the department for review and approval:

(a) Board-approved project scope documents;

(b) BG-2 Form; and

(c) Proposed contract.

(9) After written approval of the project scope is received from the department, the qualified provider shall incorporate review comments and complete the project documents, including drawings and specifications. The board shall submit to the department:

(a) Board-approved project documents, including final drawings and specifications;

(b) Proposed board-approved contract with financing documentation;

(c) Confirmation that the proposed contract complies with KRS 45A.352(3); and

(d) Revised BG-1 Form to conform to the proposed contract and financing.

(10) The department shall review and provide written approval of the proposed GESC based on:

(a) Financing documentation; and

(b) KRS 45A.352(9) and (10).

Section 8. Construction Bids, Contracts, and Bond Sales. (1) Negotiation of the bid price shall not be allowed, except in accordance with KRS 45A.375 for those districts under the Model Procurement Code.

(2) The board shall submit to the department for review and approval:

(a) Each proposed contract;

(b) A completed KDE Purchase Order Summary Form, if owner direct purchase orders are utilized;

(c) The revised financial page of the BG-1 Form to coincide with the proposed project costs;

(d) Preliminary official statement;

(e) Notice of revenue bond sale;

(f) Official terms and conditions; and

(g) Plans of financing.

(3) The board shall submit to the department for review and approval the following documentation for projects that are bid:

(a) Each bid tabulation;

(b) Bid security;

(c) KDE Form of Proposal for each successful bidder;

(d) Written recommendation of the design professional and CM, if utilized, regarding the awarding of the contract; and

(e) Written rationale for the additional cost if the accepted bid exceeds the BG-3 Form by ten (10) percent or more.

(4) If a bond sale is pending, the documents required by subsections (2) and (3) of this section shall be submitted to the department a minimum of ten (10) working days prior to the scheduled bond sale date.

(5)(a) Discrepancies between the proposed contract and bidding documents shall be remedied prior to approval.

(b) Approval of the proposed contract by the department shall not indicate the contract is the best or the most reasonable.

(6) If the submitted documents are not in an approvable form at least five (5) working days before the scheduled bond sale, the sale date shall be postponed.

(7) The board shall contract with a fiscal agent to assist in meeting all reporting, filing, and selling requirements for securing the financial approval of the department if school revenue bonds are proposed for sale.

(8) The department shall issue the written approval for the financing plan, authorize the bond sale, and issue the approval letter for the chief state school officer or a designee.

(9) The board shall submit to the department:

(a) A copy of each signed contract and purchase order;

(b) Each contractor's insurance certificate required by law and by contract to hold the board safe from loss until the project is completed or until an occupancy permit is received by the board; and

(c) A copy of each 100 percent performance and payment bond in compliance with KRS 45A.435.

Section 9. Contract Change Orders. (1) Board-approved changes in the contract scope of work shall be submitted using forms AIA Document G701-2001, Change Order or AIA Document G701/CMA-1992, Change Order, Construction Manager-Adviser Edition, including the KDE Change Order Supplemental Information Form, to ensure the cumulative cost of the contract and all change orders are within the approved budget.

(2) Board-approved change orders under \$25,000 per change event and within the construction contingency amount shall be submitted to the department.

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

(3) Board-approved change orders which equal or exceed \$25,000 per change event and within the construction contingency amount shall be submitted, prior to execution, to the department for review and approval.

(4) The department may approve a change order only if the change order amount is less than the available construction contingency amount on the BG-1 Form and is in accordance with subsections (1) and (3) of this section.

### Section 10. Construction Contract Retainage and Payments.

(1)(a) Retainage shall be governed by KRS 371.410(1).

(b) Payments shall be governed by KRS 371.405(7).

(2) The investment earnings resulting from an agreement entered by a board involving the construction account, including the construction contract retainage for an approved project, shall be invested in a manner so that additional income from the investment shall accrue only to the construction account.

Section 11. Construction Dispute Resolution. Owners shall utilize the construction dispute resolution processes defined in the signed contracts for the project.

Section 12. Construction Contract Closeout Process. (1) The applicable design professional, CM, or qualified provider shall furnish the board a completed BG-4 Contract Closeout Form, 2012 (BG-4 Form) and record documents, with applicable information requesting approval of:

(a) Each contract, including change orders; and

(b) A reconciliation of the summary of all purchase orders, if utilized, including change orders, for each contract.

(2) If the board agrees the construction contract is complete and all accounts are reconciled, it shall approve the BG-4 Form and forward it to the department for review and approval.

(3) When all construction contracts are complete, if the board agrees the project is complete, it shall approve the BG-5 Project Closeout Form, 2012 (BG-5 Form) and forward it to the department for review and approval.

Section 13. Penalties for Malfeasance or Nonfeasance. (1) A determination by the board or the department of malfeasance or nonfeasance shall be forwarded to the chief state school officer.

(2) The chief state school officer may make a recommendation to the KBE to determine that the offending firm is ineligible to provide professional services on school construction projects for a period not to exceed five (5) years.

(3) The KBE may prescribe alternative penalties.

(4) If the principals of the offending firm become associated with another firm during the penalty period, upon recommendation by the chief state school officer, the KBE may determine that the penalty invoked shall also apply to that firm.

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

(a) "AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect - KDE Version", 2013;

(b) "AIA Document A201-2007, General Conditions of the Contract for Construction - KDE Version", 2013;

(c) "AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum - KDE Version", 2013;

(d) "AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition - KDE Version", 2013;

(e) "AIA Document C132-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser - KDE Version", 2013;

(f) "AIA Document A232-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition - KDE Version", 2013;

(g) "AIA Document A132-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition - KDE Version", 2013;

(h) "AIA Document A141-2004, Standard Form of Agreement Between Owner and Design-Builder - KDE Version", 2013;

(i) "AIA Document A141-2004, Exhibit A, Terms and Conditions - KDE Version", 2013;

(j) "AIA Document A141-2004, Exhibit C, Insurance and Bonds - KDE Version", 2013;

(k) "AIA Document A701-1997, Instruction to Bidders - KDE Version", 2013;

(l) "AIA Document A312-2010, Performance Bond and Payment Bond - KDE Version", 2013;

(m) "AIA Document A310-2010, Bid Bond", 2010;

(n) "AIA Document G701-2001, Change Order", 2001;

(o) "AIA Document G701/CMA-1992, Change Order, Construction Manager-Adviser edition", 1992;

(p) "AIA Document G702-1992, Application and Certification for Payment", 1992;

(q) "AIA Document G732-2009, Application and Certification for Payment, Construction Manager-Adviser Edition", 2009;

(r) "AIA Document G704-2000, Certificate of Substantial Completion", 2000;

(s) "AIA Document G704/CMA-1992, Certificate of Substantial Completion, Construction Manager-Adviser Edition", 1992;

(t) "AIA Document G706-1994, Contractor's Affidavit of Payment of Debts and Claims", 1994;

(u) "AIA Document G706A-1994, Contractor's Affidavit of Release of Liens", 1994;

(v) "AIA Document G707-1994, Consent of Surety to Final Payment", 1994;

(w) "AIA Document G707A-1994, Consent of Surety to Reduction in or Partial Release of Retainage", 1994;

(x) "BG-1 Project Application Form", 2012;

(y) "BG-2 Outline Specifications Energy Design Criteria", 2012;

(z) "BG-3 Statement of Probable Cost", 2012;

(aa) "BG-4 Contract Closeout Form", 2012;

(bb) "BG-5 Project Closeout Form", 2012;

(cc) "KDE Architect/Engineer Fee Guidelines for Basic Services", 2012;

(dd) "KDE Change Order Supplemental Information Form", 2012;

(ee) "KDE Construction Manager Fee Guidelines for Basic Services", 2012;

(ff) "KDE Form of Proposal", 2012;

(gg) "KDE Non-Collusion Affidavit", 2012;

(hh) "KDE Purchase Order", 2012;

(ii) "KDE Purchase Order Summary Form", 2012;

(jj) "KDE Request for Proposals for Architectural/Engineering Services", 2012;

(kk) "KDE Request for Proposals for Construction Management Services", 2012; and

(ll) "KDE Request for Proposals for Guaranteed Energy Savings Contracts", 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Construction files and records shall be maintained by the superintendent in the central office and organized and accessible for review. Construction files and records shall include:

(a) Board actions;

(b) Proposals (bids);

(c) Contracts, contract documents and record drawings;

(d) Correspondence; and

(e) Financial documents.

(2) During the design phases of a new school building project, the maximum gross area shall be limited using the Model Program Space established in 702 KAR 4:180, to:

(a) For an elementary school, 110 percent of the Total Gross Area of the Model Program Space; or

(b) For a middle or high school, 115 percent of the Total Gross Area of the Model Program Space.

(3) If the architect or the CM determines additional funding is justified or a reduction of physical scope of the project is needed, the local board may approve the action if it believes it is justified and forward it to the division.

(4) During the planning and bidding phase of the construction project, the board shall:

(a) Review bidding documents for compliance with statutes and administrative regulations, with particular attention to sales and use tax exemption when purchasing materials direct;

(b) Comply with all submission requirements resulting from the review of bidding documents by the division;

(c) Not advertise before receipt of written approval from the division;

(d) Advertise in the newspaper having the largest circulation in the school district the following number of days prior to the date established to receive bids:

1. \$1,000,000 or less project, a minimum of seven (7) days and a maximum of twenty-one (21) days; or
2. A project in excess of \$1,000,000, a minimum of twenty-one (21) days;

(e) Hold the bid opening:

1. In a location accessible to the public;
2. Between 10 a.m. and 3 p.m. (local time); and
3. Monday through Friday, excluding holidays;

(f) Accept the architect's and CM's evaluation of the bids and approve or reject their recommendations, giving consideration during the review process to businesses owned by minorities and women;

(g) Ensure the CM completes the KDE Non-Collusion Affidavit;

(h) Hold possession of original bidding documents;

(i) Approve and submit the successful bidders' documents to the division for review and approval of each proposed contract and the financial plan; and

(j) Have in its possession prior to executing the construction contract:

1. Contractor's performance and payment bond;
2. Certificate of required insurance;
3. Property insurance policy;
4. Written approval from the division; and
5. Bids accepted for the bond sale, if applicable.

(5) During the construction administration of the project, the board shall:

(a) Name the superintendent or his or her representative, known as the owner's representative, to speak on behalf of the board as owner in the contract documents and set the parameters of that responsibility;

(b) Seek the superintendent's recommendation relative to proposed board actions;

(c) Approve all expenditures from the construction account;

(d) Seek SFCC approval of expenditures as applicable;

(e) At least once per month receive and review written on-site observation and progress reports provided by the architect;

(f) Review the need for changes to the contract;

(g) Assign partial or full responsibility to the proper party if additional costs are due to an oversight or omission;

(h) Monitor the administration of the project by its architect and CM to ensure no prepayment is made for their services;

(i) After notifying the division, hire a professional services firm experienced in architectural, engineering, accounting, or construction management services to provide an audit of the construction project if the board suspects nonfeasance or malfeasance;

(j) Secure all required inspections and close out documents for submittal to the appropriate agencies;

(k) Receive a certificate of occupancy from the Department of Housing, Buildings, and Construction or local building code authority having expanded jurisdiction prior to occupying the facility;

(l) Retain a minimum five (5) percent retainage of the construction contract until substantial completion of the work as defined in AIA Document A201-2007, General Conditions of the Contract for Construction, and the KDE Amendment to AIA A201-2007;

(m) Require the superintendent or the owner's representative to participate in the year-end inspection and report results of the inspection to the board;

(n) Contact the contractor's bonding company each month if the contractor is more than two (2) weeks behind schedule or is not performing in accordance with the contract; and

(o) Not hire additional architectural services outside the architect's contract without approval from the division.

(6) If federal funds or federal agencies are involved, the board may request approval from the chief state school officer to waive or

condense procedures to expedite the construction design process.

(7) If a lien is filed with a court and the board is given notice of the lien, the board shall stop partial payments on the contract in the amount of the lien and contact the division. Payments shall begin after:

(a) The lien has been released;

(b) The division has approved a payment schedule which provides for retaining the lien amount being contested; or

(c) The division has approved a payment schedule after a surety bond has been provided to pay the lien.

Section 4. Architectural Services. (1)(a) The board and architect shall negotiate a contract for services required.

(b) The board shall either advertise for architectural services or select a minimum of three (3) architectural firms that shall be evaluated through the request for proposal (RFP) process, giving consideration during the review process to businesses owned by minorities and women.

(c) Advertisement or RFP evaluation of three (3) firms shall not be required if:

1. The total construction cost of the project is estimated at less than \$1,000,000;

2. The project is the continuation of phased construction at the same site.

(2) The architectural services shall be negotiated using the following documents:

(a) Request for Proposals for Architectural/Engineering Services; if utilized;

(b) 1. AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect, with the KDE Amendment to AIA B101-2007; or

2. AIA B141/Cma, Standard Form of Agreement Between Owner and Architect, Construction Manager—Adviser Edition, with the KDE Amendment to AIA B141/Cma-1992;

(c) KDE Non-Collusion Affidavit; and

(d) Architect/Engineer Fee Guidelines as a percentage of the cost of construction, or a lump sum fee.

(3) A letter of agreement stating services, terms, and conditions that have been approved by the board shall be acceptable in lieu of the AIA B101-2007 for projects with an estimated construction cost of less than \$50,000.

(4) The division shall review and approve the proposed architect's contract based on the following criteria:

(a) Copy of the board action approving the terms of the proposed contract;

(b) Scope and fee conforms to Form BG-1; and

(c) Submittal of required forms.

(5) The division shall advise the board of:

(a) Apparent deficiencies in completion of the contract;

(b) Discrepancies related to the scope of work and anticipated cost approved on the Form BG-1;

(c) Compliance of fee-to-fee schedule; and

(d) Concerns regarding modifications to the contract.

(6) The architect shall:

(a) Provide on-site visitation and shall report on the construction project to the board;

(b) Certify, to the best of his ability, professional judgment, and with due diligence, that all phases of the project have been completed in conformance with the approved plans and specifications and any authorized changes by signing the BG-4 Project Closeout Form;

(c) Provide professional liability insurance in the following minimum amounts:

1. If the project is \$1,000,000 or less, \$500,000 per claim and \$1,000,000 aggregate per annum; or

2. If the project exceeds \$1,000,000, per claim and \$2,000,000 aggregate per annum;

(d) Require his consultants to retain professional liability insurance in the minimum amount of \$250,000 aggregate, except structural design and mechanical-electrical-plumbing consultants shall carry a minimum amount of \$1,000,000 aggregate for projects \$1,000,000 or less, and \$2,000,000 aggregate for projects exceeding \$1,000,000;

(e) Provide copies of certificates of insurance to the division;

- (f) Assist in preparing the bid advertisement for the board;
  - (g) List projects estimated in excess of \$1,000,000 with a minimum of two (2) Kentucky construction reporting services;
  - (h) Submit to the board a written report that includes a status of the project, dates and times architect was on site, conditions of the job, problems, delays, and concerns at least monthly after construction begins;
  - (i) Request payment of construction administration phase fee at the same proportionate percentage as the construction's completion;
  - (j) Request approval by the owner's representative for any reimbursement or additional service prior to the service being rendered or expenditure being made;
  - (k) If requesting reimbursements or additional service fees, provide a detailed listing of each charge on the payment request;
  - (l) Request additional payment for construction time or services extending beyond the scheduled completion date, if the additional costs were incurred through no fault of the architectural firm and are documented due to the delay of the contractor, subcontractors, material suppliers, or vendors;
  - (m) Utilize his consultants listed on the contract form for design, construction administration and observation of the work;
  - (n) Pay his consultants the same percentage proportion of their fee as he has received from the board;
  - (o) Pay his consultants eighty (80) percent of the architect's fee based on the construction cost of the consultant's work. If the architect's fee is a lump sum, the consultant shall receive the same proportionate amount;
  - (p) If a joint venture, list on the contract form the prime architectural firm accountable to the board and provide the board with a copy of the joint venture contract indicating each party's responsibilities and fees; and
  - (q) Provide independent contract administration over construction contracts awarded to the project's CM.
- (7) The board shall provide oversight of the architectural services in the following manner:
- (a) The architect's proposed contract shall be reviewed by the board's attorney for compliance with the law; and
  - (b) The board shall submit to the division for approval:
    1. The proposed architect contract;
    2. A copy of the board order approving the contract;
    3. A narrative of the selection and evaluation process;
    4. A copy of each certificate of required liability insurance; and
    5. A copy of each KDE Non-Collusion Affidavit.

Section 5. Construction Management Services. (1) A CM shall not be employed on any project estimated at less than \$2,000,000 or without the approval of the division if the number of work categories negate the need for full-time, on-site supervision for projects in excess of \$2,000,000. The division may approve exceptions as follows:

- (a) If the project is a phase of a phased project and the CM is to be employed on all subsequent phases; or
  - (b) If the project's complexity or fiscal soundness requires it.
- (2) In hiring a CM, the board shall either advertise for CM services or select a minimum of three (3) construction management firms that shall be evaluated through the RFP process. Advertisement or RFP evaluation of three (3) firms shall not be required if the project is the continuation of phased construction at the same site.
- (3) The board shall negotiate a contract using the following:
- (a) Request for Proposals for Construction Management Services, if utilized;
  - (b) AIA Document B801/Cma Standard Form of Agreement Between Owner and Construction Manager, and the KDE Amendment to AIA B801/Cma 1992; or
  - (c) KDE Construction Manager Fee Guidelines;
  - (d) KDE Non-Collusion Affidavit;
  - (e) Projected number of months construction;
  - (f) On-site services fee per month; and
  - (g) Fee scale for additional construction cost and months.
- (4) The number of months in the CM contract for the construction phase shall not be altered unless:
- (a) There is a change in the scope of the work; and

- (b) The owner, architect, and CM agree to the revised number of months during the evaluation of construction bids.
- (5) The preconstruction phase payment shall be a maximum of ten (10) percent of the total proposed fee.
- (6) The CM shall:
- (a) Provide a 100 percent performance and payment bond prior to the construction contracts being executed by the board in the amount of the CM fee from an insurance firm authorized to do business in Kentucky and listed in and written within the terms and limits established in 31 C.F.R. 223;
  - (b) Provide professional liability insurance in the following minimum amounts:
    1. Projects of \$10,000,000 or less, insurance in the amount of \$500,000; or
    2. For projects in excess of \$10,000,000, insurance in the amount of \$1,000,000;
  - (c) Develop bid packaging to ensure at least five (5) known potential bidders are notified on each bid package;
  - (d) Not transport any bidder's proposal to the bid opening;
  - (e) Complete a KDE Non-Collusion Affidavit relative to both the superintendent and local board members and the apparent low bidders;
  - (f) Request approval by the owner's representative for any reimbursement or additional service fee prior to the service being rendered or expenditure being made;
  - (g) If requesting reimbursements or additional service fees, provide a detailed listing of each charge on the payment request;
  - (h) Request additional payment for construction time or services extending beyond the scheduled completion date, by the additional costs were incurred through no fault of the construction management firm and are documented due to the delay of a contractor, material supplier, or vendor; and
  - (i) Request payment of the construction phase fee at the same proportionate percentage as the construction's completion.
- (7) The board shall provide oversight of the CM services by:
- (a) Retaining an attorney to:
    1. Review the contract as negotiated to ensure compliance with the law;
    2. Request modifications to the contract as needed; and
    3. Sign the contract form attesting to review;
  - (b) Taking action approving the contract terms and conditions; and
  - (c) Forwarding to the division for review and approval:
    1. A copy of proposed contract;
    2. The board order;
    3. A narrative of the selection and evaluation process;
    4. The certificate of required liability insurance; and
    5. The KDE Non-Collusion Affidavit.
- (8) The CM contract shall be reviewed and approved by the division based on the following criteria:
- (a) A copy of board order of approval;
  - (b) The fee is based on a lump sum amount or fee guideline established in the document titled Construction Manager Fee Guidelines;
  - (c) Any modifications to the contract comply with applicable laws; and
  - (d) Submission of required forms is made in a timely fashion.
- Section 6. Plans and Specifications. (1) After approval of the Form BG-1 application by the division, the division shall provide a procedural checklist to the board that indicates required submissions for the project.
- (a) The architect shall prepare schematic plans of the proposed construction from written educational program specifications supplied by the board.
  - (b) The schematic plans and a copy of the educational program specifications, approved by board action with a copy of the minutes, shall be submitted by the board to the division for review and approval.
  - (c) The division shall review and approve the schematic plan submittal based on:
    1. Site plan: proper siting of the building footprint provides appropriate access, vehicular and pedestrian circulation, separation of bus loading area from other vehicular traffic, parking, service, play

and athletic areas, utility connections and drainage;  
 2. Floor plan: number, type, and size of the planned spaces, including support spaces, agree with the programmed spaces listed on the Form BG-1, the educational specifications, and are in compliance with 702 KAR 4:180 and 702 KAR 4:170;  
 3. Functional aspects: review of the distribution of functions, or program space and the appropriateness for the needs of the facility;  
 4. Compliance with the Model Program Space requirements established in 702 KAR 4:180, with the maximum gross area of:  
 a. An elementary school limited to 110 percent of the Total Gross Area of the Model Program Space; or  
 b. A middle or high school limited to 115 percent of the Total Gross Area of the Model Program Space;  
 5. Building efficiency: review of the percent of net program area to gross building area to meet or exceed the guidelines of 702 KAR 4:180; and  
 6. Budget: review of the estimated construction cost (gross area multiplied by the cost per square foot, plus site development costs) in relation to the Form BG-1 Total Construction Cost. If the estimated construction cost exceeds the Form BG-1 Total Construction Cost, an increase in the budget or a decrease in the physical scope of the project shall be approved by the board.

(2) After written approval of the schematic plans is received from the division, the architect shall prepare the design development plans.

(a) The board shall submit to the division for review and approval:

1. Design development plans;
2. Board order approving plans;
3. BG-2, Outline Specification; and
4. BG-3, Statement of Probably Cost.

(b) The division shall review and approve design development plans submittals based on:

1. Site plan: proper siting of the building with respect to vehicular and pedestrian circulation, separation of bus loading area, student play areas, athletic fields, utility construction and site drainage, with details appropriately developed;
2. Floor plan: number, type, and size of the planned spaces consistent with the schematic plan;
3. Enlarged plans and details: appropriate to describe the design intention;
4. Compliance with the Model Program Space requirements established in 702 KAR 4:180, with the maximum gross area of:  
 a. An elementary school limited to 110 percent of the Total Gross Area of the Model Program Space; or  
 b. A middle or high school limited to 115 percent of the Total Gross Area of the Model Program Space;
5. Building efficiency: the percent of net program area to gross building area meets or exceeds the guidelines of 702 KAR 4:180;
6. Budget: the Grand Total Cost on the Statement of Probable Cost, Form BG-3, is within the approved Form BG-1 Total Estimated Cost budget. If the Grand Total Cost exceeds the BG #1 Total Estimated Cost, an increase in the budget or a decrease in the physical scope of the project shall be approved by the board;
7. Form BG-2, Outline Specifications form is properly completed and conforms to the educational program specifications; and
8. Design development plans incorporate all previous schematic design review comments.

(3) After written approval of design development plans is received from the division, the completed plans and specifications and project manual shall be prepared by the architect and, if applicable, CM, for bidding.

(a) The board shall submit to the division for review and approval:

1. Completed plans and specifications and project manual;
2. Board order approving plans and specifications;
3. Revised BG-3, Statement of Probably Cost; and
4. Proof of submission of completed plans to other agencies having jurisdiction.

(b) The division shall review and approve the completed plans and specifications and project manual submittals based on:

1. Compliance with 702 KAR 4:170, with special concern to reduce change orders during construction;
2. Compliance with state law regarding the seal, signature, and

date of the documents by architects and engineers;  
 3. Documents are of sufficient detail and complexity that they may be used:

- a. To obtain a building permit;
- b. As instruments in the competitive bidding process; and
- c. By a general contractor to construct the project;
4. BG-3 Grand Total Cost does not exceed by ten (10) percent the approved Form BG-1 Total Estimated Cost budget;
5. Deed, certificate of title insurance to the property, deed of easements for all utilities, and proof of road and utility access for the project are filed with the division;
6. Proposed floor elevation is a minimum of one (1) foot above the 100-year flood plain elevation for new construction and no state funds are proposed for renovation below the 100-year flood plain elevation;
7. Construction documents include the following forms to the extent applicable with KDE amendments appropriate for general construction or construction management:  
 a. AIA Document A201-2007, General Conditions of the Contract for Construction;  
 b. KDE Amendment to AIA A201-2007;  
 c. AIA Document A201/CMA, General Conditions of the Contract for Construction, 1992 Construction Manager-Adviser Edition;  
 d. KDE Amendment to AIA A201/CMA-1992;  
 e. AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor;  
 f. KDE Amendment to AIA A101-2007;  
 g. AIA Document A101/CMA, Standard Form of Agreement Between Owner and Contractor, 1992 Construction Manager-Adviser edition;  
 h. KDE Amendment to AIA A101/CMA-1992;  
 i. AIA Document A701-1997, Instructions to Bidders;  
 j. KDE Amendment to AIA A701-1997;  
 k. KDE Form of Proposal;  
 l. AIA Document A310, Bid Bond;  
 m. AIA Document A312, Performance Bond and Payment Bond;  
 n. KDE Amendment to AIA A312-1984;  
 o. AIA G702-1992, Application and Certification for Payment;  
 p. AIA Document G702/CMA, Application and Certificate for Payment, 1992 Construction Manager-Adviser edition;  
 q. AIA Document G701-2000, Change Order;  
 r. KDE Change Order Supplemental Information Form;  
 s. AIA Document G701/CMA, Change Order, 1992 Construction Manager-Adviser edition;  
 t. AIA Document G704-2000, Certificate of Substantial Completion;  
 u. AIA Document G704/CMA, Certificate of Substantial Completion, 1992 Construction Manager-Adviser edition;  
 v. AIA Document G706, Contractor's Affidavit of Payment of Debts and Claims;  
 w. AIA Document G706A, Contractor's Affidavit of Release of Liens;  
 x. AIA Document G707, Consent of Surety to Final Payment; and  
 y. AIA Document G707A, Consent of Surety to Reduction in or Partial Release of Retainage;
8. A 100 percent performance and payment bond shall be required for any contract in excess of \$25,000 and on all contracts using the CM process from an insurance firm authorized to do business in Kentucky. The insurance firm shall be listed in and the performance and payment bond shall be written within the terms and limits established by the United States Department of the Treasury, Financial Management Service, and available at <http://fms.treas.gov/c570/c570.htm>;
9. A contractor shall carry all insurance required by law and by contract to hold the board safe from loss until the project is completed or an occupancy permit is received by the board. Unless otherwise provided in the bidding documents, the board shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy in the amount of the initial Total Construction Cost, plus value of subsequent contract modifications and the cost of materials supplied and installed by others, comprising total value for the entire project at the site on a replacement cost basis without optional deductibles; and
10. Notification of other state and local agencies having jurisdiction, including:

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

- a. Department of Housing, Buildings and Construction;
- b. Division of Building Codes Enforcement;
- c. Division of Plumbing;
- d. Division of Water;
- e. Division of Air Quality;
- f. Local health department; and
- g. Local building inspector.

(4) The board shall receive written approval of the construction bidding documents and authorization to bid from the division prior to advertisement for bids.

(5) Performance specification procedures may be used by the board for proposed capital construction projects. The proposed performance specifications as prepared by the board shall be approved in writing by the division prior to advertisement for bids.

(6) Leases, lease purchases, or leases with an option to purchase by a board for fixed equipment, capital construction, or alterations to existing buildings and building systems shall require the submittal of plans and specifications and lease documents to the division for review and approval.

### Section 7. Construction Bidding, Bond Sale, and Contracting.

(1) A minimum of ten (10) working days prior to the scheduled bond sale date, the board shall submit to KDE for review and approval:

(a) To the division:

- 1. Each bid tabulation;
- 2. Bid security;
- 3. The proposal form for each successful bidder;
- 4. Each proposed contract or purchase order (unsigned);
- 5. The revised financial form (Form BG-1, page 3) to coincide with the proposed construction costs; and
- 6. The architect's written recommendation regarding the awarding of the contract; and

(b) To the Division of District Operations, KDE:

- 1. Preliminary official statement;
- 2. Notice of bond sale;
- 3. Official terms and conditions; and
- 4. Plans of financing.

(2) If the submitted documents are not in an approvable form at least five (5) working days before the scheduled bond sale, the sale date shall be postponed.

(3) The board shall contract with a fiscal agent to assist in meeting all reporting, filing, and selling requirements for securing the financial approval of KDE when school revenue bonds are proposed for sale.

(4)(a) Bids for school revenue bond sales shall be received in Frankfort, Kentucky, at:

- 1. Kentucky Department of Education, Office of District Support Services, 15th Floor, Capital Plaza Tower; or
- 2. SFCC, 229 W. Main St., Suite 102, Frankfort, Kentucky 40601, if SFCC funds are involved.

(b) A KDE or SFCC staff member shall be present to receive the bids.

(c) Bids shall be delivered by mail, in person, by telephone, electronically or by facsimile (fax) machine. If the apparent winning bid is telephoned, the bid shall be reaffirmed by fax within thirty (30) minutes after the bid opening.

(5) The division shall approve a proposed construction contract based on:

(a) Submission of tabulation of bids, form of proposal, bid security and proposed contract;

(b) The board order indicating that the low bid was accepted or written justification if other than the low bid is proposed;

(c) The proposed construction contract is within approved budget; and

(d) The form of proposal is completed in accordance with the instructions to bidders.

(6)(a) Any discrepancies between the proposed contract and bidding documents shall be remedied prior to approval.

(b) The board's desire to waive irregularities and informalities as to a bid shall be reviewed and final judgment made by the division prior to approval of the contract and financing plan.

(c) Approval of the proposed contract by the division shall not indicate the contract is the best or the most reasonable.

(7) The Division of District Operations, KDE, shall issue the final approval for the financing plan, authorize the bond sale, and prepare the approval letter for the chief state school officer or his or her designee.

(8) A negotiation of the bid price shall not be allowed, except in accordance with KRS 45A.375 for those districts under the Model Procurement Code.

(9) Construction account expenditures that are subject to bidding shall be approved by the division, except for expenditures for moveable equipment.

(10) The board shall submit to the division:

(a) A copy of each executed contract and purchase order;

(b) Each insurance certificate and a copy of the property insurance policy; and

(c) A copy of each 100 percent performance and payment bond.

Section 8. Contract Change Orders. (1)(a) All change orders shall be submitted to the division, and shall be accompanied with the following:

1. Copy of local board action approving the change order;

2. Properly completed KDE Change Order Supplemental Information Form; and

3. Cost breakdown which separates labor, material, profit and overhead. If unit prices are utilized, this cost breakdown shall not be necessary.

(b) Changes in the contract which do not substantially alter the nature of the contract, or may be regarded as incidental to or which relate to an integral part of the original contract and specifications, may be approved by the division.

(c) A copy of any change order using the forms AIA Document G701-2000 or AIA Document G701/CMA issued in connection with the project shall be signed by the appropriate parties as a recommendation and shall be subject to approval by the board.

(2) Any additive or deductive change order proposal in excess of \$7,500 shall be subject to approval by the division prior to execution.

(3) Approval of proposed change orders over \$7,500 shall be based upon:

(a) Completed supplemental information form, board order, and cost breakdown;

(b) Cost calculated according to contract unit prices or alternative method with documentation provided to support cost;

(c) The change order scope and cost are considered within the norm based upon the information submitted; and

(d) Cumulative cost of contract and all change orders are within the approved budget.

(4) The division approval shall not indicate the change order cost is the best cost or the requested change order is the most appropriate action.

Section 9. Construction Contract Retainage. (1)(a) The board shall retain ten (10) percent from each application for payment up to fifty (50) percent completion of the work. If the work is on schedule and satisfactory, and upon written request of the contractor together with written consent of surety and the recommendation of the architect, the board shall approve a reduction in retainage to five (5) percent of the current contract sum.

(b) No part of the five (5) percent retainage shall be paid until after substantial completion of the work, as defined in AIA A201-2007, General Conditions of the Contract for Construction, and the KDE Amendment to AIA A201-2007.

(c) After substantial completion of the work, if reasons for reduction of the retainage are certified in writing by the architect, a reduction to a lump sum amount less than the five (5) percent retainage shall be approved by the board. The minimum lump sum retainage shall be twice the estimated cost to correct the deficient or incomplete work.

(2) The investment earnings resulting from any agreement entered into by a board involving the construction account, including the construction contract retainage for an approved project, shall be invested in such a manner that any additional income from the investment shall accrue only to the board.

Section 10. Construction Dispute Resolution. (1) Unresolved claims between parties arising out of or relating to any contract subject to this administrative regulation shall not utilize arbitration or the American Arbitration Association unless agreed to by all parties.

(2) Prior to the initiation of legal proceedings, unresolved claims arising out of or relating to any contract shall be subject to mediation, which shall be in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association in effect on the date of the contract and, if the parties fail to resolve their disputes through mediation, to binding dispute resolution.

(3) Mediation may be initiated by written request filed by any party.

Section 11. Construction Contract Closeout Process. (1) The architect shall furnish the board a completed BG-4, Project Closeout Form, with applicable information requesting final approval.

(2) If the board agrees the construction contract is complete, it shall approve the BG #4 and forward it to the division for review and approval.

Section 12. Penalties for Malfeasance or Nonfeasance. (1) A determination by the board or the division of malfeasance or nonfeasance by the architect or CM shall be forwarded to the chief state school officer.

(2) The chief state school officer may make a recommendation to the KBE to determine that the offending firm is ineligible to provide professional services on school construction projects for a period not to exceed five (5) years.

(3) The KBE may prescribe alternative penalties.

(4) If the principals of the offending firm become associated with another firm during the penalty period, upon recommendation by the chief state school officer, the KBE may determine that the penalty invoked shall also apply to that firm.

Section 13. Incorporation By Reference. (1) The following material is incorporated by reference:

- (a) BG-1, Project Application Form, 2008;
- (b) Non-Collusion Affidavit, December 2008;
- (c) Request for Proposals for Architectural/Engineering Services, May 1993;
- (d) Architect/Engineer Fee Guidelines, May 1993;
- (e) AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect;
- (f) KDE Amendment to AIA B101-2007, December 2008;
- (g) AIA Document B141/CMA, Standard Form of Agreement Between Owner and Architect, 1992 Construction Manager-Adviser Edition;
- (h) KDE Amendment to AIA B141/CMA-1992, May 1993;
- (i) Request for Proposals for Construction Management Services, May 1993;
- (j) AIA Document B801/CMA, Standard Form of Agreement Between Owner and Construction Manager, 1992 edition;
- (k) KDE Amendment to AIA B801/CMA-1992, May 1993;
- (l) AIA Document A201-2007, General Conditions of the Contract for Construction;
- (m) KDE Amendment to AIA A201-2007, December 2008;
- (n) AIA Document A201/CMA, General Conditions of the Contract for Construction, 1992 Construction Manager-Adviser Edition;
- (o) KDE Amendment to AIA A201/CMA-1992, May 1993;
- (p) AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor;
- (q) KDE Amendment to AIA A101-2007, December 2008;
- (r) AIA Document A101/CMA, Standard Form of Agreement Between Owner and Contractor, 1992 Construction Manager-Adviser edition;
- (s) KDE Amendment to AIA A101/CMA-1992, May 1993;
- (t) AIA Document A701-1997, Instructions to Bidders;
- (u) KDE Amendment to AIA A701-1997, April 2000;
- (v) KDE Form of Proposal, April 2000;
- (w) AIA Document A310, Bid Bond, 1970;
- (x) AIA Document A312, Performance Bond and Payment Bond, 1984;

- (y) KDE Amendment to AIA A312-1984, May 1993;
- (z) KDE Purchase Order, May 1993;
- (aa) KDE Material Supplier Authorization, May 1993;
- (bb) AIA Document G702/CMA, Application and Certificate for Payment, 1992 Construction Manager-Adviser edition;
- (cc) KDE Change Order Supplemental Information Form, April 2000;
- (dd) AIA Document G701-2000, Change Order;
- (ee) AIA Document G701/CMA, Change Order, 1992 Construction Manager-Adviser edition;
- (ff) AIA Document G704-2000, Certificate of Substantial Completion;
- (gg) AIA Document G704/CMA, Certificate of Substantial Completion, 1992 Construction Manager-Adviser edition;
- (hh) AIA Document G706, Contractor's Affidavit of Payment of Debts and Claims, 1994;
- (ii) AIA Document G706A, Contractor's Affidavit of Release of Liens, 1994;
- (jj) AIA Document G707, Consent of Surety to Final Payment, 1994;
- (kk) AIA Document G707A, Consent of Surety to Reduction in or Partial Release of Retainage, 1994.
- (ll) KDE CM Fee Guideline, May 1993;
- (mm) BG #2, 2008, Outline Specifications;
- (nn) BG #3, 2008, Statement of Probable Construction Cost;
- (oo) AIA G702-1992, Application and Certificate for Payment; and
- (pp) BG #4, 2008, Project Closeout Form.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Facilities Management, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) The AIA documents may be purchased from the American Institute of Architects by calling 1-800-365-2724.]

TERRY HOLLIDAY, Commissioner  
DAVID KAREM, Chairperson

APPROVED BY AGENCY: March 15, 2013

FILED WITH LRC: March 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on April 24, 2013, at 2:00 p.m. eastern time 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 April 30, 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, Office of Guiding Support Services, Kentucky Department of Education, 500 Mero Street, 1st Floor, Capital Plaza Tower, 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 standards that school districts shall meet in operational performance, including construction of public school buildings and the use of uniform forms.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.070, 156.160, 162.060, 162.065, 322.360 and 323.033 that set forth the Kentucky Board of Education's responsibility to establish



standards that districts shall meet in operational performance and execution of school construction.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for the school construction process required in KRS 156.070, 156.160, 162.060, 162.065, 322.360 and 323.033.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics for the school construction process required in KRS 156.070, 156.160, 162.060, 162.065, 322.360 and 323.033.

(2) If 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 an update to streamline the school construction process by aligning the agency's business processes with the current construction environment and by re-vamping the agency's role of guidance and oversight. The School Facilities Work Group Report, issued on August 5, 2011, documented recommendations for improving the school construction process. The agency construction forms were revised in conjunction with the administrative regulation revision. In addition to improving the overall construction process, the agency included a section in the administrative regulation for the Guaranteed Energy Savings Contract delivery method. Local board oversight activities were identified along with required submissions for the agency's oversight.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish standards that districts shall meet in operational performance and execution of school construction and align standards and incorporate recommendations from the School Facilities Work Group.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statutes by establishing standards that districts shall meet in operational performance and execution of school construction.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specifics for the school construction process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts in Kentucky and supporting staff in the agency, design consultants, and contractors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendment will provide a comprehensive set of uniform construction documents for use by school districts, design consultants, and contractors.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts, design consultants, and contractors will abide by the standards and requirements set forth. Agency staff will continue to review all construction projects for compliance with the amendments to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky school districts will have updated regulations that support and incorporate the standards and recommendations from the School Facilities Work Group and will have the guidance establishing standards that districts shall meet in operational performance and execution of school construction.

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

(a) Initially: The amendment does not result in additional costs.

(b) On a continuing basis: The amendment does not result in additional costs.

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

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding is necessary.

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 school districts and the agency are 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 provides specifics for the school construction process required in KRS 156.070, 156.160, 162.060, 162.065, 322.360 and 323.033.

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 does not directly affect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated with this administrative regulation in the first year.

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

(c) How much will it cost to administer this program for the first year? The amendment of this administrative regulation does not result in additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment of this administrative regulation does not result in additional costs in subsequent years.

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

Revenues (+/-): Not applicable

Expenditures (+/-): Not applicable

Other Explanation: Not applicable

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Medicaid Services

##### Division of Provider Operations

##### (Amendment)

**907 KAR 1:055. Payments for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural health clinic services.**

RELATES TO: KRS 205.560, 216B.010, 216B.105, 216B.130, 216B.990, 42 C.F.R. 413, 438.60, 491, Subpart A, 440.130, 440.230, 447.3251, 45 C.F.R. 74.27, 48 C.F.R. Part 31, 42 U.S.C. 1396a, b, d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1), 216B.042, 42 U.S.C. 1396a[~~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) 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. 42 U.S.C. 1396a(aa) establishes requirements for federally-qualified health centers and rural health clinics]. This administrative regulation establishes the Department for Medicaid Services' reimbursement policies[provisions for reimbursement] for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural health clinic services.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Allowable costs" means costs that are incurred by a federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center[or clinic] that are reasonable in amount and proper and necessary for the efficient delivery of services.

(3)[(2)] "Audit" means an examination, which may be full or limited in scope, of a federally-qualified health center's, federally-qualified health center look-alike's, rural health clinic's, or primary care center's:

(a)[clinic's or center's] Financial transactions, accounts, and reports; and

(b)[as well as its] Compliance with applicable Medicare and Medicaid regulations, manual instructions, and directives. [(3) "Center" means a federally-qualified health center or a primary care center.]

(4) "Change in scope of service" means a change in the type, intensity, duration, or amount of service.

(5) "Clinical psychologist" is defined by 42 C.F.R. 410.71(d)["Clinic" means a rural health clinic.]

(6) "Department" means the Department for Medicaid Services or its designated agent.

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

(8) "Federally-qualified health center" or "FQHC" is defined in 42 C.F.R. 405.2401.

(9) "Federally-qualified health center look-alike" or "FQHC look-alike" means an entity that is currently approved by the United States Department of Health and Human Services, Health Resources and Services Administration to be a federally-qualified health center look-alike.

(10)[(8)] "Health care provider" means:

(a) A licensed physician;

(b) A licensed osteopathic physician;

(c) A licensed podiatrist;

(d) A licensed optometrist;

(e) A licensed and certified advanced practice registered nurse[practitioner];

(f) A licensed dentist or oral surgeon;

(g) A[certified] physician assistant;[or]

(h)[For an FQHC:

1.] A licensed clinical social worker;

(i) A[or

2. A licensed] clinical psychologist; or

(j) For an FQHC or FQHC look-alike:

1. A resident in the presence of a teaching physician; or

2. A resident without the presence of a teaching physician if:

a. The services are furnished in an FQHC or FQHC look-alike in which the time spent by the resident in performing patient care is included in determining any intermediary payment to a hospital in accordance with 42 C.F.R. 413.75 through 413.83;

b. The resident furnishing the service without the presence of a teaching physician has completed more than six (6) months of an approved residency program;

c. The teaching physician:

(i) Does not direct the care of more than four (4) residents at any given time; and

(ii) Directs care from a proximity that constitutes immediate availability; and

d. The teaching physician:

(i) Has no other responsibilities at the time;

(ii) Has management responsibility for any recipient seen by the resident;

(iii) Ensures that the services furnished are appropriate;

(iv) Reviews with the resident during or immediately after each visit by a recipient, the recipient's medical history, physical examination, diagnosis, and record of tests or therapies; and

(v) Documents the extent of the teaching physician's participation in the review and direction of the services furnished to each recipient.

(11)[(9)] "Interim rate" means a reimbursement amount[fee] established by the department to pay an[a] FQHC, FQHC look-alike, RHC, or a PCC[primary care center] for covered services prior to the establishment of a PPS rate.

(12) "Licensed clinical social worker" means an individual who is currently licensed in accordance with KRS 335.100.

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

(14) "Medical Group Management Association Physician Compensation and Production Survey Report" means a report developed and owned by the Medical Group Management Association which:

(a) Highlights the critical relationship between physician salaries and productivity;

(b) Is used to align physician salaries and benefits with provider production; and

(c) Contains:

1. Performance ratios illustrating the relationship between compensation and production; and

2. Comprehensive and summary data tables that cover many specialties.

(15)[(40)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(16)[(44)] "Medicare Economic Index" or "MEI" means the economic index referred to in 42 U.S.C. 1395u(b)(3)(L).

(17) "Parent facility" means a federally-qualified health center, federally-qualified health center look-alike, or primary care center that is:

(a) Licensed and operating with a unique Kentucky Medicaid program provider number;

(b) Operating under the same management as a satellite facility; and

(c) The original facility which existed prior to the existence of a satellite facility.

(18)[(42)] "PCC" or "primary care center" means an entity that is currently licensed as a PCC in accordance with[that has met the licensure requirements established in] 902 KAR 20:058.

(19)[(43)] "Percentage increase in the MEI" is defined in 42 U.S.C. 1395u(i)(3).

(20) "Physician assistant" is defined by KRS 311.840(3).

(21)[(44)] "PPS" means prospective payment system.

(22)[(45)] "Rate year" means, for the purposes of the MEI, the twelve (12) month period beginning July 1 of each year for which a rate is established for an FQHC, FQHC look-alike, RHC, or a PCC[a center or clinic] under the prospective payment system.

(23)[(46)] "Reasonable cost" means a cost as determined by the:

(a) Applicable Medicare cost reimbursement principles established[set forth] in 42 C.F.R. Part 413, 45 C.F.R. 74.27, and 48 C.F.R. Part 31; and

(b) Medical Group Management Association Physician Compensation and Production Survey Report for the applicable year and region.

(24) "Recipient" is defined by KRS 205.8451(9).

(25)[(47)] "RHC" or "rural health clinic" is defined in 42 C.F.R. 405.2401(b).

(26) "Satellite facility" means a federally-qualified health center, federally-qualified health center look-alike, or primary care center that:

(a) Is at a different location than the parent facility; and

(b) Operates under the same management as the parent facility.

(27) "Telehealth" means two (2)-way, real time interactive communication between a patient and a physician or practitioner located at a distant site for the purpose of improving a patient's health through the use of interactive telecommunication equipment that includes, at a minimum, audio and video equipment.

(28)[(48)] "Visit" means a face-to-face encounter or encounter which occurs via telehealth between a recipient or enrollee[patient] and a health care provider during which an[a] FQHC, FQHC look-alike, RHC, or PCC service is delivered.

Section 2. Provider Participation Requirements. (1) A participating FQHC, FQHC look-alike, RHC, PCC, satellite facility of an FQHC, satellite facility of an FQHC look-alike, or satellite facility of a PCC[center or clinic] shall be currently:

(a) Enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(b) Participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671.

(2)(a) To be initially enrolled with the department, an FQHC, FQHC look-alike, or RHC shall:

1. Enroll in accordance with 907 KAR 1:672; and

2. Submit proof of its certification by the United States Department of Health and Human Services, Health Resources and Services Administration as an FQHC, FQHC look-alike, or RHC.

(b) To remain enrolled and participating in the Kentucky Medicaid program, an FQHC, FQHC look-alike, or RHC shall:

1. Comply with the enrollment requirements established in 907 KAR 1:672;

2. Comply with the participation requirements established in 907 KAR 1:671; and

3. Upon recertification with the United States Department of Health and Human Services, Health Resources and Services Administration as an FQHC, FQHC look-alike, or RHC, submit proof of its continued certification to the department upon obtaining recertification.

(c) The requirements established in paragraph (a) and (b) of this subsection shall apply to a satellite facility of an FQHC or FQHC look-alike.

(3)(a) An FQHC, FQHC look-alike, or PCC that operates multiple satellite facilities shall separately enroll each satellite facility with the department in accordance with 907 KAR 1:672.

(b) An FQHC, FQHC look-alike, or PCC that operates multiple satellite facilities shall be authorized to consolidate claims and cost report data of its satellite facilities.

(4) An FQHC, FQHC look-alike, or PCC shall not submit a claim for a service provided at a satellite facility if the satellite facility is not currently:

(a) Enrolled with the department in accordance with 907 KAR 1:672; and

(b) Participating with the department in accordance with 907 KAR 1:671.

(5) An FQHC, FQHC look-alike, RHC, or PCC that has been terminated from federal participation pursuant to 42 C.F.R. 405.2436 shall be terminated from Kentucky Medicaid program participation.

(6)[-

(2) An FQHC shall be enrolled as a primary care center.

(3)] A participating:

(a) FQHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an FQHC;

(b) FQHC look-alike and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an FQHC look-alike;

(c) RHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an RHC; or

(d) PCC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of a PCC.

(7) An FQHC, FQHC look-alike, RHC, or PCC[center or clinic] and staff shall comply with all applicable federal, state, and local regulations concerning the administration and operation of a PCC, FQHC, or an RHC.

(4) A center or clinic] performing laboratory services shall meet the requirements established in 907 KAR 1:028 and 907 KAR 1:575.

Section 3. Standard Reimbursement for an FQHC, FQHC look-alike, RHC, or PCC. (1)[For services provided on and after July 1, 2004,] The department shall reimburse:

(a) A PCC, FQHC, FQHC look-alike, or RHC an all-inclusive encounter rate per patient visit in accordance with a prospective payment system (PPS) as required by 42 U.S.C. 1396a(aa); or

(b) A satellite facility of an FQHC, FQHC look-alike, or PCC an all-inclusive encounter rate per patient visit in accordance with a prospective payment system (PPS) as required by 42 U.S.C. 1396a(aa).

(2) Except for drugs or pharmacy services, costs related to drugs or pharmacy services shall be excluded from the all-inclusive encounter rate per patient visit referenced in subsection (1) of this section.

(3)[-

(2)] The department shall calculate a PPS[base] rate for:

(a) An existing center or clinic in accordance with Section 4 of this administrative regulation; or

(b)] a new FQHC, FQHC look-alike, RHC, or PCC[center or clinic] in accordance with Section 4[5] of this administrative regulation.

(4)[(3)] The department shall adjust a PPS rate per visit:

(a)[By fifty (50) percent of the percentage increase in the MEI applicable to primary care services on January 1, 2002;

(b)] By the percentage increase in the MEI applicable to FQHC, FQHC look-alike, RHC, or PCC[primary care] services on July 1 of each year[, beginning July 1, 2002]; and

(b)[(e)] In accordance with Section 7[6] of this administrative regulation:

1. Upon request and documentation by an FQHC, FQHC look-alike, RHC, or PCC[a center or clinic] that there has been a change in scope of services; or

2. Upon review and determination by the department that there has been a change in scope of services.

(5)[(4)] A rate established in accordance with this administrative regulation shall not be subject to an end of the year cost settlement.

Section 4.[Establishment of a PPS Base Rate for an Existing Provider.(1) The department shall establish a PPS base rate to reimburse an existing PCC, FQHC, and RHC 100 percent of its average allowable cost of providing Medicaid-covered services during a center's or clinic's fiscal years 1999 and 2000. A center's or clinic's fiscal year that ends on January 31 shall be considered ending the prior year.

(2) A center or clinic shall complete MAP 100601 annually and submit it to the department by the last calendar day of the third month following the center's or clinic's fiscal year end.

(3) The department shall:

(a) Use a center's or clinic's desk reviewed or audited cost reports for fiscal years ending February 1999 through January 2000 and February 2000 through January 2001;

(b) Trend the cost from the second base year forward to July 1, 2001 by the percentage of increase as measured by the HCFA hospital market basket index; and

(c) Calculate the average cost by dividing the total cost associated with FQHC, PCC, and RHC services by the total visits associated with the FQHC, PCC, and RHC services.

(4) If a center or clinic has only one (1) full year of cost report data, the department shall calculate a PPS base rate using a single audited cost report.

(5) The department shall adjust a PPS base rate determined in accordance with this section to account for an increase or decrease in the scope of services provided during fiscal year 2001 in accordance with Section 6 of this administrative regulation.

(6) Until the establishment of a PPS base rate by the depart-

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

ment, a center or clinic shall be paid for services at an interim rate:

(7) Except for a center that has been receiving an incentive payment, the interim rate shall be the rate on file on June 30, 2001.

(8) A center that has been receiving an incentive payment shall have an interim rate based upon the average costs of providing services for fiscal years 1999 and 2000. The average shall be calculated in accordance with this section using unaudited cost report data.

(9) A center shall not be eligible for an incentive payment for services provided on and after July 1, 2001.

(10)(a) A center or clinic shall have thirty (30) days from the date of notice by the department of its PPS rate to request an adjustment based on a change in scope of services; and

(b) The department shall have thirty (30) days to review the request prior to establishing a final PPS rate that shall be subject to appeal in accordance with Section 9 of this administrative regulation.

Section 5.] Establishment of a PPS Rate for a New FQHC, FQHC look-alike, RHC, or PCC[Base Rate for a New Provider].

(1)(a) The department shall establish a PPS[base] rate to reimburse a new PCC, FQHC, FQHC look-alike, or, and, RHC 100 percent of its reasonable cost of providing Medicaid covered services during the FQHC, FQHC look-alike, or RHC's[a center's or clinic's] base year.

(b) Except for a time frame in which the department reimburses an FQHC, FQHC look-alike, RHC, or PCC an interim rate, the initial and subsequent final PPS rate established for an FQHC, FQHC look-alike, RHC, or PCC shall:

1. Be prospective; and
2. Not settled to cost.

(2)(a) The department shall determine the reasonable costs of an FQHC, FQHC look-alike, RHC, or PCC based on the cost reported which contains twelve (12) full months of operating data most recently submitted to the department by the FQHC, FQHC look-alike, RHC, or PCC.

(b) The base rate referenced in subsection (1)(a) of this section shall be based on the reasonable cost determination made by the department pursuant to paragraph (a) of this subsection[(2) Reasonable costs shall be determined by the department based on a center's or clinic's cost report used by the department to establish the PPS rate].

(3)(a) Until an FQHC, FQHC look-alike, or RHC[a center or clinic] submits a Medicaid cost report containing twelve (12) full months of operating data for the facility's base[a fiscal] year, the department shall reimburse the FQHC, FQHC look-alike, or RHC[make payments to the center or clinic based on] an interim rate equal to the per diem rate established for the FQHC, FQHC look-alike, or RHC by Medicare.

(b) An FQHC, FQHC look-alike, or RHC shall provide the department with a copy of the Medicare rate letter for the rates in effect during the FQHC's, FQHC look-alike's, or RHC's interim period.

(c)1. The department shall adjust an interim rate for an FQHC, FQHC look-alike, or RHC based on the establishment of the final rate.

2. All claims submitted to the department and paid by the department based on the interim rate shall be adjusted to comport with the final rate.

(d)1. Until a PCC submits a Medicaid cost report containing twelve (12) full months of operating data for the facility's base year, the department shall reimburse the PCC an interim rate equal to the average PPS rate paid to PCCs in the same region in which the PCC is located.

2. The department shall adjust an interim rate for a PCC based on the establishment of the final rate.

3. All claims submitted to the department and paid by the department based on the interim rate shall be adjusted to comport with the final rate.

(4)(a) An FQHC, FQHC look-alike, RHC, or PCC shall submit an annual cost report to the department by the end of the fifth month following the end of the FQHC's, FQHC look-alike's, RHC's, or PCC's first full fiscal year.

(b) The department shall:

1. Review an annual cost report submitted by an FQHC, FQHC

look-alike, RHC, or PCC within ninety (90) business days of receiving the cost report; and

2. Notify the FQHC, FQHC look-alike, RHC, or PCC of the:

- a. Necessity of the FQHC, FQHC look-alike, RHC, or PCC to submit additional documentation if necessary;
- b. Final rate established;
- c. Appeal rights regarding the final rate; and
- d. Estimated time for determining a final rate if a final rate is not established within ninety (90) days.

(c)1. If additional documentation is necessary to establish a final rate, the FQHC, FQHC look-alike, RHC, or PCC shall:

- a. Provide the additional documentation to the department within thirty (30) days of the notification of need for additional documentation; or
- b. Request an extension beyond thirty (30) days to provide the additional documentation.

2. The department shall grant no more than one (1) extension.

3. An extension shall not exceed thirty (30) days.

(d) If the department requests additional documentation from an FQHC, FQHC look-alike, RHC, or a PCC but does not receive additional documentation or an extension request within thirty (30) days, the department shall reimburse the FQHC, FQHC look-alike, RHC, or PCC based on the Medicaid physician fee schedule applied to physician services pursuant to 907 KAR 3:010 until:

1. The additional documentation has been received by the department; and
2. The department has established a final rate.

Section 5. Reimbursement for Services Provided to an Enrollee by a PCC That is Not an FQHC, FQHC Look-Alike, or RHC. (1) For a visit by an enrollee to a PCC that is not an FQHC, FQHC look-alike, or RHC, the PCC's reimbursement shall be the reimbursement established pursuant to an agreement between the PCC and the managed care organization with whom the enrollee is enrolled.

(2) The department shall not supplement the reimbursement referenced in subsection (1) of this section.

Section 6. Supplemental Reimbursement for FQHC Services, FQHC Look-Alike Services, and RHC Services. If a managed care organization's reimbursement to an FQHC, FQHC look-alike, or RHC for a visit by an enrollee to the FQHC, FQHC look-alike, or RHC is less than what the FQHC, FQHC look-alike, or RHC would receive pursuant to Sections 3 and 4 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

(1) Equals the difference between what the managed care organization reimbursed and what the reimbursement would have been if it been made in accordance with Sections 3 and 4 of this administrative regulation;

(2) Is in accordance with 42 U.S.C. 1396a(bb)(5)(A); and

(3) Ensures that total reimbursement does not exceed the federal upper payment limit in accordance with:

(a) 42 C.F.R. 447.304; and

(b) 42 C.F.R. 447.321;

(4) A new center or clinic shall submit a budget that sets forth:

(a) Estimates of Medicaid allowable costs to be incurred by the center or clinic during the initial reporting period of at least twelve (12) months; and

(b) The number of Medicaid visits a center or clinic expects to provide during the reporting period.

(5) An interim payment shall be based on an annual budgeted or projected average cost per visit that shall be subject to reconciliation after a Medicaid cost report with twelve (12) months of actual operating data has been received].

Section 7. Change in Scope and PPS Rate Adjustment[6. Adjustments to a PPS Rate].

(1) If an FQHC, FQHC look-alike, RHC, or PCC[a center or clinic] changes its scope of services after the base year, the department shall adjust the FQHC's, FQHC look-alike's, or RHC's[a center's or clinic's] PPS rate[by dividing a center's or clinic's total Medicaid costs by total Medicaid visits. A provider shall submit MAP 100501 to request a rate adjustment after a change in ser-

vice].

(2) A change in scope of service shall be restricted to:

(a) Adding or deleting a covered service;

(b) Increasing or decreasing the intensity of a covered service;

or

(c) A statutory or regulatory change that materially impacts the costs or visits of an FQHC, FQHC look-alike, RHC, or PCC.

(3) The following individually shall not constitute a change in scope:

(a) A general increase or decrease in the costs of existing services;

(b) An expansion of office hours;

(c) An addition of a new site that provides the same Medicaid covered services;

(d) A wage increase;

(e) A renovation or other capital expenditure;

(f) A change in ownership; or

(g) An addition or deletion of a service provided by a non-licensed professional or specialist.

(4) An addition or deletion of a covered service shall be restricted to the addition or deletion of a licensed professional staff member who can perform a Medicaid covered service that is not currently being performed within the FQHC, FQHC look-alike, or RHC by a licensed professional employed or contracted by the facility.

(5) A change in intensity shall:

(a) Include a material change;

(b) Increase or decrease the existing PPS rate by at least five (5) percent; and

(c) Last at least twelve (12) months.

(6) The department shall consider a change in scope request due to a statutory or regulatory change that materially impacts the costs of visits at an FQHC, FQHC look-alike, or RHC if:

(a) A government entity imposes a mandatory minimum wage increase and the increase was not included in the:

1. Calculation of the final PPS rate; or

2. Subsequently included in the MEI applied yearly; or

(b) A new licensure requirement or modification of an existing requirement by the state results in a change that affects all facilities within the class. A provider shall document that an increase or decrease in the cost of a visit occurred as a result of a licensure requirement or policy modification.

(7) A requested change in scope shall:

(a) Increase or decrease the existing PPS rate by at least five (5) percent; and

(b) Last at least twelve (12) months.

(8) For a change in scope that is effective during a base year for determining an FQHC's, FQHC look-alike's, or RHC's final PPS rate, the base year costs associated with the change in scope shall not be duplicated when determining the revised PPS rate due to the change in scope.

(9) The following documents shall be submitted to the department within six (6) months of the effective date of a change in scope:

(a) A narrative describing the change in scope;

(b) A projected cost report containing twelve (12) months of data for the interim rate change; and

(c) A completed MAP 100501, Prospective Payment System Rate Adjustment.

(10) The department shall:

(a) Review the documentation listed in subsection (9) of this section; and

(b) Notify the FQHC, FQHC look-alike, or RHC in writing of the approval or denial of the request for change in scope within ninety (90) business days.

(11)(a) If the department requests additional documentation to calculate the rate for a change in scope, the FQHC, FQHC look-alike, or RHC shall:

1. Provide the additional documentation to the department within thirty (30) days of the notification of need for additional documentation; or

2. Request an extension beyond thirty (30) days to provide the additional documentation.

(b)1. The department shall grant no more than one (1) exten-

sion.

2. An extension shall not exceed thirty (30) days.

Section 8. Regions. The following shall be the regions used to determine a PCC's regional location for the purpose of determining a new PCC's interim rate:

(1) Region one (1) shall be the region containing Ballard, Caldwell, Calloway, Carlisle, Crittenden, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, and McCracken Counties;

(2) Region two (2) shall be the region containing Christian, Daviess, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Ohio, Todd, Trigg, Union, and Webster Counties;

(3) Region three (3) shall be the region containing Breckinridge, Bullitt, Carroll, Grayson, Hardin, Henry, Jefferson, Larue, Marion, Meade, Nelson, Oldham, Shelby, Spencer, Trimble, and Washington Counties;

(4) Region four (4) shall be the region containing Adair, Allen, Barren, Butler, Casey, Clinton, Cumberland, Edmonson, Green, Hart, Logan, McCreary, Metcalfe, Monroe, Pulaski, Russell, Simpson, Taylor, Warren, and Wayne Counties;

(5) Region five (5) shall be the region containing Anderson, Bourbon, Boyle, Clark, Estill, Fayette, Franklin, Garrard, Harrison, Jackson, Jessamine, Lincoln, Madison, Mercer, Montgomery, Nicholas, Owen, Powell, Rockcastle, Scott, and Woodford Counties;

(6) Region six (6) shall be the region containing Boone, Campbell, Gallatin, Grant, Kenton, and Pendleton Counties;

(7) Region seven (7) shall be the region containing Bath, Boyd, Bracken, Carter, Elliott, Fleming, Greenup, Lawrence, Lewis, Mason, Menifee, Morgan, Robertson, and Rowan Counties; and

(8) Region eight (8) shall be the region containing Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Laurel, Lee, Leslie, Letcher, Magoffin, Martin, Owsley, Perry, Pike, Whitley, and Wolfe Counties[Total Medicaid costs shall be determined in accordance with the following:

(a) The Medicaid costs of existing services shall be determined by multiplying a center's or clinic's current Medicaid PPS rate by the number of Medicaid visits used to calculate the base Medicaid PPS rate; and

(b) The Medicaid costs of a new service shall be determined by:

1. Adding:

a. The projected annual direct cost of a new service as determined from a center's or clinic's budgeted report; and

b. The administrative cost of a new service which shall be equal to the ratio of administrative costs to direct costs determined from the base year cost reports multiplied by a center's or clinic's projected direct cost of a new service; and

2. Multiplying the sum derived in subparagraph 1 of this paragraph by a center's or clinic's projected Medicaid utilization percentage for the change in service.

(3) The amount determined in subsection (2)(a) of this section shall be added to the amount determined in subsection (2)(b) of this section.

(4) The amount determined in subsection (3) of this section shall be divided by total visits to derive a center's or clinic's new PPS rate.

(5) Total Medicaid visits shall include:

(a) The annual number of Medicaid visits used in the calculation of the PPS base rate; and

(b) The projected annual number of Medicaid visits for a new service.

(6) The department shall adjust the PPS rate determined under this section to a final rate upon completion of:

(a) A Medicaid comprehensive desk review of a center's or clinic's cost report;

(b) A Medicaid audit of a center's or clinic's cost report in accordance with 45 C.F.R. 74.27 and 48 C.F.R. Part 31; or

(c) A Medicare audit that has been reviewed and accepted by Medicaid of a center's or clinic's cost report].

Section 9.[7.] Limitations. (1) Except for a case in which a recipient or enrollee[patient], subsequent to the first encounter, suffers an illness or injury requiring additional diagnosis or treatment, an encounter with more than one (1) health care provider and multiple

## VOLUME 39, NUMBER 10 – APRIL 1, 2013

encounters with the same health care provider which take place on the same day and at a single location shall constitute a single visit.

(2) A vaccine available without charge to an[a] FQHC, FQHC look-alike, RHC, or PCC through the department's Vaccines for Children Program and the administration of the vaccine shall not be reported as a cost to the Medicaid Program.

Section 10.[8-] Out-of-State Providers. Reimbursement to an out-of-state FQHC, FQHC look-alike, or RHC shall be the rate on file with the FQHC's, FQHC look-alike's, or RHC's[their] state Medicaid agency.

Section 11.[9-] Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An[A] FQHC, FQHC look-alike, PCC, or RHC may appeal a department decision[decisions] as to the application of this administrative regulation as it impacts the facility's reimbursement rate in accordance with 907 KAR 1:671.

Section 12.[40-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP 100501, Prospective Payment System Rate Adjustment," November 2008 edition[November, 2001 edition]; and

(b) "Instructions for Completing the MAP 100501 Form", February 2013 edition["MAP 100601, Scope of Services Survey Base-line Documentation, November, 2001 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.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 1, 2013

FILED WITH LRC: March 1, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 22, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing April 15, 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 April 30, 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: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services (DMS) reimbursement policies for Medicaid covered services provided by a federally-qualified health center (FQHC), rural health clinic (RHC), or primary care center (PCC) that is not an FQHC, FQHC look-alike, or RHC. An FQHC or FQHC look-alike is a federally-recognized entity that serves a population that is medically underserved. An RHC is a federally-recognized entity that is designated or certified by the secretary of the Department of Health and

Human Services as being located in an area that is a health professional shortage area or medically underserved area. A PCC is an entity whose licensure requirements are established by the Cabinet for Health and Family Services Office of Inspector General pursuant to 902 KAR 20:058 and are not federally-recognized as being equivalent to an FQHC.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the Department for Medicaid Services (DMS) reimbursement policies for Medicaid covered services provided by an FQHC, RHC, or PCC (that is not an FQHC, FQHC look-alike, or RHC.)

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by reimbursing for Medicaid covered services provided by an FQHC, RHC, or PCC in a manner which ensures the receipt of federal funding for the reimbursement.

(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 reimbursing for Medicaid covered services provided by an FQHC, RHC, or PCC in a manner which ensures the receipt of federal funding for the reimbursement.

(2) If 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 supplemental payments (in addition to payments that PCCs receive from managed care organizations) to PCCs for services provided to managed care organization enrollees. Additional amendments include elaborating on the enrollment/participation process and requirements; establishing that DMS will reimburse a new PCC an interim rate equal to the average rate to PCCs in the region in which the PCC is located (currently DMS pays an interim rate based on projected costs submitted to DMS by the PCC); elaborating on reimbursement requirements such as cost report requirements; clarifying policy; inserting criteria for what constitutes a change in scope; and eliminating obsolete statements.

(b) The necessity of the amendment to this administrative regulation: The primary amendment is necessary to prevent a loss of federal funding for services provided by primary care centers that are not federally qualified health centers, federally-qualified health center look-alikes, or rural health clinics. The Centers for Medicare and Medicaid Services (CMS) issued a letter to the Department for Medicaid Services "deferring" (declining to provide federal matching funds) for supplemental payments made by DMS to PCCs (that are not FQHCs) for the most recently finalized quarterly expenditure period (July 1, 2012 through September 30, 2012.) CMS stated that the PCCs to which DMS provides supplemental payments are being "improperly classified" as FQHCs, FQHC look-alikes, or RHCs as they have not been designated by the Health Resources and Services Administration (HRSA) as FQHCs or FQHC look-alikes nor have they been certified as RHCs. The supplemental payments represent payments DMS made to PCCs above what the PCCs were reimbursed by managed care organizations for services provided to managed care enrollees. DMS has been reimbursing PCCs the difference (on a per claim basis) between what DMS paid to PCCs prior to managed care implementation and what PCCs receive from managed care organizations. CMS indicates that the supplemental payments violate 42 U.S.C. 1396a(bb)(5)(A) and 42 C.F.R. 438.60 and that PCC reimbursement (as they are not FQHCs, FQHC look-alikes or RHCs) cannot be supplemented by DMS above what the PCCs receive from managed care organizations. As CMS will not provide federal matching funds for the supplemental payments, DMS is amending the regulation to protect Kentucky taxpayer funds from being used to offset the loss of federal funds and to ensure that DMS operates within the fiscal parameters established by the Kentucky General Assembly and Governor via the biennium budget (in accordance with the Kentucky Constitution.) The amendment to a PCC's interim rate is necessary due to some PCC's submitting extraordinarily high projected costs to DMS, for interim rate purposes, compared to what the actual costs experienced by the PCC proved to be over the first full year of costs. The amendment helps

ensure that DMS pays a reasonable interim rate on the front end and minimizes the possibility of a PCC receiving an exorbitant amount (in contrast to actual costs) of reimbursement on the front end.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by preventing a loss of federal funds for reimbursement to PCCs, by protecting Kentucky taxpayer funds from being used to offset the loss of federal fund, and by ensuring that DMS operates within the fiscal parameters established by the Kentucky General Assembly and Governor via the biennium budget (in accordance with the Kentucky Constitution.)

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by preventing a loss of federal funds for reimbursement to PCCs, by protecting Kentucky taxpayer funds from being used to offset the loss of federal fund, and by ensuring that DMS operates within the fiscal parameters established by the Kentucky General Assembly and Governor via the biennium budget (in accordance with the Kentucky Constitution.)

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Centers for Medicare and Medicaid Services identified 107 primary care centers that do not qualify as FQHCs, FQHC look-alikes, or RHCs and to which DMS is to cease providing supplemental payments.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Any primary care center that is not a federally-qualified health center (FQHC) or FQHC look-alike and wishes to be reimbursed in the same manner as an FQHC or FQHC look-alike will have to apply to the United States Department of Health and Human Services (USDHHS), Health Resources and Services Administration (HRSA) and be designed by HRSA as an FQHC or FQHC look-alike. Similarly, any PCC that wishes to be reimbursed in the same manner as an RHC must complete the steps necessary to be federally certified as an RHC.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment, but any PCC who does not become an FQHC, FQHC look-alike, or RHC will no longer receive supplemental payments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). A PCC which applies and is approved by HRSA as an FQHC or FQHC look-alike or is certified as an RHC will benefit by receiving an enhanced reimbursement for services provided.

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

(a) Initially: The amendment is necessary to prevent DMS from losing \$8.7 million in federal taxpayer matching funds for supplemental payments to PCCs for the July 1, 2012 to September 30, 2012 quarter. The Centers for Medicare and Medicaid Services (CMS) has indicated it will no longer provide federal matching funds for supplemental payments to PCCs who are not FQHCs, FQHC look-alikes, or RHCs. DMS hopes to avoid any loss of federal funds but the amount lost depends partly on the adoption of the amendment.

(b) On a continuing basis: The amendment is necessary to prevent DMS from losing \$8.7 million in federal taxpayer matching funds for supplemental payments to PCCs for the July 1, 2012 to September 30, 2012 quarter. The Centers for Medicare and Medicaid Services (CMS) has indicated it will no longer provide federal matching funds for supplemental payments to PCCs who are not FQHCs, FQHC look-alikes, or RHCs. DMS hopes to avoid any loss of federal funds but the amount lost depends partly on the adoption of the amendment.

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

eral funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in the sense that primary care centers that are not an FQHC, FQHC look-alike, or RHC will not be reimbursed in the same manner as those entities as the Centers for Medicare and Medicaid Services (CMS) has stated that such payments violate federal law and regulation and are ineligible for federal matching funds.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(bb)(5)(A) and 42 C.F.R. 438.60 mandate the amendment.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(bb)(5)(A) only authorizes federally-qualified health centers (FQHCs), FQHC look-alikes, or RHCs to receive Medicaid reimbursement in addition to reimbursement they receive pursuant to a contract between the FQHC, FQHC look-alike, or RHC and a managed care organization. 42 C.F.R. 438.60 establishes that no Medicaid reimbursement may be made to a provider who is a provider with a managed care organization in addition to what the provider receives from the managed care organization except for delineated exceptions. Payments to PCCs who are not FQHCs, FQHC look-alikes, or RHCs do not qualify as any of the exceptions.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are 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? The Department for Medicaid Services will be affected by 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. 438.60 and this administrative regulation authorize the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS projects no revenue will initially be generated by the amendment to this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS projects no revenue will be generated in subsequent years by the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? The amendment is necessary to prevent DMS from losing \$8.7 million in federal matching taxpayer funds for supplemental

payments to PCCs for the July 1, 2012 to September 30, 2012 quarter. The Centers for Medicare and Medicaid Services (CMS) has indicated it will no longer provide federal matching funds for supplemental payments to PCCs who are not FQHCs, FQHC look-alikes, or RHCs. DMS hopes to avoid any loss of federal funds but the amount lost depends partly on the adoption of the amendment.

(d) How much will it cost to administer this program for subsequent years? The amendment is necessary to prevent DMS from losing \$8.7 million in federal taxpayer matching funds for supplemental payments to PCCs for the July 1, 2012 to September 30, 2012 quarter. The Centers for Medicare and Medicaid Services (CMS) has indicated it will no longer provide federal matching funds for supplemental payments to PCCs who are not FQHCs, FQHC look-alikes, or RHCs. DMS hopes to avoid any loss of federal funds but the amount lost depends partly on the adoption of the amendment

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation



NEW ADMINISTRATIVE REGULATIONS

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM  
Kentucky Board of Emergency Medical Services  
(New Administrative Regulation)**

**202 KAR 7:540. Emergency Medical Services data collection, management, and compliance.**

RELATES TO: KRS 311A.020, 311A.035, 311A.045, 311A.060, 311A.155, 311A.190, 23 U.S.C. 403(b)(1)(A)(iv), 405(c)(3)(C), 42 U.S.C. 300d-4(b)(1)

STATUTORY AUTHORITY: KRS 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.190 authorizes the Kentucky Board of Emergency Medical Services to promulgate administrative regulations concerning EMS information that ambulance services shall furnish to the board and authorizes the Kentucky Board of Emergency Medical Services to require collection and submission of EMS data that will allow for analysis of the state's needs for provision of EMS and that will allow the state to participate in the National Emergency Medical Services Information System (NEMSIS), a multi-partnered project that is funded by the National Highway Traffic Safety Administration, the Health Resources and Services Administration, the Centers for Disease Control and Prevention, the Federal Emergency Management Administration, and HRSA's Office of Rural Health Policy. This administrative regulation establishes standards and criteria for data collection, submission, and compliance.

Section 1. Data Collection and Statewide Compliance Plan. (1) The board shall require each licensed ambulance service to collect and submit run report data that aids in identifying patient care needs in the Commonwealth of Kentucky.

(2) The board shall collect, maintain, and use data provided by licensed ground and air ambulance services to assist the board and other state and federal agencies relevant to emergency management or public health.

(3) The information and data collected shall be used at a minimum to determine demographic trends and other emerging situations involving the provision of EMS to and the medical transport of individuals within the state.

(4) The board shall collect and use the submitted data to develop and adopt a statewide plan for EMS Information and Analysis.

Section 2. Data Management Committee. (1) A Data Management Committee shall be established by this section.

(2) The Data Management Committee shall consist of seven (7) members appointed by the board chair in the manner established in 202 KAR 7:020.

(3) Any office of the board staff member specifically employed through or designated by the Kentucky Community and Technical College System (KCTCS) for the purpose of EMS data collection and analysis shall serve as the staff liaison for the Data Management Committee.

(4) The Data Management Committee shall be responsible for the following:

(a) The development of a statewide plan for data collection and compliance;

(b) Identification of information initiatives for EMS in Kentucky;

(c) Identification and research of funding sources tied to EMS data collection;

(d) Assistance to licensed services with questions or other needs associated with this administrative regulation, KRS Chapter 311A, and other issues associated with the board's statutory authority to require data collection and submission; and

(e) Matters identified by board members, the chair, or the executive director that involve data collection, data submission, or information use.

(5) The Data Management Committee shall be conducted in accordance with 202 KAR 7:020 and the board bylaws.

(6) The Data Management Committee shall schedule on an annual basis at least six (6) regular meetings.

Section 3. Data Collection and Submission. (1) Each licensed ground and air ambulance service shall collect data relevant to patient care in Kentucky.

(2) Each service shall collect data at a rate that allows the service to submit the required data elements to the board on a schedule established by Section 5 of this administrative regulation.

Section 4. (1) The most recent version of the National EMS Information System (NEMSIS) data dictionary, US Department of Transportation National Highway Traffic Safety Administration (NHTSA) Uniform Pre-Hospital Emergency Medical Services (EMS) Dataset found at [www.nemsis.org](http://www.nemsis.org) shall be Kentucky's standard for required data elements.

(2) The board shall not require information that is not contained within the most recent version of the NEMSIS data dictionary found at [www.nemsis.org](http://www.nemsis.org).

(3) The required data set shall be known as the Kentucky Emergency Medical Services Information System (KEMSIS) project.

Section 5. Compliance; Manner and Rate of Submission. (1) Each licensed service shall submit data electronically.

(2) Data shall be provided electronically to KBEMS no later than the fifteenth day of the month following the last day of the prior reporting month. (Example: The day of submission for data collected in January shall be February 15.)

(3) Failure to submit collected data at the rate required by subsection (2) of this section shall subject a service to disciplinary action pursuant to KRS Chapter 311A.

Section 6. Quality of Data Determined by Completeness and Accuracy. (1) The board shall determine a service's compliance with data collection requirements by the quality of data submitted.

(2) The quality of a service's data shall be determined by the completeness and the accuracy of the submitted data.

(3) A service shall submit data that meets both components of compliance.

(4) The board shall determine data completeness by comparing a service's number of submitted records with the number of the service's submitted records that contain fully incomplete or partially incomplete fields.

(5) The accuracy of data shall be determined by comparing the total number of fields in a service's submitted records with the total number of a service's fields completed correctly.

(6) The board shall impose on a service a plan of correction pursuant to KRS 311A.060 and 202 KAR 7:501 if a service's rate of accuracy, completeness, or both falls below ninety (90) percent for three (3) consecutive months.

(7) The eligibility of a service to receive block grant funds pursuant to 202 KAR 7:520 shall be dependent on compliance with the data collection requirements in this administrative regulation.

(8) Failure to comply with a plan of correction shall subject a service to disciplinary action pursuant to KRS 311A.060.

(9) The board staff shall report to the Data Management Committee a determination of incomplete or inaccurate data submission that results in a plan of correction.

Section 7. Run Reports. (1) Each ambulance service shall provide a copy of the completed run report to the receiving medical facility prior to departure.

(2) A service that cannot leave a copy of the completed run report with the receiving medical facility prior to departure shall leave a continuation of care form that contains at least the following data elements for the patient:

(a) Full name;

(b) Date of birth;

(c) Chief complaint;

(d) History of present illness;

(e) Assessment;

(d) Medications;

(e) Past medical history;

- (f) Allergies;
- (g) Vital signs;
- (h) Treatment;
- (i) Response to treatment; and
- (j) Time call received.

(3) If a service provides the receiving hospital or other health-care facility with a continuation of care form that meets the requirements of subsection (2) of this section, the service shall have twenty-four (24) hours to provide the full patient care report.

(4) The twenty-four (24) hour timeframe for delivery of the full patient care report shall not apply to situations involving mass disaster, mass casualty, or other documented emergency of similar scope.

Section 8. Data Use and Confidentiality. (1) Unless otherwise required by law, the board shall not release information of a confidential or private nature or any information protected by local, state, or federal non-disclosure laws.

(2) The board may release information of a statistical nature that does not reveal or contain personal information.

(3) The board may share information with research, state, and other organizations that have a shared interest in the promotion of EMS or patient care.

(4) Unless otherwise required by law, the board shall not release information for purely commercial uses.

Section 9. Incorporation by Reference. (1) "US Department of Transportation National Highway Traffic Safety Administration (NHTSA) Uniform Pre-Hospital Emergency Medical Services (EMS) Dataset", [www.nemsis.org/theProject/historyofNemsis.html](http://www.nemsis.org/theProject/historyofNemsis.html), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Emergency Medical Services, Kentucky Community and Technical College System Office, 300 North Main Street, Versailles, Kentucky 40383, Monday through Friday, 8:30 a.m. to 4:30 p.m.

MIKE POYNTER, Executive Director

APPROVED BY AGENCY: March 15, 2013

FILED WITH LRC: March 15, 2013 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2013 at 10:00 a.m. Eastern Time at the Kentucky Community and Technical College System, 300 North Main Street, Versailles, Kentucky 40383. Individuals interested in being heard at this hearing shall notify the Kentucky Board of Emergency Medical Services in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 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: Pamela Duncan, Legal Counsel, Kentucky Board of Emergency Medical Services, KCTCS, 300 North Main Street, Versailles, Kentucky 40383, phone (859) 256-3217, fax (859) 256-3127.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Pamela Duncan

(1) Provide a brief summary of:

(a) What this administrative regulation does: 202 KAR 7:540 establishes the requirements for the Emergency Medical Services data collection process. The regulation sets the compliance standards and consequences for failure to meet requirements.

(b) The necessity of this administrative regulation: This regulation is mandated by KRS 311A.190 which creates the requirement for EMS providers to collect data and to submit the data to the

board. Additionally, KRS 311A.190 creates a requirement for run reports and proper delivery of patient information to receiving facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms with KRS 311A.190 which establishes a mandate to collect, report, and analyze data regarding the provision of emergency services in the state of Kentucky. Additionally, KRS 311A.190 sets the standard for EMS agencies to provide patient care reports to treating medical facilities or other agencies taking charge of the patient for follow-on care.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.035 requires the Kentucky Board of EMS to establish minimum data reporting requirements and to develop a system of EMS delivery for the state of Kentucky. KRS 311A.190 requires the collection and submission of data to KBEMS by EMS services licensed in Kentucky. This administrative regulation is mandated through KRS 311A.190 and will create a mechanism for orderly and systematic collection and reporting of EMS data.

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

(a) How the amendment will change this existing administrative regulation: This regulation is not an amendment. It is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This regulation is not an amendment. It is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation is not an amendment. It is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This regulation is not an amendment. It is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

(a) All ground ambulance services licensed in Kentucky will be required to submit data for inclusion in the KEMSIS and further in the NEMSIS program;

(b) EMS personnel who will benefit from the collection, submission and analysis of data to create innovations in EMS and to advance their scope of practice by becoming part of the federal NEMSIS project;

(c) County and City Governments who fund EMS within their governmental boundaries because the creation of the KEMSIS program for inclusion in the federal NEMSIS program will mean Kentucky becomes eligible for any funds available through this program; and

(d) All residents and citizens who receive EMS in Kentucky because EMS data will be used to increase the quality of care and the efficiency of care provided by EMS professionals 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: EMS Personnel, EMS Ambulance Providers, and County and City Governments will all benefit from the amended regulation because it will mandate data collection that will be used to study demographic trends that will assist Kentucky when attempting to increase the quality of EMS care provided throughout the state.

(a) List 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 regulated entities – services, county and city governments, and personnel – shall meet applicable data collection requirements by becoming part of the state KEMSIS program and feeding data into the database through the "state field bridge" or other electronic mechanism. Because most services are already billing through electronic means, most data will be able to be uploaded with little increased effort on the part of agencies and their personnel.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance does not affect EMS personnel. Cost will be borne by ambulance services and county and city

governments that operate EMS services. Much of the data collection will have no cost because the agency has obtained software that is called the "field bridge" and will provide a platform for submitting collected data. The data is currently collected for billing purposes. The same cost analysis applies to city and county governments that operated EMS services. Collection of data may actually result in an increase of revenue through grant funds that will result from inclusion of the Commonwealth in the federal data collection system known as NEMSIS. At present the agency is part of a federal grant of money that equals nearly half a million dollars and requires progress in data collection requirements such as this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit due to the data's use in making EMS more efficient, more modern, and more responsive. Additionally, agencies may become the beneficiaries of grant funds resulting from the inclusion of Kentucky in the federal data collection program known as NEMSIS. The federal grant amounts are variable, but the state block grant amounts available to each county is approximately \$10,000 and will be tied to progress in data collection pursuant to 202 KAR 7:520.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: KBEMS will incur costs that will be mainly reimbursed through a federal DOT grant of approximately \$500,000. Without this regulation, KBEMS may lose the federal grant monies provided to implement the KEMSIS system.

(a) Initially: The above paragraph is accurate for initial costs; and

(b) On a continuing basis: The continuing costs may decline as the system becomes more streamlined and agencies become compliant with the data collection and submission requirements in this administrative regulation. The agency has provided staff assistance, training sessions, and beta testing sites to assist in bringing state EMS services up to standard, and the costs of such actions will decline as the system is implemented.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBEMS is a state agency that receives its annual budget from the state government as well funds obtained through the federal DOT grant governing NEMSIS and the state version of the data collection program known as KEMSIS.

(7) Provide an assessment of whether an 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 funds will be necessary. The program is in its second year of implementation and is ready to move on to the next stage which cannot be achieved without this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was by assisting in a federal project for data collection that will essentially funnel data up from smaller geographic areas to the state to the US Department of Transportation. The funneling of this data will then be used to support highway safety, including the provision of EMS and will generate federal grant dollars which will in turn funnel down. Consequently, the participation at the state level negates the need for federal regulations to accomplish this data collection.

#### 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 regulation will relate to any County or City owned ambulance service or any ambulance service operated on behalf of a City or County.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.010, 311A.030(2), 311A.035, 311A.190. No federal statutes necessitate this amendment but federal initiatives through the DOT create the NEMSIS program.

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) KBEMS has purchased a state field bridge to assist agencies, including those operated by local governments in order to assist EMS services in their compliance with data collection requirements.

(b) The regulation will supply revenue to the state or local government entities by qualifying Kentucky licensed services and KBEMS for federal funds related to the NEMSIS program.

(c) In the first year, this administrative regulation will not impose any new need for expenditures or revenue outlay by the governmental entities involved.

(d) In subsequent years, the amendment will not cost any revenues above and beyond what is currently being expended to electronically bill for EMS services provided by EMS agencies throughout the state.

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

#### ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (New Administrative Regulation)

#### 401 KAR 5:320. Wastewater Laboratory Certification Program.

RELATES TO: KRS 224.01-010, 224.10-100, 224.10-670, 224.70-100, 224.70-110, 40 C.F.R. 136, 33 U.S.C. 1342

STATUTORY AUTHORITY: KRS 224.10-670

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-670 authorizes the cabinet to promulgate administrative regulations establishing standards for the operation of laboratories, fees for certification and competency evaluation of those laboratories, issuance of certificates of competency, and a certification program for laboratories that submit environmental data as it relates to analyses and laboratory tests for activities subject to 33 U.S.C. 1342. This administrative regulation establishes the wastewater laboratory certification program, standards for the certification of wastewater laboratories, and fees for certification and evaluation of wastewater laboratories.

Section 1. Definitions. (1) "Analysis category" means one (1) of the following analyte groups for which an analysis can be performed by a wastewater laboratory:

- (a) Inorganic general chemistry;
- (b) Inorganic metals;
- (c) Organic chemistry volatiles;
- (d) Organic chemistry semi-volatiles;
- (e) Organic chemistry pesticides, herbicides, or PCBs;
- (f) Organic chemistry dioxins;
- (g) Microbiology;
- (h) Whole effluent toxicity; and
- (i) Field analysis.

(2) "Certified" means that the cabinet has determined that the wastewater laboratory meets the regulatory performance criteria and the standard of quality established in this administrative regulation and has issued a certification.

(3) "Equivalency of certification" means certification of a wastewater laboratory by an entity, other than the cabinet, whose requirements for certification are determined by the cabinet to meet the requirements of this administrative regulation.

(4) "Field analysis" means a measuring of the following:

- (a) Dissolved oxygen;
- (b) Residual chlorine;
- (c) pH;
- (d) Temperature;
- (e) Conductivity;
- (f) Turbidity; and

(g) Flow.

(5) "Interim certification" means a certification approved by the cabinet if it determines through documentation review that the wastewater laboratory meets the requirements of Section 8 of this administrative regulation. Interim certification is applicable to a method-analyte pairing until the cabinet has completed an audit for that method-analyte pairing.

(6) "Primary analyst or technician" means an analyst or technician who performs a specific method-analyte pairing analysis more often than any other analyst or technician at that wastewater laboratory.

(7) "Wastewater laboratory" means a laboratory that performs an analysis or laboratory test for an activity subject to 33 U.S.C. 1342.

Section 2. Requirement for Acceptance of Environmental Data. In accordance with KRS 224.10-670(2), beginning July 1, 2014, environmental data from analyses and laboratory tests submitted for activities subject to 33 U.S.C. 1342 shall be performed:

(1) By a certified wastewater laboratory; and

(2) In compliance with:

(a) An analytical method in 40 C.F.R. 136 or as established in the applicable permit;

(b) This administrative regulation; and

(c) The provisions of the Commonwealth of Kentucky Wastewater Laboratory Certification Manual.

Section 3. Certification Requirements. The following requirements shall apply to a wastewater laboratory seeking certification.

(1) Application for certification shall be made on the Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification, KWLCP Form App, and shall include all information required by that form, and shall be submitted with the applicable fee as established in Section 6 of this administrative regulation as follows:

(a) If in paper form, to: Kentucky Division of Water, Attn: Laboratory Certification, 200 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40601; or

(b) If in electronic form, via the cabinet's Web site: [www.water.ky.gov](http://www.water.ky.gov).

(2) The wastewater laboratory shall apply for certification for each analysis category and for each method-analyte pairing for which the wastewater laboratory intends to perform an analysis.

Section 4. Term of Certification Periods. (1) The first certification period shall be from July 1, 2013, until December 31, 2014, and subsequent certification periods shall be consecutive two (2) year periods, beginning January 1, 2015.

(2) If, beginning January 1, 2015, a wastewater laboratory applies for initial certification of the wastewater laboratory or for certification for a new method-analyte pairing, the certification period shall be the two (2) year period as established in subsection (1) of this section, based upon the date of application receipt by the cabinet.

Section 5. Due Date for Certification Renewal Applications. (1) If an application, the Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification, KWLCP Form App, for certification renewal is received by the cabinet by November 15 of the even-numbered year of the current certification period, the application shall be considered timely submitted, and the wastewater laboratory's certification shall continue in effect until the cabinet acts upon the application, unless the certification is otherwise revoked.

(2) If an application, the Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification, KWLCP Form App, for certification renewal is received by the cabinet after November 15 but on or before December 15 of the even-numbered year of the current certification period, the application shall not be considered timely submitted, and shall be subject to the surcharge established in Section 6(4) of this administrative regulation. The wastewater laboratory's certification shall continue in effect until the cabinet acts upon the application, unless the certification is otherwise revoked.

(3) If an application, the Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification, KWLCP Form App, for certification renewal is received by the cabinet after December 15 of the even-numbered year of the current certification period, the application shall not be considered timely submitted, and shall be subject to the surcharge established in Section 6(5) of this administrative regulation. The wastewater laboratory's certification shall expire after December 31 of that even-numbered year and shall not be valid until the cabinet acts upon the renewal application.

Section 6. Annual Certification Fees. (1) The annual certification fees for wastewater laboratory certification shall be established in Table 1 of subsection (2) of this section and shall include:

(a) A nonrefundable administrative fee; and

(b) A fee for each applicable analysis category.

(2) If a follow-up audit is performed to verify the correction of a deficiency identified by an audit pursuant to Section 8 of this administrative regulation, an additional audit fee, established in Table 1, shall be assessed.

Table 1: Wastewater Laboratory Certification Fee

Fee Category	Annual Fee
Administrative Fee	\$1,000
Analysis Category Fee	
Inorganic general chemistry	\$500
Inorganic metals	\$500
Organic chemistry volatiles	\$500
Organic chemistry semi-volatiles	\$500
Organic chemistry pesticides, herbicides, PCBs	\$500
Organic chemistry dioxins	\$750
Microbiology	\$500
Whole effluent toxicity	\$1,000
Field analysis only	\$250
Follow-up Audit Fee	\$500

(3) The applicable certification fee shall be due by November 15 of each year. In even-numbered years of the certification period, the applicable certification fee shall be submitted concurrent with the renewal certification application, the Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification, KWLCP Form App.

(4)(a) If a fee is received by the cabinet after November 15 but on or before December 15, the wastewater laboratory shall incur a surcharge of fifteen (15) percent of the applicable certification fee (administrative fee plus analysis category fee).

(b) Payment of this surcharge shall be due thirty (30) days after notice is provided by the cabinet.

(5) If a fee is received by the cabinet after December 15, the wastewater laboratory shall incur a surcharge of twenty-five (25) percent of the applicable certification fee.

(a) The wastewater laboratory's certification shall expire after December 31 of that year and shall not be valid until the applicable certification fee and the surcharge are received by the cabinet.

(b) Payment of this fee and surcharge shall not reinstate certification for failure to timely submit an application for certification renewal pursuant to the expiration established in Section 5(3) of this administrative regulation.

(6) A wastewater laboratory seeking or obtaining equivalency of certification shall receive a twenty (20) percent reduction of the certification fee.

(7) An in-state laboratory that is also certified for drinking water analysis, as established in 401 KAR 8:040, shall receive a twenty (20) percent reduction of the certification fee.

(8) A wastewater laboratory that provides only field analysis shall be exempt from the annual administrative fee established in Table 1 of subsection (2) of this section.

(9) A wastewater laboratory operated by a facility that has been issued a Kentucky Pollutant Discharge Elimination System permit and that is providing only field analysis for only its own facility shall be exempt from all fees established in this administrative regulation.

(10) A wastewater laboratory operated by a municipality that

provides analysis for only its own facility shall receive the following reduction to the administrative fee established in Table 1 of subsection (2) of this section, based on its maximum permitted flow value:

(a) Less than or equal to 0.10 million gallons per day (MGD), a 100 percent reduction (no administrative fee);

(b) Less than or equal to 0.50 MGD but greater than 0.10 MGD, a seventy-five (75) percent reduction;

(c) Less than or equal to one and zero tenths (1.0) MGD but greater than zero and five tenths (0.5) MGD, a fifty (50) percent reduction;

(d) Less than or equal to two and zero tenths (2.0) MGD but greater than one and zero tenths (1.0) MGD, a twenty-five (25) percent reduction; and

(e) Greater than two and zero tenths (2.0) MGD, a ten (10) percent reduction.

(11) If more than one (1) reduction pursuant to subsections (6) through (10) of this section applies, only the greatest reduction shall be taken.

Section 7. Interim Certification. (1) If a wastewater laboratory demonstrates that the following requirements are met for a method-analyte pairing, the cabinet shall approve interim certification for that method-analyte pairing:

(a) All information required by the Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification, KWLC Form App, shall be submitted to the cabinet;

(b) The appropriate fee shall be submitted to the cabinet;

(c) A method, including instrumentation, established in 40 C.F.R. 136 or the applicable permit shall be used; and

(d) A proficiency test study sample shall be analyzed by the primary analyst or technician within the last year and the results shall be within the acceptance limits specified by a proficiency test study provider approved by the American Association for Laboratory Accreditation.

(2) A wastewater laboratory with interim certification may analyze samples for that method-analyte pairing for compliance purposes.

Section 8. Audits. (1) A certified wastewater laboratory shall allow a cabinet auditor to conduct, and shall participate in, an on-site audit during normal business hours without prior notification.

(2) Wastewater laboratory certification records and supporting documentation shall be retained for five (5) years or until the next on-site audit, whichever is longer.

(3) If the cabinet identifies a deficiency, the certified laboratory shall correct or otherwise address the deficiency within thirty (30) days of receipt of notice of the deficiency.

(4)(a) If an on-site audit of a wastewater laboratory located outside of Kentucky is conducted by the cabinet, the wastewater laboratory shall bear the cost of the audit.

(b) Payment shall be due thirty (30) days after notice of this cost is provided by the cabinet.

Section 9. Full Certification Requirements. (1) If, after an on-site audit and review of submitted information, all requirements of this administrative regulation for a method-analyte pairing have been met, the cabinet shall approve full certification for that method-analyte pairing.

(2) To maintain full certification for the method-analyte pairing, the wastewater laboratory shall:

(a) Maintain compliance with the requirements of this administrative regulation, based upon the cabinet's review of requested documentation, on-site audit inspection, or both;

(b) Analyze a proficiency test study sample at least annually by the primary analyst or technician and the results shall be within the acceptance limits specified by a proficiency test study provider approved by the American Association for Laboratory Accreditation;

(c) Notify the cabinet within thirty (30) calendar days of a change in the personnel, equipment, analytical method, or laboratory location identified in its application, Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification, KWLC Form App;

(d) Submit documentation or data required by this administrative regulation; and

(e) Submit to the cabinet all fees by the deadlines established in this administrative regulation.

Section 10. Provisional Certification. (1) The cabinet shall, when becoming aware of a failure of a wastewater laboratory to comply with one (1) or more of the requirements established in Section 9(2) of this administrative regulation, provide written notice to the wastewater laboratory of the deficiency and of the cabinet's intent to change the certification status to provisional certification.

(2) If the deficiency relates to a specific method-analyte pairing, the cabinet may change the status of the wastewater laboratory's certification to provisional certification. If the status is changed to provisional certification, this changed status shall be for only the analyte that failed to meet the requirements of Section 9(2) of this administrative regulation, unless the cabinet had certified a group of related analytes based on a limited number of analytes in the group.

(3) The wastewater laboratory shall submit to the cabinet a written corrective action plan to address this deficiency within thirty (30) days of receipt of the notice of intent from the cabinet, specifying the immediate and long-term corrective actions that shall be taken.

(4) The wastewater laboratory shall correct this deficiency as soon as reasonably possible. If the deficiency is not corrected within thirty (30) days of receipt of the notice of intent, the cabinet shall change the certification status to provisional certification, and shall provide written notice to the wastewater laboratory of this action.

(5) A wastewater laboratory with provisional certification may continue to analyze a sample for compliance purposes, but shall notify its client of the wastewater laboratory's provisional certification status prior to conducting an analysis for that client and shall provide that information in writing to the client.

(6) A wastewater laboratory with provisional certification shall correct the deficiency as soon as is reasonably possible, but within three (3) months of written notification from the cabinet of the change to provisional certification status.

(7) The cabinet shall restore the wastewater laboratory's provisional certification status to full certification upon making a determination that the deficiency resulting in the provisional certification status has been corrected and shall provide written notice to the wastewater laboratory of this action.

Section 11. Certification Revocation. (1) The cabinet may immediately revoke a wastewater laboratory's certification for any of the following reasons:

(a) Failure to use an analytical method established in 40 C.F.R. 136 or in the applicable permit;

(b) Reporting proficiency test study data from another laboratory as its own data;

(c) Engaging in falsification of data or another deceptive practice;

(d) Endangering public health or the environment through an operation associated with the wastewater laboratory;

(e) Refusal to allow or participate in an on-site audit conducted by the cabinet; or

(f) Persistent failure to report accurate compliance data to the cabinet.

(2) If the cabinet revokes a wastewater laboratory's certification pursuant to subsection (1) of this section, the cabinet shall immediately notify the wastewater laboratory of this action and provide written notice to the wastewater laboratory of this action.

(3) If a wastewater laboratory has not corrected the deficiency resulting in the provisional certification status within three (3) months of written notification from the cabinet of the change to provisional certification, the cabinet shall provide written notice to the wastewater laboratory of the cabinet's intent to revoke the wastewater laboratory's certification for any method-analyte pairing involved in the deficiency.

(4) The wastewater laboratory may request, in writing, a re-determination of the cabinet's intent to revoke certification pursuant to subsection (3) of this section.

(a) If a redetermination is requested, the request shall be made

within thirty (30) days of receipt of the notice of intent to revoke.

(b)1. This request shall be submitted to the cabinet and shall explain the basis for the redetermination request and, if appropriate, include a written corrective action plan to address the deficiency identified in the cabinet's notice of intent to revoke.

2. The request shall be signed by a responsible official of the wastewater laboratory.

(5) The cabinet, having received a request for redetermination pursuant to subsection (4) of this section, shall make a final determination whether or not to continue provisional certification, approve certification, or revoke certification, and shall provide written notice to the wastewater laboratory of this action.

(6) If, within thirty (30) days of receipt of the notice of intent to revoke pursuant to subsection (3) of this section, the wastewater laboratory does not request a redetermination, the cabinet shall revoke the wastewater laboratory's certification and provide written notification to the wastewater laboratory of this action.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Commonwealth of Kentucky Wastewater Laboratory Certification Manual", March 2013;

(b) "Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification", KWLC Form App, March 2013;

(c) "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms", Fourth Edition, U.S.EPA-821-R-02-013, October 2002; and

(d) "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms", Fifth Edition U.S. EPA-821-R-02-012, October 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained through the Division of Water's Web site at <http://water.ky.gov>.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: March 13, 2013

FILED WITH LRC: March 14, 2013 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2013, at 6:00 P.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 18, 2013, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 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: Jon Trout, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email [Jon.Trout@ky.gov](mailto:Jon.Trout@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jon Trout

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the wastewater laboratory certification program, standards for the certification of wastewater laboratories, and fees for certification and evaluation of wastewater laboratories.

(b) The necessity of this administrative regulation: KRS 224.10-670 authorizes the cabinet to promulgate administrative regulations to implement this statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms

to KRS 224.10-670 which requires the cabinet to consider national and state wastewater laboratory certification programs. The requirements reflect the already-applicable requirements in 40 C.F.R. Part 136 established by the U.S. Environmental Protection Agency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statute by providing the structure of a wastewater laboratory certification program and the specific criteria required for a wastewater laboratory to become certified. The statute requires that, one year after the promulgation of this administrative regulation, water quality samples be analyzed by a wastewater laboratory that is certified by the cabinet.

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

(a) How the amendment will change this existing administrative regulation: This 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: This administrative regulation applies to approximately ninety-seven (97) municipal laboratories, sixteen (16) industrial laboratories, 110 commercial laboratories, and fifty-nine (59) field service laboratories.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To continue to analyze wastewater samples for permit compliance purposes after one year after the promulgation of this administrative regulation, each laboratory will be required to submit an application, required laboratory and analysis information, and a fee and comply with the laboratory analysis requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost for each wastewater laboratory will vary, depending upon what types of analyses will be performed and other factors. The annual fee will range from zero dollars (all fees are waived) for some small municipal laboratories to \$4,125 for full service laboratories. Because the required laboratory analysis protocols and documentation are already required by federal regulations, there should be no additional significant cost to comply with the substantive laboratory analysis requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By statute, data from samples analyzed by an uncertified wastewater laboratory will be deemed invalid. Thus, obtaining certification will allow the wastewater laboratory to submit data from samples for the purpose of demonstrating compliance.

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

(a) Initially: The initial cost the Division of Water will be a maximum of approximately \$475,000 for the first year, comprised mostly of the salary for seven staff members.

(b) On a continuing basis: The continuing annual cost will remain approximately the same, a maximum of \$475,000 to retain the seven staff members.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The cost of implementing and enforcing this administrative regulation will be funded by fees assessed to the participating wastewater laboratories. Program fees were authorized by the statute.

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



regulation will be new fees assessed to the participating wastewater laboratories.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes fees to fund implementation and enforcement.

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. Municipal wastewater laboratories that provide only service for their own facilities have a sliding-scale reduction in the administrative fee, from a 100 percent reduction (no fee) to a ten (10) percent reduction, based upon the permitted maximum permitted flow value. Wastewater laboratories pay an analysis category fee for only the analysis categories for which they seek certification.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Jon Trout

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? Municipalities that operate a wastewater treatment plant and perform their own wastewater laboratory analyses would be impacted by this administrative regulation if they choose to continue to operate their wastewater laboratory. It is anticipated that this will affect approximately 97 municipal wastewater laboratories.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The substantive requirements for wastewater laboratory analyses are federal regulations in 40 C.F.R. Part 136. KRS 224.10-670 establishes statutory authority for the cabinet to promulgate 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? Implementation of the fee portion of this administrative regulation during the first year, will generate approximately \$432,000 to \$475,000, depending upon how many of the existing wastewater laboratories decide to become certified.

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Implementation of the fee portion of this administrative regulation during subsequent years, will generate approximately \$432,000 to \$475,000, depending upon how many of the existing wastewater laboratories decide to become certified.

c. How much will it cost to administer this program for the first year? It is estimated that the first year cost to administer this program will be a maximum of \$475,000.

d. How much will it cost to administer this program for subsequent years? It is estimated that the cost to administer this program for subsequent years will be a maximum of \$475,000

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Although the substantive requirements for wastewater laboratory analyses are federal regulations in 40 C.F.R. Part 136, these regulations do not require the states to develop and implement a wastewater laboratory certification program.

2. State compliance standards.

KRS 224.10-670 establishes statutory authority for the cabinet to promulgate this administrative regulation. The substantive re-

quirements from 40 C.F.R. Part 136, along with the certification program and fees, are included in 401 KAR 5:320.

3. Minimum or uniform standards contained in the federal mandate. Wastewater laboratory analyses, for the purpose of demonstrating compliance for activities subject to 33 U.S.C. 1342, are required to meet the analytical methods, including instrumentation, required by 40 C.F.R. Part 136.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? The substantive wastewater laboratory analysis requirements are the same as those in 40 C.F.R. Part 136. 401 KAR 5:320 adds to those the requirements for becoming certified by Kentucky and an administrative fee. These provisions are established pursuant to statutory authority in KRS 224.10-670.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The certification requirements and fee provisions of 401 KRS 224.10-670 are established pursuant to statutory authority in KRS 224.10-670.

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Repealer)

#### 703 KAR 5:121. Repeal of 703 KAR 5:120 and 703 KAR 5:180.

RELATES TO: KRS 158.6451, 158.6453, 158.6455, 158.782, 158.805, 160.346

STATUTORY AUTHORITY: KRS 156.029, 156.070, 158.6453, 158.6455, 160.346(1)(a), (9)

NECESSITY, FUNCTION, AND CONFORMITY: In order to receive approval of Kentucky's ESEA (Elementary and Secondary Education Act) Flexibility Waiver request, the U.S. Department of Education required the identification of Kentucky's lowest-achieving schools as priority schools. It is necessary to repeal 703 KAR 5:120, Assistance for schools; guidelines for scholastic audit, and 703 KAR 5:180, Intervention system for persistently low-achieving schools, as they are no longer consistent with current state and federal accountability requirements. 703 KAR 5:250 has been promulgated to establish the new requirements for implementing the intervention options in priority schools and districts. This administrative regulation repeals 703 KAR 5:120 and 703 KAR 5:180.

Section 1. The following administrative regulations are hereby repealed:

(1) 703 KAR 5:120, Assistance for schools; guidelines for scholastic audit; and

(2) 703 KAR 5:180, Intervention system for persistently low-achieving schools.

TERRY HOLLIDAY, PH.D., Commissioner

DAVID KAREM, Chairperson

APPROVED BY AGENCY: March 15, 2013

FILED WITH LRC: March 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on April 24, 2013, at 2:00 p.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 April 30, 2013. Send written notification of intent to be heard at the public hearing or written comments on the pro-

posed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

#### 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 repeals 703 KAR 5:120 which established education assistance and scholastic audit processes for low-performing schools to implement an accountability system that is no longer in use. It also repeals 703 KAR 5:180 which established the process and procedures for implementing those interventions and alternate governance options. In order to receive approval of Kentucky's ESEA Flexibility Waiver, KDE is now required to identify persistently low-achieving schools as priority schools. KDE is promulgating a new regulation to establish the intervention processes for priority schools and districts.

(b) The necessity of this administrative regulation: This regulation is no longer required because a new regulation is being put in place[te] which will outline the intervention process required for priority schools and districts.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation repeals two regulations that are no longer required due to the promulgation of a new regulation to implement the requirements of KRS 160.346 and Kentucky's ESEA Flexibility Waiver.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of these regulations will permit the promulgation of a new regulation which will outline the intervention process for priority schools and districts.

(2) If 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 statute: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will only apply to a limited number of schools and districts: 1) to newly-identified priority schools and their districts that replace one of the forty-one (41) currently identified priority schools once they have exited that status, 2) to any priority schools where the commissioner determines an additional audit review is necessary, and 3) for priority districts that will be identified in approximately three years. It will also impact school councils of priority schools and KDE staff assigned to this process.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The repeal of these regulations will permit the promulgation of a new regulation which will outline the intervention process that will be used with the entities identified in (3).

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs.

(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 the administrative body to implement this administrative regulation:

(a) Initially: No additional costs

(b) On a continuing basis: No additional costs

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation: No additional funding is necessary.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the regulations are being repealed.

#### 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? Schools and 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.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? The proposed regulation will require no additional cost.

(d) How much will it cost to administer this program for subsequent years? The proposed regulation will require no additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (New Administrative Regulation)

#### 703 KAR 5:250. Implementation of Intervention Options in Priority Schools and Districts.

RELATES TO: KRS 158.6453, 158.6455, 158.782, 160.346

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) indicates the primary function of the Kentucky Board of Education (KBE) is to adopt policies and administrative regulations by which the Kentucky Department of Education (Department) shall be governed in planning and operating programs within its jurisdiction. KRS 156.070(5) requires the KBE, upon the recommendation of the Commissioner of Education, to establish policy or act on all programs, services, and other matters which are within the administrative responsibility of the Department. KRS 158.6453(3)(a) vests in the KBE the responsibility to create an assessment system that measures achievement of the state learning goals, ensures compliance with the federal No Child Left Behind Act of 2001 (NCLB), 20 U.S.C. secs. 6301 et. seq., and ensures school accountability. KRS 158.6455 requires the KBE to create an accountability system to classify schools and districts,



and to establish appropriate consequences for schools failing to meet their accountability measures. KRS 160.346 requires the KBE to promulgate administrative regulations to establish the process for implementing school interventions and alternate management options for schools, districts, and the state for persistently low-achieving schools, now identified as priority schools. In order to obtain approval of Kentucky's Elementary and Secondary Education Act (ESEA) Flexibility Waiver, which allows flexibility from specific requirements of NCLB, the United States Department of Education (USDE) requires the KBE to identify the state's lowest-achieving schools (formerly called persistently low-achieving schools) as priority schools, and for those priority schools to follow the requirements of 20 U.S.C. 6301, Section 1003(g), regarding school intervention options. This administrative regulation establishes the process and procedures for implementing school interventions and alternate governance options for priority schools and districts.

Section 1. Definitions. (1) "Annual measurable objective" or "AMO" is defined in 703 KAR 5:225, Section 1(1).

(2) "District leadership review" means an assessment of the functioning of the district and of the district's ability to manage an intervention in a priority school.

(3) "District that contains a priority school" means a district that has not been identified as a priority district but that has in its jurisdiction one (1) or more priority schools.

(4) "Leadership review process" means the review and audit process required under KRS 158.6455 and 158.346 to establish appropriate consequences for districts containing priority schools and priority districts and priority schools as defined in 703 KAR 5:225, Section 1(21) and (22).

(5) "Leadership review team" means a team approved by the Commissioner of Education to conduct a school or district leadership review required by KRS 160.346.

(6) "Persistently low-achieving school" is defined in KRS 160.346(1)(a).

(7) "Priority district" is defined in 703 KAR 5:225, Section 1(21).

(8) "Priority school" is defined in 703 KAR 5:225, Section 1(22).

(9) "School intervention" is defined in KRS 160.346(1)(b).

(10) "School leadership review" is described in KRS 160.346, and is an assessment of the functioning of the school, including:

(a) A determination of the capacity of a principal and school council to lead an intervention option in a priority school; and

(b) A recommendation by the leadership review team as to whether the council and principal have capacity to lead the school to recovery, or should be replaced.

Section 2. Leadership review team selection and membership.

(1)(a) Members of the leadership review team shall be selected from qualified applicants by the department, and approved by the commissioner or his or her designee.

(b) The team members shall complete department-provided or approved training in any areas needed to effectively perform their duties.

(c) Members shall hold appropriate certification or qualifications for the position being represented.

(d) The team shall not include any members currently employed by the district or school under review.

(2) The team shall be approved by the commissioner or his or her designee and shall include the following representation:

(a) The chairperson, who shall be designated by the department or its designee, shall be:

1. An experienced administrator approved by the department to provide highly skilled education assistance as required by KRS 158.782;

2. An experienced certified administrator member of the audit team;

3. A similarly experienced and qualified professional approved by the department.

4. The chair may serve in addition to the six (6) members outlined in paragraphs (b) through (g), or may be selected from those six (6) members who also meet the qualifications of this paragraph;

(b) An individual approved by the department to provide highly skilled education assistance as required by KRS 158.782;

(c) A teacher who is actively teaching or has taught within the last three (3) years;

(d) A principal who is currently serving or has served as a principal within the last three (3) years;

(e) A district level administrator who is currently serving or has served in a district administrative position within the last three (3) years;

(f) A parent or legal guardian of a school-aged child; and

(g) A university representative who is currently serving or has served in that capacity within the last three (3) years.

Section 3. School Leadership Review (1) Within ninety (90) days of an identification as a priority school by the department, a school leadership review shall be scheduled to review the functioning of the school council and the specific leadership capacity of the principal.

(2) The determination of the principal's ability to lead the intervention in the school shall be based upon an assessment of whether:

(a) The principal demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;

(b) The principal leads and operates the school under a governance and leadership style that promotes and supports student performance and system effectiveness;

(c) The principal establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;

(d) The principal ensures that systems are in place for collection and use of data;

(e) The principal ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and

(f) The principal ensures that the school implements a comprehensive assessment system that generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement.

(3) The determination of the school council's ability to lead the intervention in the school shall be based upon an assessment of capacity in the following areas:

(a) Purpose and direction supporting high expectations for all students;

(b) Effective governance and leadership systems and processes;

(c) Curriculum, instructional design, and delivery that ensure both teacher effectiveness and student achievement;

(d) Comprehensive, continuous assessment and data analysis processes;

(e) Provision of sufficient human and fiscal resources to support improvement; and

(f) Commitment to a culture of evaluation and continuous improvement.

(4) The school leadership review shall include analysis of state and local education data; review of comprehensive school improvement plans and other planning documents; interviews with students, parents, all school council members, school and district personnel, and community members; direct observation; administration of teacher and principal working conditions surveys and student satisfaction surveys; review of school council minutes and agendas; administration of the Missing Piece of the Proficiency Puzzle, June 2007, as well as other methods that may be required to obtain necessary information.

(5) Following the review, a report shall be submitted to the commissioner that specifically makes:

(a) A determination of the capacity of a principal and school council to lead an intervention option in a priority school;

(b) A recommendation by the leadership review team as to whether the principal has capacity to lead the school to recovery, or should be replaced;

(c) A recommendation by the leadership review team as to whether the school council has capacity to lead the school to recovery or whether school council authority should be transferred.

(6) If the school council is determined to have capacity, it shall

retain its authority; however, if the school council is determined not to have capacity, the council shall either be determined to remain as an advisory council or shall be replaced by the commissioner.

(7) A school leadership assessment shall be repeated as often as the commissioner deems necessary, based on student achievement scores, progress on implementation of the comprehensive school improvement plan (CSIP), and other factors related to student achievement.

(8) Pursuant to KRS 160.346(8), the authority of the school council shall be restored if the school meets its AMO for two (2) consecutive years.

(9) The commissioner shall notify a school that it has exited priority status when the school:

- (a) Meets AMO goals for three (3) consecutive years;
- (b) Is no longer identified by the applicable percent calculation of being in the lowest five (5) percent; and
- (c) Scores at or above a seventy (70) percent graduation rate for three (3) consecutive years.

Section 4. District Leadership Review. (1) Within ninety (90) days of identification by the KDE as a district containing a priority school, or as a priority district, a district leadership review shall be scheduled to review the functioning of the district administration and its specific leadership capacity related to each identified school.

(2) The determination of the district's level of functioning and ability to manage the intervention in the priority school shall be based upon an assessment of capacity in the following areas:

- (a) Purpose and direction supporting high expectations for all students;
- (b) Effective governance and leadership systems and processes;
- (c) Curriculum, instructional design, and delivery that ensure both teacher effectiveness and student achievement;
- (d) Comprehensive, continuous assessment and data analysis processes;
- (e) Provision of sufficient human and fiscal resources to support improvement; and
- (f) Commitment to a culture of evaluation and continuous improvement.

(3) The district leadership review shall include analysis of state and local education data; review of school board minutes; review of comprehensive school improvement plans and other planning documents; interviews with school board members, students, parents, school and district personnel, and community members; direct observation; administration of teacher and principal working conditions surveys and student satisfaction surveys; administration of the Missing Piece of the Proficiency Puzzle, June 2007, as well as other methods that may be required to obtain necessary information.

(4) Following the review, a report shall be submitted to the commissioner that specifically makes a recommendation regarding the district's level of functioning and whether the district has the capability and capacity to manage the intervention in each identified school.

(5) There shall be only one (1) district leadership review per district, per year, regardless of the number of priority schools located in the district.

(6) A district leadership review shall be repeated as often as the commissioner deems necessary, based on student achievement scores, progress on implementation of the comprehensive district improvement plan (CDIP), and other factors related to student achievement.

Section 5. Notification to Schools and Districts of Leadership Assessment Determination. (1) After completion of the district leadership reviews and within thirty (30) days of receipt of the reports, the commissioner shall notify in writing the school council, principal, superintendent, and local board of education of the determination regarding:

- (a) School council capacity and authority;
  - (b) Principal capacity and authority; and
  - (c) District capacity and authority.
- (2) The notification shall include a statement of the appeal

process to the KBE as required by KRS 160.346. The commissioner shall make the final report publicly available.

Section 6. Authority to Select an Intervention Option. (1) If the school leadership review determines that the school council has sufficient capacity to manage the recovery, and the district leadership review determines that the district has the capacity to support the recovery, the school council shall, within thirty (30) days after the receipt of the commissioner's notification and pursuant to KRS 160.346, choose an intervention option and develop an action plan. The council shall present the option and plan to the local board of education, which shall give final approval and provide the necessary support and resources for the recovery effort.

(2) If the school leadership review determines that the school council does not have sufficient capacity to manage the recovery and recommends that the council's role become advisory and the district leadership review finds sufficient district capacity to support the recovery and recommends the council's authority be transferred to the superintendent, the superintendent shall, within forty-five (45) days after the receipt of the commissioner's notification or thirty (30) days after the action of the KBE if an appeal is filed, make a recommendation for an intervention option and submit the choice to the local board of education, which shall make the final determination on the intervention option.

(3) If the school leadership review determines that the school council has sufficient capacity to manage the recovery, and the district leadership review determines the district does not have the capacity to support the recovery, the school council shall, within thirty (30) days after the receipt of the commissioner's notification or thirty (30) days after the action of the KBE if an appeal is filed, choose the intervention option and submit its choice to the local board of education, which shall review the option chosen by the school council and submit the choice to the commissioner, who shall approve the choice.

(4) If the school leadership review determines that the school council does not have sufficient capacity to manage the recovery and recommends that the council's role become advisory and the district leadership review finds that the district lacks sufficient capacity to support the recovery and recommends the council's authority be transferred to the commissioner, the commissioner shall, within forty-five (45) days after receipt of these determinations and in consultation with the advisory school council, superintendent, and local board of education, determine the intervention option. The identified school and local district shall implement the intervention option with support from the department.

School council has capacity to lead the intervention	District has capacity to lead the intervention	Choice of intervention option
Yes	Yes	School council chooses option and develops action plan, which is submitted to board, board approves and provides necessary support.
No	Yes	Superintendent recommends to local board, board has final approval
Yes	No	School council chooses option, submits to board, board reviews and submits to Commissioner of Education, commissioner approves
No	No	Commissioner chooses in consultation with advisory school council, superintendent, and local board. School and district implement with KDE support.

Section 7. Replacement of school council members by the Commissioner of Education. (1) When the commissioner is required to appoint advisory school council members, the commissioner shall include three (3) teachers and two (2) parents from the

school. These members may be appointed from a list of nominees submitted by the superintendent.

(2) The commissioner shall select candidates who are capable of providing leadership in the turnaround environment of the school, and meet the requirements of KRS 160.345.

(3) The appointed council shall remain in an advisory capacity until the school meets the requirements of KRS 160.346(8).

(4) The commissioner shall fill any subsequent vacancy through this procedure, until such time as full authority is restored to the school council.

Section 8. Implementation of Intervention Options. (1) A school or district engaging in the re-staffing option shall:

(a) Replace the principal with a certified principal who has specific training in turning around low-achieving schools and grant the new principal sufficient operational flexibility, including staffing, calendars, time, and budgeting, to fully implement a comprehensive approach to substantially improve student achievement outcomes and, if a high school, increase high school graduation rates. The current principal shall be eligible to remain if the commissioner's report determines the principal has the capacity to lead the recovery;

(b) Replace the school council with individuals appointed by the commissioner pursuant to Section 7 of this administrative regulation. The current school council shall be eligible to remain if the commissioner's report determines the school council has the capacity to lead the recovery;

(c) Use competencies adopted by the local board of education to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students to:

1. Screen all existing staff and rehire no more than fifty (50) percent; and

2. Select new staff;

(d) Select new staff to replace those transferred or dismissed;

(e) Implement strategies, including more flexible working conditions, that are designed to increase opportunities for career growth and are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in the turnaround school;

(f) Provide staff with ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;

(g) Adopt a new governance structure which shall include requiring the school to provide quarterly progress reports to the local board of education and the department;

(h) Use data to identify and implement an instructional program that is research-based and aligned from one (1) grade to the next as well as aligned with the required core academic standards established in 704 KAR 3:303;

(i) Promote the continuous use of student data from formative, interim, and summative assessments to inform and differentiate instruction in order to meet the academic needs of individual students;

(j) Establish schedules and implement strategies that provide increased learning time; and

(k) Provide appropriate social, emotional, and community-oriented services and supports for students.

(2) A school or district engaging in the external management option shall:

(a) Choose an education management organization (EMO) from a list of approved EMOs established by the KBE pursuant to Section 9 of this administrative regulation;

(b) Contract with the EMO to provide day to day management of the school; and

(c) Provide quarterly progress reports to the local board of education and the department.

(3) A school or district engaging in the transformation option shall:

(a) Replace the principal who led the school prior to commencement of the transformation option with a certified principal who has specific training in turning around low-achieving schools.

The current principal shall be eligible to remain if the commissioner's report determines the principal has the capacity to lead the recovery and has specific training in turning around low-achieving schools;

(b) Replace the school council with individuals appointed by the commissioner. The current school council shall be eligible to remain if the commissioner's report determines they have the capacity to lead the recovery in an active or advisory capacity;

(c) Use rigorous, transparent, and equitable evaluation systems for teachers and principals that:

1. Take into account data on student growth as a significant factor as well as other factors such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high-school graduations rates; and

2. Are designed and developed with teacher and principal involvement;

(d) Identify and provide additional leadership and compensation opportunities to school leaders, teachers, and other staff who have increased student achievement and high-school graduation rates, if applicable, and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, have not done so;

(e) Provide staff with ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed in conjunction with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies which shall include:

1. Subject-specific pedagogy;

2. Instruction that reflects a deeper understanding of the community served by the school; and

3. Differentiated instruction;

(f) Implement strategies designed to increase opportunities for career growth which shall include more flexible working conditions designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in a transformation school;

(g) Use data to identify and implement an instructional program that is research-based and aligned from one (1) grade to the next as well as aligned with state academic standards;

(h) Promote the continuous use of student data from formative, interim, and summative assessments to inform and differentiate instruction in order to meet the academic needs of individual students;

(i) Increase learning time and create community-oriented schools that:

1. Establish schedules and implement strategies that provide increased learning time; and

2. Provide ongoing mechanisms for family and community engagement;

(j) Provide operational flexibility and sustained support that:

1. Gives the school sufficient operational flexibility, including staffing, calendar, time, and budgeting to fully implement a comprehensive approach to substantially improve student achievement outcomes and increase high school graduation rates; and

2. Ensures that the school participates in ongoing, intensive technical assistance and related support from the local district and the state; and

(k) Provide quarterly progress reports to the local board of education and the department.

(4) A school or district engaging in the school closure option shall develop a plan for the closure of the school. The plan shall include:

(a) A process for the transfer of students to higher performing schools in the district;

(b) A determination by the local board of education regarding staff assignments and the use of the existing facility and other assets;

(c) A method of monitoring the progress of students in their new school environment; and

(d) A quarterly progress report to the local board of education and the department.

Section 9. Establishment of Approved External Management

Organizations. (1) The list of approved EMOs shall be created by the commissioner following the application process established in subsection (2) of this section.

(2) The Commissioner shall issue a request for information to solicit EMO applicants who shall detail the scope of the services they are able to provide to a persistently low-achieving school. The request for information shall include the following information to solicit the EMO's qualifications:

(a) The ability of the EMO to staff the school, during the period of the contract, with dynamic leadership with experience in turning around low-performing schools;

(b) The ability of the EMO to conduct a needs assessment in the school and develop a plan of action based on the needs assessment;

(c) The ability of the EMO to deliver a comprehensive list of services designed to turnaround the school;

(d) The ability of the EMO to screen staff and make decisions on staff assignments;

(e) The familiarity of the EMO with Kentucky school laws and administrative regulations;

(f) The experience of the EMO in turning around low-achieving schools;

(g) References from other low-achieving schools or school districts supporting the EMO's ability to turn around low-achieving schools;

(h) Evidence provided by the EMO that its provision of services includes instructional leadership, professional learning support for teachers and other staff, and services to families and community stakeholders;

(i) Evidence of the EMO's financial stability, any pending or threatened litigation, and liability insurance coverage; and

(j) Other information required pursuant to KRS Chapter 45A.

(3) The commissioner shall review all responses and determine which applicants meet the criteria in subsection (2) of this section. The qualifying applicants shall be submitted to the KBE for approval. The list of approved EMOs shall be made public upon approval by the KBE.

Section 10. Incorporation by Reference. (1) "The Missing Piece of the Proficiency Puzzle", June 2007, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Next Generation Schools and Districts, 8th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TERRY HOLLIDAY, PH.D., Commissioner

DAVID KAREM, Chairperson

APPROVED BY AGENCY: March 14, 2013

FILED WITH LRC: March 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on April 24, 2013, at 2:00 p.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 April 30, 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, 500 Mero Street, First Floor, Capital Plaza Tower, 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: In order to obtain approval of Kentucky's ESEA Flexibility Waiver, which allows flexibility from specific requirements of NCLB, the USDE requires the KBE to identify the state's lowest-achieving schools (formerly called persistently low-achieving schools) as priority schools, and for those priority schools to follow the requirements of 20 U.S.C. 6301, Section 1003 (g) regarding school intervention options. KRS 160.346 requires the KBE to promulgate administrative regulations to establish the process for implementing school interventions and alternate management options for the schools, districts and state for persistently low-achieving schools (now identified as priority schools). This administrative regulation establishes the process and procedures. It combines relevant elements of 703 KAR 5:120 and 703 KAR 5:180, which applied to persistently low-achieving schools, and applies them to priority schools. Those two regulations are being repealed. This regulation will only apply to a limited number of schools and districts as follows: 1) to newly-identified schools that replace one of the forty-one (41) currently identified priority schools when they have exited that status, 2) to any schools where the Commissioner determines an additional audit review is necessary, and 3) for priority districts that will be identified in approximately three years.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process and procedures for school intervention and management options for priority schools and districts required by Kentucky's ESEA Flexibility Waiver and KRS 160.346.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 160.340 requires the KBE to promulgate administrative regulations to establish the process and procedures for implementing the intervention options available to local boards of education and the Commissioner of Education. This administrative regulation provides the process and procedures for priority schools and districts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a specific process and procedures for implementing the intervention options of KRS 160.346 that are available to priority schools and districts, local boards of education and the Commissioner of Education.

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

(a) How the amendment will change this existing administrative regulation: 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: This regulation will only apply to a limited number of schools and districts as follows: 1) to newly-identified priority schools and their districts that replace one of the forty-one (41) currently identified priority schools once they have exited that status, 2) to any priority schools where the Commissioner determines an additional audit review is necessary, and 3) for priority districts that will be identified in approximately three (3) years. It will also impact the school councils of priority schools and KDE staff assigned to this process.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The priority schools, their councils and their districts will be provided with sufficient detail to perform their responsibilities as required by KRS 160.346. KDE staff will be provided guidance in implementing their responsibilities under KRS 160.346. KDE staff must perform audit reviews to determine the capacity of councils, principals and districts and make recommendations to the Com-

missioner of Education.

(a) List 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 Commissioner of Education must notify the local district upon receipt of audit review committee recommendations as to school and district leadership capacity. KDE staff and contracted individuals will be responsible for completion of the audit reviews described in the regulation. Depending on capacity, school councils, local boards of education or the Commissioner of Education must formally choose an intervention option from those listed in KRS 160.346 and carry out the processes detailed for that option.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to schools and districts impacted by this process. The proposed regulation results in additional costs to KDE to conduct the audit review process, which costs are paid for through Commonwealth School Improvement Funds or federal funds. The cost is estimated at between \$10,000 and \$12,000 per audit review depending on the student population of the school.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The identified priority schools will have an improved chance of turning around their struggling school by qualifying to apply for additional resources to assist in the school improvement efforts as they are available. The Commissioner and KDE staff will have better ability to conduct audit reviews and make recommendations to the school districts regarding the best strategies for improving these schools.

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

(a) Initially: The proposed regulation results in additional costs to KDE to conduct the audit review process. The audit review is paid through the Commonwealth School Improvement Funds or federal funds. The cost is estimated at between \$10,000 and \$12,000 per audit review depending on the student population of the school.

(b) On a continuing basis: The proposed regulation results in additional costs to KDE to conduct the audit review process. The audit review is paid through the Commonwealth School Improvement Funds or federal funds. The cost is estimated at between \$10,000 and \$12,000 per audit depending on the student population of the school.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Commonwealth School Improvement Funds and federal funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts containing low-achieving schools.

number required to be identified under the ESEA waiver. When a school meets the requirements for moving from the priority schools list, another will be identified. Initial identification will be the cost of the audit review and intervention staff (as funds are available). The audit review cost will be between \$10,000 and \$12,000 depending on the student population. An intervention team (if funds are available) would cost approximately \$450,000. The intervention teams currently are provided through Commonwealth School Improvement Funds or federal funds as available.

(a) How much 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, however this regulation enables some districts to be eligible for federal funding as it is available.

(c) How much will it cost to administer this program for the first year? The cost will depend on how many currently identified priority schools exit the process, and how many are determined by the Commissioner to need a follow-up audit review. At this point, approximately three schools are expected to be eligible to exit next year based on their assessment scores to date. The cost will be between \$10,000 and \$12,000 per audit review depending on the student population of the school.

(d) How much will it cost to administer this program for subsequent years? The cost will depend on how many currently identified priority schools exit the process, and how many are determined by the Commissioner to need a follow-up audit review. At this point, approximately three schools are expected to be eligible to exit next year based on their assessment scores to date. The cost will be between \$10,000 and \$12,000 per audit depending on the student population of the school.

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029 (7); KRS 156.070 (5); KRS 158.6453 (3); KRS 158.6455; KRS 160.346; 20 U.S.C. 6301, Section 1003 (a); Kentucky's ESEA Flexibility Waiver.

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 are currently forty-one (41) priority schools, which is the

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**  
**Minutes of March 12, 2013**

**Call to Order and Roll Call**

The March 2013 meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, March 12, 2013, at 9:00 a.m., in Room 154 of the Capitol Annex. Senator Ernie Harris, Co-chair, called the meeting to order, the roll call was taken. The minutes of the February 2013 meeting were approved.

**Present were:**

**Members:** Senators Joe Bowen, Sara Beth Gregory, Ernie Harris, Perry B. Clark, and Representatives Johnny Bell, Robert Damron, and Jimmie Lee.

**LRC Staff:** Dave Nicholas, Donna Little, Emily Caudill, Sarah Amburgey, Emily Harkenrider, Karen Howard, Betsy Cupp, and Laura Napier.

**Guests:** Becky Gilpatrick, Melissa Justice, Kentucky Higher Education Assistance Authority; Beau Barnes, Kentucky Teachers' Retirement System; Sharon Eli Mercer, Board of Nursing; Virginia Moore, Timothy Owen, Michael West, Board of Interpreters for Deaf and Hard of Hearing; Margaret Everson, Karen Waldrop, Department of Fish and Wildlife Resources; Kevin Brown, Robin Chandler, David Cook, Amy Peabody, David Wickersham, Department of Education; Dawn Bellis, Libby Simpson, Tina Quire, Department of Housing, Buildings and Construction; Stephanie Brammer-Barnes, Mary Reinle Begley, Allison Lile, Stuart Owen, and Chandra Venettozzi, Cabinet for Health and Family Services.

**The Administrative Regulation Review Subcommittee met on Tuesday, March 12, 2013, and submits this report:**

**Administrative Regulations Reviewed by the Subcommittee:**

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: Authority**

11 KAR 4:080. Student Aid applications. Becky Gilpatrick, director, Student Aid Services, and Melissa F. Justice, senior associate counsel, represented the authority.

**FINANCE AND ADMINISTRATION CABINET: Kentucky Teachers' Retirement System: General Rules**

102 KAR 1:230. Limitations on benefits. Beau Barnes, deputy executive secretary, represented the system.

In response to a question by Co-Chair Bell, Mr. Barnes stated that stakeholders were generally supportive of this administrative regulation, which did not relate to Social Security offsets.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to make technical corrections; and (2) to amend Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**GENERAL GOVERNMENT CABINET: Board of Nursing: Board**

201 KAR 20:220. Nursing continuing education provider approval. Sharon Eli Mercer, nursing practice consultant, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 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.

201 KAR 20:381. Repeal of 201 KAR 20:200 and 201 KAR 20:380.

**Board of Interpreters for the Deaf and Hard of Hearing: Board**

201 KAR 39:030. Application; qualifications for licensure; and certification levels. Timothy Owens, chair, and Michael West, assistant attorney general, represented the board.

In response to a question by Representative Lee, Subcommittee Staff stated that the suggested amendment specifically clarified deadline dates.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify that EIPA certification may be used for licensure if applying before July 1, 2013; and (2) to amend Section 2 to further update the application form. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to specify the expiration date for temporary licenses and the deadline to request an extension; (2) to amend Section 5 to further update application forms; and (3) to amend Sections 4 and 5 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and quota hunts. Karen Waldrop, director, Wildlife Division, and Margaret Everson, assistant attorney general, represented the department.

In response to a question by Senator Bowen, Ms. Waldrop stated that Kentucky had an excellent environment for elk. The population was thriving, and the calves seemed to be doing well. The state had over 10,000 elk, which did not tend to migrate out of the state.

In response to questions by Representative Damron, Ms. Waldrop stated that the department was working to develop new administrative regulations to address damage caused by elk to farms and other property. The department was taking other measures in addition to developing administrative regulations. Landowners were allowed to take action if elk were caught causing damage. The commission would meet in June and was planning to discuss proposals to further address elk damage. There was a delicate balance between those who have damage caused by elk and the tourism and enjoyment of the animals. The department had moved elk populations from areas of historic nuisance.

In response to a question by Representative Damron regarding if deferral would be beneficial, Co-Chair Bell stated that the department seemed confident that the elk damage issues would be readily resolved. Representative Damron stated that, if those issues were not resolved satisfactorily, this administrative regulation could be recalled by the Subcommittee for further consideration.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete the definition for "at-large" and add definitions for "at-large north" and "at-large south"; (2) to amend Section to: (a) establish that a drawn hunter was authorized to hunt in up to three (3) areas of limited entry or at-large areas; and (b) establish that a drawn hunter who did not apply for or was not drawn for a LEA shall be assigned to one (1) of the at-large portions of the elk zone; and (3) to amend Section 7 to revise the boundaries of Straight Creek LEA. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas.

301 KAR 2:195 & E. Falconry, raptor take, and raptor propagation.

A motion was made and seconded to approve the following amendments: to amend Section 7 to comply with the drafting 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 Chief  
State School Officer**

701 KAR 5:140. Districts of Innovation. Kevin C. Brown, general counsel; David Cook, director of innovation; and Amy Peabody, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 6 and the material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 3 to establish a process for amending an approved plan. Without objection, and with agreement of the agency, the amendments were approved.

**Office of Instruction**

704 KAR 3:095. The use of response-to-intervention in Kindergarten through Grade 3.

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 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**PUBLIC PROTECTION CABINET: Department of Housing,  
Buildings and Construction: Division of Building Codes En-  
forcement: Electrical**

815 KAR 35:060. Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060. Dawn Bellis, general counsel; Libby Simpson, building codes enforcement; and Tina Quire, electrical licensing, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1, 2, 4, 5, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2 to clarify that the required applicant photo shall have been taken within the past six (6) months. Without objection, and with agreement of the agency, the amendments were approved.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of  
Health Policy: Data Reporting and Public Use Data Sets**

900 KAR 7:030 & E. Data reporting by health care providers. Allison Lile, health data administrator, and Chandra Venettozzi, health data administrator, represented the cabinet.

**Office of Inspector General: Division of Audits and Investiga-  
tions: Controlled Substances**

902 KAR 55:015 & E. Schedule I substances. Mary Begley, inspector general, and Stephanie Brammer-Barnes, policy analyst, represented the cabinet.

In response to a question by Co-Chair Bell, Ms. Begley stated that this administrative regulation governed illegal substances classified as Schedule I, which included cocaine and heroin, for example. Ms. Brammer-Barnes stated that House Bill 8 of the 2013 Regular Session of the General Assembly supported this administrative regulation and was awaiting the Governor's signature.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (2) to amend Sections 1, 3, and 5 to make minor clarifications; and (3) to amend Sections 1 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Medicaid Services: Commissioner's Office:  
Payment and Services**

907 KAR 3:170. Telehealth consultation coverage and reimbursement. Stuart Owen, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION,

AND CONFORMITY paragraph and Section 2 to move substantive provisions from the NECESSITY, FUNCTION, AND CONFORMITY paragraph to Section 2; (3) to amend Sections 1 through 5 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; (4) to amend Section 1 to establish a definition for "telehealth practitioner"; (5) to amend Section 3 to clarify when specified services will be covered by the department; (6) to amend Section 4 to specify when individual psychotherapy will be covered as a telehealth consultation in a community mental health center; and (7) to amend Section 5 to clarify the reimbursement provisions for a telehealth consultation. Without objection, and with agreement of the agency, the amendments were approved.

**The following administrative regulations were deferred to the  
April 9, 2013, meeting of the Subcommittee:**

**ENERGY AND ENVIRONMENT CABINET: Department for Envi-  
ronmental Protection: Division of Water: Water Quality Stan-  
dards**

401 KAR 10:030. Antidegradation policy implementation methodology.

401 KAR 10:031. Surface water standards.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET:  
Board of Education: Department of Education: School Admin-  
istration and Finance**

702 KAR 3:130. Internal accounting.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of  
Health Policy: State Health Plan**

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

**Department for Public Health: Division of Maternal and Child  
Health: Kentucky Early Intervention System**

902 KAR 30:001. Definitions for 902 KAR Chapter 30.

**Department for Medicaid Services: Commissioner's Office:  
Medicaid Services**

907 KAR 1:711E. Repeal of 907 KAR 1:705 and 907 KAR 1:710.

**Other Business:** Co-Chair Harris stated that he was thankful the Cabinet for Health and Family Services deferred consideration of 900 KAR 5:020, relating to the state health plan. He had just been informed about an amendment possibility the prior evening and needed additional time to consider substantive changes to administrative regulations. He believed that deferring that administrative regulation specifically and any administrative regulations in general that had last-minute substantive changes was the best course of action.

Co-Chair Bell stated that he echoed what Co-Chair Harris had stated and that substantive amendments made after the public hearing and public comment period caused myriad problems if made after the Statement of Consideration was filed or if a Statement of Consideration was not applicable. He, too, was thankful for the deferral of 900 KAR 5:020 and the selenium administrative regulation (401 KAR 10:031) from the prior month's meeting in order to give the public a chance to have input into the process and to comment on the proposed changes.

Representative Lee reiterated Co-Chair Bell's statement that substantive amendments made at the Subcommittee meeting caused problems and added that, if substantive amendments were made at the Subcommittee meeting and if there was protest from a member of the public, the Subcommittee would request the agency to defer in order to address stakeholder concerns.

Senator Bowen congratulated Co-Chair Harris on successfully chairing his first Administrative Regulation Review Subcommittee meeting.

**The Subcommittee adjourned at 9:35 a.m. until April 9, 2013 at  
1 p.m.**

**VOLUME 39, NUMBER 10 – APRIL 1, 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.

**HOUSE STANDING COMMITTEE ON JUDICIARY**  
**Meeting of March 4, 2013**

The following administrative regulations were available for consideration and placed on the agenda of House Standing Committee on Judiciary for its meeting of March 4, 2013, having been referred to the Committee on February 6, 2013, pursuant to KRS 13A.290(6):

201 KAR 9:081. Disciplinary proceedings.  
201 KAR 9:200. National Practitioner Data Bank reports.  
201 KAR 9:210. Criminal background checks required for all new applicants.  
201 KAR 9:220. Restriction upon dispensing of Schedule II controlled substances and Schedule III controlled substances containing Hydrocodone.  
201 KAR 9:230. Required registration in the KASPER system; legal requirements for prescribing controlled substances in the Commonwealth of Kentucky; enforcement.  
201 KAR 9:240. Emergency orders and hearings; appeals and other proceedings.  
201 KAR 9:250. Registration and oversight of pain management facilities.  
201 KAR 9:260. Professional standards for prescribing and dispensing controlled substances.  
201 KAR 9:310. Continuing medical education.  
902 KAR 20:420. Pain management facilities.  
902 KAR 55:110. Monitoring system for prescription controlled substances.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

201 KAR 9:081. Disciplinary proceedings.  
201 KAR 9:260. Professional standards for prescribing and dispensing controlled substances.  
902 KAR 20:420. Pain management facilities.  
902 KAR 55:110. Monitoring system for prescription controlled substances.

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 4, 2013 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**SENATE STANDING COMMITTEE ON JUDICIARY**  
**Meeting of March 4, 2013**

The following administrative regulations were available for consideration and placed on the agenda of Senate Standing Committee on Judiciary for its meeting of March 4, 2013, having been referred to the Committee on February 6, 2013, pursuant to KRS 13A.290(6):

201 KAR 9:081. Disciplinary proceedings.  
201 KAR 9:200. National Practitioner Data Bank reports.  
201 KAR 9:210. Criminal background checks required for all new applicants.  
201 KAR 9:220. Restriction upon dispensing of Schedule II controlled substances and Schedule III controlled substances containing Hydrocodone.  
201 KAR 9:230. Required registration in the KASPER system; legal requirements for prescribing controlled substances in the Commonwealth of Kentucky; enforcement.  
201 KAR 9:240. Emergency orders and hearings; appeals and other proceedings.  
201 KAR 9:250. Registration and oversight of pain management facilities.  
201 KAR 9:260. Professional standards for prescribing and dispensing controlled substances.  
201 KAR 9:310. Continuing medical education.  
902 KAR 20:420. Pain management facilities.  
902 KAR 55:110. Monitoring system for prescription controlled substances.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

201 KAR 9:081. Disciplinary proceedings.  
201 KAR 9:260. Professional standards for prescribing and dispensing controlled substances.  
902 KAR 20:420. Pain management facilities.  
902 KAR 55:110. Monitoring system for prescription controlled substances.

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 4, 2013 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.





## CUMULATIVE SUPPLEMENT

### Locator Index - Effective Dates

J - 2

The Locator Index lists all administrative regulations published in VOLUME 39 of the *Administrative Register of Kentucky* from July 2012 through June 2013. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 38 are those administrative regulations that were originally published in VOLUME 38 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the 2012 *Kentucky Administrative Regulations Service* was published.

### KRS Index

J - 11

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 39 of the *Administrative Register of Kentucky*.

### Technical Amendment Index

J - 23

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

J - 24

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 10 – APRIL 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 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

# VOLUME 39, NUMBER 10 – APRIL 1, 2013

803 KAR 2:309			811 KAR 1:095		
Amended	2021	8-31-12	Amended	2077	(See 39 Ky.R.)
803 KAR 2:313			811 KAR 2:093	2119	8-31-12
Amended	2023	(See 39 Ky.R.)	811 KAR 2:096		
803 KAR 2:316			Amended	2084	(See 39 Ky.R.)
Amended	2025	8-31-12	811 KAR 2:100		
803 KAR 2:317			Amended	2093	(See 39 Ky.R.)
Amended	2027	8-31-12	815 KAR 6:010		
803 KAR 2:319			Amended	1498	
Amended	2029	8-31-12	Amended	1866	
803 KAR 2:320			As Amended	1966	7-6-12
Amended	2031	(See 39 Ky.R.)	815 KAR 6:070	1521	
803 KAR 2:403			As Amended	1968	
Amended	2037	8-31-12	Withdrawn		6-8-12
803 KAR 2:405			815 KAR 20:100		
Amended	2040	(See 39 Ky.R.)	Amended	2099	8-31-12
803 KAR 2:407			900 KAR 7:030		
Amended	2042	(See 39 Ky.R.)	Amended	2102	8-31-12
803 KAR 2:425			900 KAR 9:010	2121	(See 39 Ky.R.)
Amended	2044	(See 39 Ky.R.)	921 KAR 2:015		
803 KAR 2:500			Amended	1501	
Amended	2046	8-31-12	As Amended	1969	6-20-12
804 KAR 4:370			921 KAR 3:035		
Amended	2049	8-31-12	Amended	1804	6-20-12
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			

## SYMBOL KEY:

\* Statement of Consideration not filed by deadline

\*\* 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	Expired		1-21-13
Replaced	813	1-4-13	201 KAR 9:001E	401	7-20-12
103 KAR 3:040	1862	1-15-13	Expired		2-16-13
103 KAR 3:060E	942	9-27-12	201 KAR 9:081E	402	7-20-12
Expires		3-26-12	Expired		1-16-13
103 KAR 5:220	730	9-4-12	201 KAR 9:200E	406	7-20-12
Replaced	1653	3-8-13	Expired		1-16-13
103 KAR 31:170E		(See 38 Ky.R.)	201 KAR 9:210E	408	7-20-12
Replaced	458	10-5-12	Expired		1-16-13
105 KAR 1:400E	4	5-30-12	201 KAR 9:220E	409	7-20-12
Replaced	750	10-24-12	Expired		2-16-13
201 KAR 2:020E	378	7-20-12	201 KAR 9:230E	410	7-20-12
Expired		1-16-13	Expired		1-16-13
201 KAR 2:030E	379	7-20-12	201 KAR 9:240E	411	7-20-12
Expired		1-16-13	Expired		1-16-13
201 KAR 2:050E	381	7-20-12	201 KAR 9:250E	414	7-20-12
Expired		1-16-13	Expired		1-16-13
201 KAR 2:061E	383	7-20-12	201 KAR 9:260E	418	7-20-12
Expired		1-16-13	Expired		2-16-13
201 KAR 2:205E	385	7-20-12	201 KAR 9:310E	423	7-20-12
Expired		1-16-13	Expired		1-16-13
201 KAR 2:350E	386	7-20-12	201 KAR 20:056E	426	7-20-12
Expired		1-16-13	Expired		1-16-13
201 KAR 5:010E	388	7-20-12	201 KAR 20:057E	429	7-20-12
Expired		1-16-13	Expired		2-16-13
201 KAR 5:030E	390	7-20-12	201 KAR 20:161E	431	7-20-12
Expired		1-16-13	Expired		1-16-13
201 KAR 5:130E	392	7-20-12	201 KAR 20:215E	434	7-20-12
Expired		1-16-13	Expired		1-16-13
201 KAR 8:532E	394	7-20-12	201 KAR 25:011E	436	7-20-12
Expired		1-16-13	Expired		1-16-13
201 KAR 8:540E	398	7-25-12	201 KAR 25:021E	438	7-20-12
			Expired		1-16-13
			201 KAR 25:031E	439	7-20-12
			Expired		1-16-13
			201 KAR 25:051E	441	7-20-12
			Expired		1-16-13
			201 KAR 25:090E	444	7-20-12

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
Expired		1-16-13	As Amended	946	12-7-12
301 KAR 2:195E	1574	12-28-12	101 KAR 2:210		
301 KAR 2:221E	1099	10-31-12	Amended	813	1-4-13
Replaced	1302	3-8-13	102 KAR 1:070		
301 KAR 2:222E	1101	10-31-12	Amended	1899	
Replaced	1684	3-8-13	102 KAR 1:225		
301 KAR 2:224E	1105	10-31-12	Amended	1050	
Replaced	1308	3-8-13	As Amended	1371	2-1-13
301 KAR 2:225E	773	8-27-12	102 KAR 1:230		
Replaced	838	1-4-13	Amended	1749	
405 KAR 10:015E		(See 38 Ky.R.)	As Amended	1995	
Replaced	467	9-6-12	102 KAR 1:310		
502 KAR 10:120E	8	5-31-12	Amended	1282	
Replaced	478	10-2-12	As Amended	1651	3-8-13
900 KAR 6:075E	736	8-23-12	102 KAR 1:320		
Replaced	1695	3-8-13	Amended	1901	
900 KAR 7:030E	1580	12-27-12	102 KAR 1:340	1342	
902 KAR 20:420E	446	7-20-12	As Amended	1652	3-8-13
Expired		2-16-13	102 KAR 1:350	1964	
902 KAR 55:015E	1584	12-19-12	103 KAR 3:010		
902 KAR 55:110E	452	7-20-12	Amended	1904	
Expired		2-16-13	103 KAR 3:030		
906 KAR 1:160E	182	7-13-12	Amended	1910	
Replaced	335	10-17-12	103 KAR 3:040		
907 KAR 1:055E	1987	3-1-13	Amended	1920	
907 KAR 1:056E(r)	1993	3-1-13	103 KAR 5:220	916	
907 KAR 1:711E	1587	12-21-12	Amended	1461	
907 KAR 9:005E	739	9-4-12	As Amended	1653	3-8-13
Replaced	1697	3-8-13	103 KAR 31:170		(See 38 Ky.R.)
907 KAR 9:010E	746	9-4-12	As Amended	458	10-5-12
Replaced	1704	3-8-13	105 KAR 1:140		
907 KAR 14:005E	184	6-22-12	Amended	1484	
Replaced	1168	1-4-13	As Amended	1872	
907 KAR 17:005E	1589	12-21-12	105 KAR 1:400		
907 KAR 17:010E	1610	12-21-12	Amended	68	
907 KAR 17:015E	1620	12-21-12	As Amended	750	10-24-12
907 KAR 17:020E	1625	12-21-12	105 KAR 1:420		
907 KAR 17:025E	1630	12-21-12	Amended	72	
907 KAR 17:030E	1635	12-21-12	As Amended	753	10-24-12
921 KAR 2:015E	1639	12-21-12	105 KAR 1:430		
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>			Amended	74	
11 KAR 3:100		(See 38 Ky.R.)	As Amended	753	10-24-12
As Amended	187	8-31-12	106 KAR 2:030		(See 38 Ky.R.)
11 KAR 4:080			As Amended	199	8-21-12
Amended	1748		200 KAR 14:011		
11 KAR 8:030			Amended	814	
Amended	1271		As Amended	1108	1-4-13
Withdrawn		1-8-13	200 KAR 14:081		
13 KAR 1:020			Amended	817	
Amended	1043		As Amended	1110	1-4-13
As Amended	1365	2-1-13	200 KAR 14:091		
16 KAR 2:120			Amended	820	
Amended	66		As Amended	1111	1-4-13
As Amended	456	9-10-12	201 KAR 2:020		
16 KAR 3:010			Amended	501	2-1-13
Amended	497		201 KAR 2:030		
As Amended	944	11-19-12	Amended	502	
16 KAR 6:010			As Amended	1371	2-1-13
Amended	1274		201 KAR 2:040		
As Amended	1646	3-8-13	Amended	1051	
16 KAR 6:030			As Amended	1372	2-1-13
Amended	499		201 KAR 2:050		
As Amended	945	11-19-12	Amended	504	2-1-13
16 KAR 8:030			201 KAR 2:061		
Amended	1279		Amended	506	
As Amended	1649	3-8-13	As Amended	1374	2-1-13
17 KAR 3:010			201 KAR 2:074		
Amended	1897		Amended	1753	
17 KAR 3:040	1963		201 KAR 2:205		
40 KAR 2:330	350		Amended	508	2-1-13
Amended	780		201 KAR 2:340	172	
			As Amended	458	9-19-12

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
201 KAR 2:350	655		Amended	2046	
As Amended	1375	2-1-13	201 KAR 20:161		
201 KAR 5:010			Amended	538	2-1-13
Amended	509		201 KAR 20:215		
As Amended	1376	2-1-13	Amended	540	2-1-13
201 KAR 5:030			201 KAR 20:220		
Amended	511	2-1-13	Amended	1756	
201 KAR 5:130	656	2-1-13	As Amended	2011	
201 KAR 8:520			201 KAR 20:230		
Amended	512		Amended	257	10-17-12
As Amended	1377	2-1-13	201 KAR 20:370		
201 KAR 8:532			Amended	258	10-17-12
Amended	514		201 KAR 20:381(r)	1820	
As Amended	1378	2-1-13	201 KAR 20:411		
201 KAR 8:540			Amended	259	10-17-12
Amended	519		201 KAR 20:400		
As Amended	1381	2-1-13	Amended	2047	
201 KAR 8:562		(See 38 Ky.R.)	201 KAR 20:450		(See 38 Ky.R.)
As Amended	199	8-15-12	As Amended	203	8-15-12
201 KAR 9:001	658		201 KAR 20:500		
Amended	1172		Amended	2049	
As Amended	1655		201 KAR 22:001		
Withdrawn		3-4-13	Amended	76	
201 KAR 9:081			Withdrawn		8-16-12
Amended	521		Amended	826	12-11-12
As Amended	1655	3-4-13	201 KAR 22:020		
As Amended	1997		Amended	1930	
201 KAR 9:200	660		201 KAR 22:035		
As Amended	1660	3-4-13	Amended	1932	
201 KAR 9:210	661		201 KAR 22:040		
As Amended	1660	3-4-13	Amended	77	9-19-12
201 KAR 9:220	661		201 KAR 22:045		
As Amended	1660	3-4-13	Amended	79	
201 KAR 9:230	663		As Amended	459	9-19-12
As Amended	1661	3-4-13	Amended	1933	
201 KAR 9:240	664		201 KAR 22:053		
As Amended	1662	3-4-13	Amended	81	
201 KAR 9:250	667		Withdrawn		8-16-12
Amended	1173		Amended	827	
As Amended	1664	3-4-13	As Amended	1113	12-11-12
201 KAR 9:260	671		201 KAR 25:011		
Amended	1177		Amended	543	
As Amended	1668	3-4-13	As Amended	1388	2-1-13
As Amended	2002		201 KAR 25:021		
201 KAR 9:310			Amended	545	
Amended	526		As Amended	1389	2-1-13
As Amended	1676	3-4-13	201 KAR 25:031		
201 KAR 13:040		(See 38 Ky.R.)	Amended	546	2-1-13
As Amended	11	8-6-12	201 KAR 25:051		
201 KAR 14:105			Amended	548	
Amended	821		As Amended	1389	2-1-13
As Amended	1112	1-4-13	201 KAR 25:090	676	
201 KAR 17:090			As Amended	1391	2-1-13
Amended	823		201 KAR 30:030		
As Amended	1678	3-8-13	Amended	83	
201 KAR 17:110	918		As Amended	460	10-5-12
Amended	1463		Amended	1486	
As Amended	1680	3-8-13	As Amended	1873	
201 KAR 18:040			201 KAR 30:050		
Amended	528		Amended	1488	
As Amended	948	12-7-12	As Amended	1875	
201 KAR 18:192			201 KAR 30:070		
Amended	530		Amended	1490	
As Amended	948	12-7-12	As Amended	1876	
201 KAR 20:056			201 KAR 30:110		
Amended	533		Amended	1492	
As Amended	1383	2-1-13	As Amended	1877	
201 KAR 20:057			201 KAR 30:125		
Amended	535		Amended	86	10-5-12
Amended	1185		201 KAR 30:180		
As Amended	1385	2-1-13	Amended	87	
201 KAR 20:059			As Amended	461	10-5-12

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
201 KAR 30:190			Amended	40	
Amended	90		As Amended	754	
As Amended	463	10-5-12	As Amended	952	
Amended	1493		Reprint	1981	10-17-12
As Amended	1877		300 KAR 5:010	1821	
201 KAR 32:035		(See 38 Ky.R.)	301 KAR 1:015		
As Amended	12	8-6-12	Amended	830	1-4-13
201 KAR 33:015			301 KAR 1:146		
Amended	1284		Amended	832	1-4-13
As Amended	1680	3-8-13	301 KAR 1:155		
201 KAR 39:030			Amended	834	1-4-13
Amended	1759		301 KAR 1:410		(See 38 Ky.R.)
As Amended	2012		As Amended	13	7-12-12
201 KAR 39:050			Amended	1944	
Amended	1760		301 KAR 2:030		
As Amended	2013		Amended	551	
201 KAR 42:020			As Amended	965	
Amended	1285		Withdrawn		10-31-12
Withdrawn		1-15-13	301 KAR 2:041		(See 38 Ky.R.)
Amended	1935		As Amended	205	8-2-12
201 KAR 42:035			301 KAR 2:049		(See 38 Ky.R.)
Amended	1287		As Amended	15	7-12-12
Withdrawn		1-15-13	Amended	2061	
Amended	1936		301 KAR 2:081		(See 38 Ky.R.)
201 KAR 42:040			As Amended	18	7-12-12
Amended	1288		301 KAR 2:082		(See 38 Ky.R.)
Withdrawn		1-15-13	As Amended	23	7-12-12
Amended	1938		301 KAR 2:084		(See 38 Ky.R.)
201 KAR 42:070			As Amended	27	7-12-12
Amended	1289		301 KAR 2:122		
Withdrawn		1-31-13	Amended	2064	
Amended	1939		301 KAR 2:132		
201 KAR 42:080			Amended	1764	
Amended	1291		As Amended	2014	
Withdrawn		1-15-13	301 KAR 2:142		
Amended	1941		Amended	1298	3-8-13
201 KAR 43:030			301 KAR 2:178		
Amended	1943		Amended	1769	
201 KAR 43:050			301 KAR 2:185		
As Amended	1681	3-8-13	Amended	1299	3-8-13
201 KAR 43:060	1965		301 KAR 2:195		
201 KAR 43:070	1967		Amended	1776	
201 KAR 43:080	1968		As Amended	2018	
201 KAR 44:090	353		301 KAR 2:221		
As Amended	950		Amended	1302	3-8-13
Amended	1761		301 KAR 2:222		
201 KAR 44:100	354		Amended	1304	
As Amended	951	12-7-12	As Amended	1684	3-8-13
201 KAR 44:110	356		301 KAR 2:224		
As Amended	951	12-7-12	Amended	1308	3-8-13
201 KAR 44:120	357		301 KAR 2:225		
As Amended	952	12-7-12	Amended	838	1-4-13
Amended	1763		301 KAR 2:300		(See 38 Ky.R.)
201 KAR 45:010	920		Amended	53	8-2-12
Withdrawn	*	12-14-12	301 KAR 3:012		
201 KAR 45:020	921		Amended	554	
Withdrawn	*	12-14-12	As Amended	967	12-7-12
201 KAR 45:030	922		301 KAR 3:022		(See 38 Ky.R.)
Withdrawn	*	12-14-12	Amended	56	(See 38 Ky.R.)
201 KAR 45:040	923		As Amended	208	8-2-12
Withdrawn	*	12-14-12	301 KAR 4:070		
201 KAR 45:050	925		Amended	***	8-17-12
202 KAR 7:330			Amended	841	1-4-13
Amended	2050		301 KAR 6:020		
202 KAR 7:520			Amended	1947	
Amended	1293		302 KAR 16:091		
Withdrawn		3-11-13	Amended	94	9-14-12
Amended	2056		302 KAR 27:050		
202 KAR 7:530	1343		Amended	95	
Withdrawn		3-11-13	Withdrawn		8-9-12
202 KAR 7:540	2092		302 KAR 28:020		
202 KAR 7:601		(See 38 Ky.R.)	Amended	100	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
Withdrawn		8-9-12	Amended	135	12-7-12
302 KAR 28:050			405 KAR 5:032		
Amended	102		Amended	1310	
Withdrawn		8-9-12	As Amended	1687	3-8-13
302 KAR 29:020			401 KAR 5:320	2094	
Amended	104		405 KAR 10:015		(See 38 Ky.R.)
Withdrawn		8-9-12	As Amended	467	9-6-12
Amended	556		405 KAR 10:030		(See 38 Ky.R.)
As Amended	968	12-7-12	As Amended	471	9-6-12
302 KAR 29:050			405 KAR 16:020		(See 38 Ky.R.)
Amended	106		As Amended	473	9-6-12
Withdrawn		8-9-12	418 KAR 1:010		
302 KAR 29:060			Amended	844	
Amended	110		As Amended	1393	2-1-13
Withdrawn		8-9-12	418 KAR 1:020		
Amended	558		Amended	846	
As Amended	969	12-7-12	Amended	1196	2-1-13
304 KAR 1:040		(See 38 Ky.R.)	418 KAR 1:030		
As Amended	466	10-5-12	Repealed	926	2-1-13
304 KAR 1:080		(See 38 Ky.R.)	418 KAR 1:031(r)	926	2-1-13
As Amended	467	10-5-12	418 KAR 1:040		
304 KAR 4:070	***		Amended	848	
Withdrawn		8-17-2012	Amended	1198	
306 KAR 1:010			As Amended	1393	2-1-13
Repealed	358	10-17-12	418 KAR 1:050		
306 KAR 1:011(r)	358	10-17-12	Amended	850	
306 KAR 1:020			Amended	1200	
Repealed	358	10-17-12	As Amended	1395	2-1-13
306 KAR 1:030			418 KAR 1:060		
Repealed	358	10-17-12	Amended	852	
306 KAR 1:040			Amended	1201	
Repealed	358	10-17-12	As Amended	1395	2-1-13
306 KAR 1:050			418 KAR 1:070		
Repealed	358	10-17-12	Amended	854	
306 KAR 1:060			As Amended	1397	2-1-13
Repealed	358	10-17-12	500 KAR 5:006(r)	1969	
306 KAR 1:070			501 KAR 6:020		(See 38 Ky.R.)
Repealed	358	10-17-12	As Amended	27	8-6-12
306 KAR 1:090			Amended	1053	
Repealed	358	10-17-12	As Amended	1397	2-1-13
307 KAR 1:005	359		501 KAR 6:070		
As Amended	767	11-2-12	Amended	1949	
307 KAR 4:020			501 KAR 6:040		
Amended	262	11-2-12	Amended	1316	
307 KAR 8:010			As Amended	1692	3-8-13
Repealed	361	11-2-12	501 KAR 6:050		(See 38 Ky.R.)
307 KAR 8:011(r)	361	11-2-12	As Amended	209	
307 KAR 9:010			501 KAR 6:130		
Amended	264	11-2-12	Amended	144	
401 KAR 5:055			As Amended	476	10-5-12
Amended	265		501 KAR 6:140		
Amended	990	3-8-13	Amended	146	
401 KAR 5:060			As Amended	477	10-5-12
Amended	268		501 KAR 6:230		
Amended	992	3-8-13	Amended	270	
401 KAR 10:001			As Amended	768	11-2-12
Amended	561		501 KAR 6:260		(See 38 Ky.R.)
401 KAR 10:026			As Amended	211	8-31-12
Amended	564		501 KAR 6:270		
401 KAR 10:030			Amended	272	
Amended	584		As Amended	768	11-2-12
401 KAR 10:031			501 KAR 6:280		(See 38 Ky.R.)
Amended	596		As Amended	212	8-31-12
Amended	1188		501 KAR 11:011(r)		
401 KAR 51:001			Repealed	362	11-2-12
Amended	113		501 KAR 11:011(r)	362	11-2-12
Amended	783		501 KAR 16:290		
As Amended	971	12-7-12	Amended	603	2-1-13
401 KAR 51:017			501 KAR 16:310		
Amended	124		Amended	606	2-1-13
As Amended	794	12-7-12	501 KAR 16:330		
401 KAR 51:052			Amended	609	



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
Amended	1204	2-1-13	As Amended	1404	2-1-13
502 KAR 10:120			803 KAR 2:313		(See 38 Ky.R.)
Amended	148		As Amended	212	8-31-12
As Amended	478	10-2-12	803 KAR 2:320		(See 38 Ky.R.)
503 KAR 1:170			As Amended	212	8-31-12
Amended	2066		803 KAR 2:405		(See 38 Ky.R.)
505 KAR 1:160			As Amended	217	8-31-12
Amended	1952		803 KAR 2:407		(See 38 Ky.R.)
601 KAR 1:146			As Amended	217	8-31-12
Amended	1497		803 KAR 2:425		(See 38 Ky.R.)
As Amended	1880		As Amended	217	8-31-12
601 KAR 9:090			804 KAR 9:040		
Amended	274	11-2-12	Amended	1958	
601 KAR 9:135			804 KAR 9:050		
Amended	1953		Amended	1961	
601 KAR 13:110			806 KAR 3:190		(See 38 Ky.R.)
Amended	1055		As Amended	36	8-6-12
As Amended	1398	2-1-13	806 KAR 5:050		
602 KAR 50:030			Repealed	1085	2-1-13
Amended	1058		806 KAR 5:051(r)	1085	2-1-13
As Amended	1881		806 KAR 7:110	1086	
602 KAR 50:050			As Amended	1405	2-1-13
Amended	1059		806 KAR 9:210		
As Amended	1882		Repealed	682	12-7-12
603 KAR 5:050			806 KAR 9:211(r)	682	12-7-12
Amended	1318		806 KAR 10:060	683	
701 KAR 5:110			As Amended	981	12-7-12
Amended	1319		806 KAR 17:540		
As Amended	1693	3-8-13	Amended	615	12-7-12
701 KAR 5:140			806 KAR 17:545		
Amended	1889		Amended	617	12-7-12
As Amended	2023		806 KAR 17:555		
702 KAR 1:160		(See 38 Ky.R.)	Amended	620	12-7-12
As Amended	28	7-13-12	807 KAR 5:001		
702 KAR 3:130			Amended	275	
Amended	1321		Amended	995	
Amended	1891		As Amended	1117	1-4-13
702 KAR 4:160			807 KAR 5:006		
Amended	2073		Amended	295	
703 KAR 5:002		(See 38 Ky.R.)	Amended	1015	
As Amended	30	7-13-12	As Amended	1136	1-4-13
703 KAR 5:070		(See 38 Ky.R.)	807 KAR 5:011		
Amended	59		Amended	312	
As Amended	480		Amended	1032	
Withdrawn		10-4-12	As Amended	1152	1-4-13
703 KAR 5:121r	2098		807 KAR 5:076		
703 KAR 5:140		(See 38 Ky.R.)	Amended	320	
As Amended	31	7-13-12	As Amended	1159	1-4-13
703 KAR 5:225		(See 38 Ky.R.)	810 KAR 1:018		(See 38 Ky.R.)
Amended	60		As Amended	218	8-30-12
As Amended	480	9-10-12	810 KAR 1:028		(See 38 Ky.R.)
703 KAR 5:240		(See 38 Ky.R.)	As Amended	224	8-31-12
As Amended	32	7-13-12	811 KAR 1:090		(See 38 Ky.R.)
703 KAR 5:250	2099		As Amended	230	8-30-12
704 KAR 3:095	1541		811 KAR 1:095		(See 38 Ky.R.)
Amended	1893		As Amended	237	8-31-12
As Amended	2025		811 KAR 2:096		(See 38 Ky.R.)
704 KAR 3:305			As Amended	243	8-31-12
Amended	612		811 KAR 2:100		(See 38 Ky.R.)
As Amended	1115	1-4-13	As Amended	251	8-31-12
704 KAR 3:340		(See 38 Ky.R.)	815 KAR 4:027	1970	
As Amended	34	7-13-12	815 KAR 4:030		
704 KAR 5:070		(See 38 Ky.R.)	Amended	622	
As Amended	35	7-13-12	As Amended	1162	1-4-13
704 KAR 7:160	678		815 KAR 4:040		
Amended	1207		Amended	625	
As Amended	1400	2-1-13	As Amended	1164	1-4-13
704 KAR 19:002	1082		815 KAR 4:060		
Amended	1465		Amended	627	1-4-13
As Amended	1694	3-8-13	815 KAR 7:070		
789 KAR 1:010			Amended	1499	
Amended	1061		As Amended	1882	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
815 KAR 7:110			902 KAR 20:420	684	
Amended	1503		Amended	1212	
As Amended	1886		As Amended	1409	3-4-13
815 KAR 7:120			As Amended	2027	
Amended	1506		902 KAR 30:001		
815 KAR 8:060			Amended	1510	
Amended	1064		902 KAR 30:110		
As Amended	1407	2-1-13	Amended	1513	
815 KAR 10:060			Withdrawn	*	3-15-13
Amended	1066	3-8-13	902 KAR 30:120		
815 KAR 20:020			Amended	1517	
Amended	151		Withdrawn	*	3-15-13
As Amended	485	10-5-12	902 KAR 30:130		
815 KAR 20:034			Amended	1520	
Amended	325	11-2-12	Reprint	1568	
815 KAR 20:191			Withdrawn	*	3-15-13
Amended	155	10-5-12	902 KAR 30:150		
815 KAR 20:195			Amended	1524	
Amended	1509		Withdrawn	*	3-15-13
As Amended	1887		902 KAR 30:160		
815 KAR 22:010			Amended	1528	
As Amended	1165	1-4-13	Withdrawn	*	3-15-13
815 KAR 35:020			902 KAR 30:180		
As Amended	769	11-2-12	Amended	1530	
815 KAR 35:060			Withdrawn	*	3-15-13
Amended	162		902 KAR 30:200		
As Amended	488	10-5-12	Amended	1534	
Amended	1782		Withdrawn	*	3-15-13
As Amended	2026		902 KAR 55:015		
830 KAR 1:010			Amended	1789	
As Amended	1408	2-1-13	As Amended	2032	
900 KAR 5:020			902 KAR 55:110		
Amended	1322		Amended	629	
Amended	1895		Amended	1218	
900 KAR 6:030			As Amended	1413	
Amended	856	12-11-12	As Amended	2033	
900 KAR 6:060			906 KAR 1:160		
Amended	327		Amended	335	
Amended	805	11-9-12	As Amended	632	
900 KAR 6:075			Amended	1221	
Amended	857		907 KAR 1:055		
Amended	1467		Amended	2084	
As Amended	1695	3-8-13	907 KAR 1:145		
900 KAR 6:085			Amended	632	
Amended	329		Amended	1221	
As Amended	982	11-9-12	As Amended	1416	2-1-13
900 KAR 6:090			907 KAR 1:155		
Amended	331		Amended	646	
Amended	807		Amended	1235	
As Amended	982	11-9-12	As Amended	1429	2-1-13
900 KAR 6:125			907 KAR 1:418		
Amended	860		Repealed	1993	3-1-13
As Amended	1166	12-11-12	907 KAR 1:427		
900 KAR 6:130			Repealed	1993	3-1-13
Amended	811		907 KAR 1:705		
As Amended	985	11-9-12	Repealed	1587	12-21-12
900 KAR 7:030			907 KAR 1:710		
Amended	1785		Repealed	1587	12-21-12
900 KAR 9:010		(See 38 Ky.R.)	907 KAR 3:170		
As Amended	770	10-17-12	Amended	1070	
902 KAR 18:010			Amended	1738	
Withdrawn	1543	3-15-13	As Amended	2036	
902 KAR 18:020			907 KAR 9:005		
Withdrawn	1545	3-15-13	Amended	863	
902 KAR 18:030			Amended	1470	
Withdrawn	1547	3-15-13	As Amended	1697	3-8-13
902 KAR 18:060			907 KAR 9:010		
Withdrawn	1548	3-15-13	Amended	869	
902 KAR 18:070			Amended	1479	
Withdrawn	1551	3-15-13	As Amended	1704	3-8-13
902 KAR 18:080			907 KAR 12:010		
Withdrawn	1552	3-15-13	Amended	690	
	*			1239	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
As Amended	1431	2-1-13	-----		
907 KAR 12:020	716		SYMBOL KEY:		
Amended	1266		* Statement of Consideration not filed by deadline		
As Amended	1457	2-1-13	** Withdrawn, not in effect within 1 year of publication		
907 KAR 14:005	367		*** Withdrawn before being printed in Register		
Amended	1040		(r) Repealer regulation: KRS 13A.310-on the effective date		
As Amended	1168	1-4-13	of an administrative regulation that repeals another, the		
907 KAR 17:005			regulations compiler shall delete the repealed administrative		
Amended	1792		regulation and the repealing administrative regulation.		
907 KAR 17:010	1822				
907 KAR 17:015	1831				
907 KAR 17:020	1836				
907 KAR 17:025	1841				
907 KAR 17:030	1846				
908 KAR 1:400	1348				
As Amended	1706	3-8-13			
908 KAR 3:050					
Amended	873				
As Amended	1169	2-1-13			
910 KAR 1:190					
Amended	164				
As Amended	490	9-19-12			
910 KAR 1:240					
Amended	649				
As Amended	986	11-9-12			
910 KAR 1:260					
Amended	875				
As Amended	1169	12-11-12			
910 KAR 1:240					
921 KAR 1:001					
Amended	337				
As Amended	772	10-17-12			
921 KAR 1:380					
Amended	339				
As Amended	774	10-17-12			
921 KAR 1:400					
Amended	342	10-17-12			
921 KAR 1:410					
Amended	345				
As Amended	776	10-17-12			
921 KAR 2:015					
Amended	1813				
921 KAR 2:055					
Amended	1324	3-8-13			
921 KAR 2:060					
Amended	1327	3-8-13			
921 KAR 3:030					
Amended	1329	3-8-13			
921 KAR 3:042					
Amended	1331	3-8-13			
921 KAR 3:050					
Amended	1334	3-8-13			
921 KAR 3:060					
Amended	1338	3-8-13			
922 KAR 2:090					
Amended	878				
As Amended	1708	3-8-13			
922 KAR 2:100					
Amended	883				
As Amended	1711	3-8-13			
922 KAR 2:110					
Amended	893				
As Amended	1720	3-8-13			
922 KAR 2:120					
Amended	898				
As Amended	1724	3-8-13			
922 KAR 2:180					
Amended	907				
As Amended	1731	3-8-13			
922 KAR 2:190					
Amended	912				
As Amended	1735	3-8-13			

# KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
12	907 KAR 3:170	61.637	105 KAR 1:140
12.355	201 KAR 22:045	61.645	105 KAR 1:400
13B	201 KAR 20:161	61.675	105 KAR 1:140
	815 KAR 35:060	61.685	105 KAR 1:140
	900 KAR 7:030	61.701	105 KAR 1:420
	902 KAR 18:010	61.702	105 KAR 1:140
	902 KAR 18:020		105 KAR 1:420
	902 KAR 18:030	61.645	105 KAR 1:420
	902 KAR 18:060	61.805-61.850	418 KAR 1:020
	902 KAR 18:070	61.870-61.884	103 KAR 3:010
	902 KAR 18:080		103 KAR 3:030
	910 KAR 1:240		418 KAR 1:020
	910 KAR 1:260		807 KAR 5:001
	921 KAR 2:055	64.012	103 KAR 3:010
	922 KAR 2:090	66.480	702 KAR 3:130
	922 KAR 2:100	67A	815 KAR 7:110
	922 KAR 2:190	67A.620	921 KAR 1:410
13B.010	921 KAR 1:410	67C	815 KAR 7:110
15.055	921 KAR 1:410	78.510 - 78.852	105 KAR 1:430
15.310	503 KAR 1:170	78.545	105 KAR 1:140
15.380	906 KAR 1:160	78.616	105 KAR 1:140
15A.040	500 KAR 5:006	78.625	105 KAR 1:140
15A.065	505 KAR 1:160	78.652	105 KAR 1:140
15A.067	505 KAR 1:160	82.105	815 KAR 7:110
16.505 - 16.652	105 KAR 1:430	83	815 KAR 7:110
16.645	105 KAR 1:140	83A	815 KAR 7:110
17.165	910 KAR 1:240	95.620	921 KAR 1:410
	922 KAR 2:090	95.878	921 KAR 1:410
	922 KAR 2:100	98.2	922 KAR 2:090
	922 KAR 2:110	116.048	921 KAR 3:030
	922 KAR 2:180	124.62	401 KAR 5:055
17.500-17.580	922 KAR 2:090	131.010	103 KAR 3:010
	922 KAR 2:100	131.020	103 KAR 3:010
	922 KAR 2:110		103 KAR 3:030
	922 KAR 2:180	131.030	103 KAR 3:010
18A.030	101 KAR 2:210		103 KAR 3:030
18A.105	105 KAR 1:140	131.041	103 KAR 3:010
18A.225	101 KAR 2:210		103 KAR 3:030
18A.2254	101 KAR 2:210	131.041-131.081	103 KAR 3:040
39	202 KAR 7:330	131.051	103 KAR 3:010
39A.050	202 KAR 7:330		103 KAR 3:040
39A.350- 39A.366	201 KAR 8:532	131.061	103 KAR 3:010
40.320	17 KAR 3:010		103 KAR 3:040
	17 KAR 3:040	131.071	103 KAR 3:040
40.325	17 KAR 3:010	131.081	103 KAR 3:010
	17 KAR 3:040		103 KAR 3:030
41.610	200 KAR 14:081		103 KAR 3:040
	200 KAR 14:091	131.110	103 KAR 3:010
42.014	200 KAR 14:091		103 KAR 3:030
42.470	103 KAR 3:010		103 KAR 3:040
	103 KAR 3:030		601 KAR 9:135
42.500	200 KAR 14:011	131.130	103 KAR 3:010
	200 KAR 14:081		103 KAR 3:030
	200 KAR 14:091		103 KAR 3:040
42.505-42.545	200 KAR 14:091	131.150	103 KAR 3:010
42.520	200 KAR 14:011	131.155	103 KAR 3:010
	200 KAR 14:081		103 KAR 3:030
42.525	200 KAR 14:011		103 KAR 3:040
	200 KAR 14:081	131.170	103 KAR 3:010
45.237	921 KAR 2:055		103 KAR 3:040
45A	702 KAR 3:130	131.180	103 KAR 3:040
	702 KAR 4:160	131.181	103 KAR 3:010
45A.365	601 KAR 13:110		103 KAR 3:030
48.010	401 KAR 51:001	131.183	103 KAR 3:010
58.200	815 KAR 20:191		103 KAR 3:030
61.410	702 KAR 3:130	131.190	103 KAR 3:010
61.510 - 61.705	105 KAR 1:430		103 KAR 3:030
61.546	105 KAR 1:140		103 KAR 3:040
61.552	105 KAR 1:140	131.240	103 KAR 3:010
61.565	105 KAR 1:140	131.250	103 KAR 3:040
61.569	105 KAR 1:140	131.340	103 KAR 3:010

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	103 KAR 3:030	134.390	103 KAR 3:010
	103 KAR 3:040		103 KAR 3:030
	601 KAR 9:135	134.420	103 KAR 3:010
131.400	103 KAR 3:060E		103 KAR 3:030
131.410	103 KAR 3:060E	134.430	103 KAR 3:010
131.420	103 KAR 3:060E		103 KAR 3:030
131.425	103 KAR 3:060E	134.440	103 KAR 3:010
131.430	103 KAR 3:060E		103 KAR 3:030
131.435	103 KAR 3:060E	134.500	103 KAR 3:010
131.440	103 KAR 3:060E		103 KAR 3:030
131.445	103 KAR 3:060E	134.580	103 KAR 3:010
131.500	103 KAR 3:010	134.590	103 KAR 3:010
	103 KAR 3:030		103 KAR 3:030
	103 KAR 3:040	134.800	103 KAR 3:010
131.510	103 KAR 3:010		103 KAR 3:030
	103 KAR 3:030	134.805	103 KAR 3:010
	103 KAR 3:040		103 KAR 3:030
131.530	103 KAR 3:010	134.810	103 KAR 3:010
131.540	103 KAR 3:010		103 KAR 3:030
	103 KAR 3:030	134.815	103 KAR 3:010
	103 KAR 3:040		103 KAR 3:030
131.570	921 KAR 1:410	134.820	103 KAR 3:010
132.010	815 KAR 7:120		103 KAR 3:030
132.020	103 KAR 3:010	134.825	103 KAR 3:010
	103 KAR 3:030		103 KAR 3:030
132.130-132.160	103 KAR 3:010	134.830	103 KAR 3:010
132.130-132.180	103 KAR 3:030		103 KAR 3:030
132.180	103 KAR 3:010	134.490	103 KAR 5:220
132.190	103 KAR 3:010	135.010	103 KAR 3:010
	103 KAR 3:030		103 KAR 3:030
132.200	103 KAR 3:010	135.020	103 KAR 3:010
	103 KAR 3:030		103 KAR 3:030
132.220	103 KAR 3:010	135.050	103 KAR 3:010
132.220-132.270	103 KAR 3:030		103 KAR 3:030
132.227	103 KAR 3:010	136.020	103 KAR 3:010
132.230	103 KAR 3:010		103 KAR 3:030
132.260	103 KAR 3:010	136.050	103 KAR 3:010
132.270	103 KAR 3:010		103 KAR 3:030
132.290	103 KAR 3:010	136.070	103 KAR 3:010
	103 KAR 3:030	136.0704	103 KAR 3:010
132.310	103 KAR 3:010	136.071	103 KAR 3:010
	103 KAR 3:030	136.090	103 KAR 3:010
132.320	103 KAR 3:010	136.100	103 KAR 3:010
	103 KAR 3:030	136.115-136.180	103 KAR 3:010
132.360	103 KAR 3:030		103 KAR 3:030
132.450	103 KAR 3:010	136.1802-136.1806	103 KAR 3:030
	103 KAR 3:030	136.1873	103 KAR 3:010
132.487	103 KAR 3:010		103 KAR 3:030
	103 KAR 3:030	136.188	103 KAR 3:030
132.510	103 KAR 3:010	136.310	103 KAR 3:010
	103 KAR 3:030		103 KAR 3:030
132.820	103 KAR 3:010	136.320	103 KAR 3:010
	103 KAR 3:030		103 KAR 3:030
132.825	103 KAR 3:030	136.330	103 KAR 3:010
132.990	103 KAR 3:010		103 KAR 3:030
	103 KAR 3:030	136.335	103 KAR 3:010
133.045	103 KAR 3:010		103 KAR 3:030
	103 KAR 3:030	136.377	103 KAR 3:010
133.110	103 KAR 3:010		103 KAR 3:030
	103 KAR 3:030	136.392	103 KAR 3:010
133.120	103 KAR 3:010	136.545	103 KAR 3:010
	103 KAR 3:030		103 KAR 3:030
133.130	103 KAR 3:010	136.575	103 KAR 3:010
	103 KAR 3:030		103 KAR 3:030
133.240	103 KAR 3:010	136.600-136.660	103 KAR 3:010
	103 KAR 3:030		103 KAR 3:030
134.015	103 KAR 3:030	137.130	103 KAR 3:010
134.020	103 KAR 3:010		103 KAR 3:030
	103 KAR 3:030	137.160	103 KAR 3:010
134.119	103 KAR 3:030		103 KAR 3:030
134.121	103 KAR 3:030	138.448	103 KAR 3:010
134.122	103 KAR 3:030	138.462	601 KAR 1:146
134.128	103 KAR 3:030	138.463	601 KAR 1:146
134.129	103 KAR 3:030	138.4631	601 KAR 1:146

KRS SECTION	REGULATION	KRS SECTION	REGULATION
138.885	103 KAR 3:010	141.428	103 KAR 3:040
139.185	103 KAR 3:010	141.430	103 KAR 3:040
139.200	103 KAR 3:010	141.434	103 KAR 3:040
139.240	103 KAR 3:010	141.436	103 KAR 3:040
139.330	103 KAR 3:010	141.437	103 KAR 3:040
139.390	103 KAR 3:010	141.438	103 KAR 3:040
139.550	103 KAR 3:010	141.985	103 KAR 3:040
141.010	103 KAR 3:040	141.990	103 KAR 3:040
141.0101	103 KAR 3:040	142.010	103 KAR 3:010
141.011	103 KAR 3:040	142.050	103 KAR 3:010
141.016	103 KAR 3:040	142.321	103 KAR 3:010
141.020	103 KAR 3:040	142.327	103 KAR 3:010
141.0202	103 KAR 3:040	142.357	103 KAR 3:010
141.030	103 KAR 3:040	143.030	103 KAR 3:010
141.040	103 KAR 3:040		103 KAR 3:030
	306 KAR 1:011	143.037	103 KAR 3:010
141.050			103 KAR 3:030
141.0401	103 KAR 3:010	143.040	103 KAR 3:010
	103 KAR 3:040		103 KAR 3:030
141.0405	103 KAR 3:040	143.050	103 KAR 3:010
141.041	103 KAR 3:040		103 KAR 3:030
141.042	103 KAR 3:040	143.060	103 KAR 3:010
141.044	103 KAR 3:040		103 KAR 3:030
141.062	103 KAR 3:040	143.085	103 KAR 3:010
141.065	103 KAR 3:040		103 KAR 3:030
141.066	103 KAR 3:040	143.990	103 KAR 3:010
141.067	103 KAR 3:040		103 KAR 3:030
141.068	103 KAR 3:040	143A.010	103 KAR 3:010
141.069	103 KAR 3:040		103 KAR 3:030
141.070	103 KAR 3:040	143A.030	103 KAR 3:010
141.071	103 KAR 3:040		103 KAR 3:030
141.120	103 KAR 3:040	143A.035	103 KAR 3:010
141.121	103 KAR 3:040		103 KAR 3:030
141.160	103 KAR 3:040	143A.037	103 KAR 3:010
141.170	103 KAR 3:040		103 KAR 3:030
141.180	103 KAR 3:040	143A.080	103 KAR 3:010
141.200	103 KAR 3:040		103 KAR 3:030
141.205	103 KAR 3:040	143A.090	103 KAR 3:010
141.206	103 KAR 3:040		103 KAR 3:030
141.207	103 KAR 3:040	143A.100	103 KAR 3:010
141.208	103 KAR 3:040		103 KAR 3:030
141.210	103 KAR 3:010	143A.991	103 KAR 3:010
141.235	103 KAR 3:010		103 KAR 3:030
141.300	103 KAR 3:040	146.200 - 146.360	401 KAR 10:001
141.310	103 KAR 3:040		401 KAR 10:026
141.325	103 KAR 3:040		401 KAR 10:030
141.330	103 KAR 3:040		401 KAR 10:031
141.335	103 KAR 3:040		418 KAR 1:031
141.340	103 KAR 3:010	146.410 - 146.535	401 KAR 10:001
141.347	103 KAR 3:040		401 KAR 10:026
141.370	103 KAR 3:040		401 KAR 10:030
141.381	103 KAR 3:040		401 KAR 10:031
141.382	103 KAR 3:040	146.415	418 KAR 1:010
141.383	103 KAR 3:040	146.550 - 146.570	401 KAR 10:001
141.384	103 KAR 3:040		401 KAR 10:026
141.385	103 KAR 3:040		401 KAR 10:030
141.386	103 KAR 3:040		401 KAR 10:031
141.390	103 KAR 3:040		418 KAR 1:010
141.395	103 KAR 3:040		418 KAR 1:020
141.400	103 KAR 3:040		418 KAR 1:031
141.401	103 KAR 3:040		418 KAR 1:040
141.402	103 KAR 3:040		418 KAR 1:050
141.403	103 KAR 3:040		418 KAR 1:060
141.405	103 KAR 3:040		418 KAR 1:070
141.407	103 KAR 3:040	146.600 - 146.619	401 KAR 10:001
141.412	103 KAR 3:040		401 KAR 10:026
141.415	103 KAR 3:040		401 KAR 10:030
141.418	103 KAR 3:040		401 KAR 10:031
141.420	103 KAR 3:040	146.990	401 KAR 10:001
141.421	103 KAR 3:040		401 KAR 10:026
141.423	103 KAR 3:040		401 KAR 10:030
141.424	103 KAR 3:040		401 KAR 10:031
141.4242	103 KAR 3:040	150.010	301 KAR 1:015
141.4244	103 KAR 3:040		301 KAR 1:146

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	301 KAR 1:155	150.410	301 KAR 2:049
	301 KAR 1:410	150.445	301 KAR 1:146
	301 KAR 2:049		301 KAR 1:155
	301 KAR 2:132		301 KAR 1:410
	301 KAR 2:178	150.450	301 KAR 1:146
	301 KAR 2:185		301 KAR 1:155
	301 KAR 2:195		301 KAR 3:022
	301 KAR 2:221	150.485	301 KAR 3:022
	301 KAR 2:222	150.520	301 KAR 3:022
	301 KAR 2:224	150.525	301 KAR 3:022
	301 KAR 2:300	150.600	301 KAR 2:224
	301 KAR 3:012		301 KAR 3:022
	301 KAR 4:070	150.603	301 KAR 2:225
150.015	301 KAR 2:185		301 KAR 3:022
150.025	301 KAR 1:146	150.620	301 KAR 1:410
	301 KAR 2:221		301 KAR 3:012
	301 KAR 2:224	150.625	301 KAR 1:015
150.092	301 KAR 3:022	150.640	301 KAR 3:012
150.120	301 KAR 2:300		301 KAR 3:022
	301 KAR 1:146	150.660	301 KAR 3:022
150.170	301 KAR 1:155	150.720	301 KAR 3:022
	301 KAR 1:146	150.990	301 KAR 1:015
	301 KAR 1:155		301 KAR 1:146
	301 KAR 1:410		301 KAR 1:155
	301 KAR 2:049		301 KAR 1:410
	301 KAR 2:132		301 KAR 2:049
	301 KAR 2:178		301 KAR 2:122
	301 KAR 2:300		301 KAR 2:132
150.175	301 KAR 4:070		301 KAR 2:142
	301 KAR 1:146		301 KAR 2:132
	301 KAR 1:155		301 KAR 2:178
	301 KAR 1:410		301 KAR 2:185
	301 KAR 2:142		301 KAR 2:221
	301 KAR 2:300		301 KAR 2:222
	301 KAR 3:022		301 KAR 2:224
150.180	301 KAR 2:132		301 KAR 3:012
	301 KAR 2:195		301 KAR 4:070
	301 KAR 3:022	151	922 KAR 2:120
150.183	301 KAR 4:070	151B.127	103 KAR 3:040
	301 KAR 2:195	151B.450	789 KAR 1:010
	301 KAR 3:022	151B.465	789 KAR 1:010
150.090	301 KAR 1:015	154.12-100	307 KAR 1:005
150.195	301 KAR 4:070	154.12-2086	103 KAR 3:040
150.235	301 KAR 1:410	154.20-033	307 KAR 1:005
150.240	301 KAR 3:012		307 KAR 8:011
	301 KAR 3:022		307 KAR 9:010
150.275	301 KAR 3:022	154.20-050	103 KAR 3:040
150.280	301 KAR 3:022	154.22-050	103 KAR 3:010
150.290	301 KAR 2:195	154.22-060	103 KAR 3:010
	301 KAR 3:022		103 KAR 3:040
150.305	301 KAR 2:142	154.22-070	103 KAR 3:010
	301 KAR 2:195	154.23-010	103 KAR 3:010
	301 KAR 2:221	154.23-035	103 KAR 3:040
	301 KAR 2:222	154.24-110	103 KAR 3:010
	301 KAR 2:224		103 KAR 3:040
150.320	301 KAR 2:195	154.24-130	103 KAR 3:010
150.330	301 KAR 2:195	154.25-030	103 KAR 3:040
	301 KAR 2:221	154.26-090	103 KAR 3:010
	301 KAR 2:222		103 KAR 3:040
	301 KAR 2:224	154.28-090	103 KAR 3:010
	301 KAR 2:225		103 KAR 3:040
150.340	301 KAR 2:122	154.31	307 KAR 1:005
	301 KAR 2:178		307 KAR 4:020
	301 KAR 2:221	154.32	307 KAR 8:011
	301 KAR 2:222	154.32-010	103 KAR 3:010
	301 KAR 2:224		103 KAR 3:040
	301 KAR 2:225		307 KAR 1:005
150.360	301 KAR 2:122	154.34-070	307 KAR 9:010
	301 KAR 2:195	154.34-080	103 KAR 3:040
150.370	301 KAR 2:049	154.45-001-154.45-120	306 KAR 1:011
	301 KAR 2:122	154.45-090	103 KAR 3:040
	301 KAR 2:178	154.48-025	103 KAR 3:040
150.399	301 KAR 2:049	155.170	103 KAR 3:010
150.400	301 KAR 2:049		103 KAR 3:040

KRS SECTION	REGULATION	KRS SECTION	REGULATION
156.029	702 KAR 3:130	161.5465	102 KAR 1:350
156.070	704 KAR 19:002	161.547	102 KAR 1:350
156.074	702 KAR 4:160	161.548	102 KAR 1:350
156.076	702 KAR 3:130	161.549	102 KAR 1:350
	702 KAR 4:160	161.560	702 KAR 3:130
156.108	701 KAR 5:140	161.600	102 KAR 1:070
156.160	701 KAR 5:140		102 KAR 1:225
	702 KAR 3:130	161.605	102 KAR 1:070
	704 KAR 3:305	161.611	102 KAR 1:230
	704 KAR 7:160	161.630	102 KAR 1:320
	704 KAR 19:002	161.640	102 KAR 1:070
156.200	704 KAR 3:095	161.655	102 KAR 1:310
	702 KAR 3:130		102 KAR 1:320
156.496	702 KAR 4:160	161.661	102 KAR 1:310
156.670	701 KAR 5:110	161.663	102 KAR 1:310
	702 KAR 4:160	161.700	102 KAR 1:320
157	922 KAR 2:090		921 KAR 1:410
157.390	16 KAR 2:120	161.716	102 KAR 1:225
157.420	702 KAR 4:160	161.1211	16 KAR 2:120
157.450	702 KAR 4:160	161.1221	16 KAR 2:120
157.455	702 KAR 4:160	162.070	702 KAR 4:160
157.650	701 KAR 5:110	164.518	11 KAR 4:080
157.655	701 KAR 5:110	164.744	11 KAR 4:080
157.660	701 KAR 5:110	164.748	11 KAR 4:080
157.665	701 KAR 5:110	164.753	11 KAR 4:080
158.290	702 KAR 3:130	164.7535	11 KAR 4:080
158.444	704 KAR 7:160	164.769	11 KAR 4:080
158.645	703 KAR 5:225	164.772	201 KAR 22:020
	704 KAR 3:305		201 KAR 22:040
158.782	703 KAR 5:121		815 KAR 35:060
	703 KAR 5:250	164.780	11 KAR 4:080
158.805	703 KAR 5:121	164.785	11 KAR 4:080
158.6451	703 KAR 5:070	164.7890	11 KAR 4:080
	703 KAR 5:121	164.945	13 KAR 1:020
	703 KAR 5:225	164.946	13 KAR 1:020
	704 KAR 3:305	164.947	13 KAR 1:020
158.6453	703 KAR 5:070	164.992	13 KAR 1:020
	703 KAR 5:121	165A.320	13 KAR 1:020
	703 KAR 5:225	171.830-171.849	102 KAR 1:230
	703 KAR 5:250	176.430	401 KAR 10:030
158.6455	703 KAR 5:070	183.861	602 KAR 50:030
	703 KAR 5:121	183.865	602 KAR 50:030
	703 KAR 5:225	183.867	602 KAR 50:030
	703 KAR 5:250		602 KAR 50:050
160	702 KAR 3:130	183.868	602 KAR 50:030
160.107	701 KAR 5:140	183.870	602 KAR 50:030
160.160	701 KAR 5:110	186	922 KAR 2:120
	702 KAR 4:160	186.018	601 KAR 13:110
160.346	703 KAR 5:121	186.020	601 KAR 9:135
	703 KAR 5:250		922 KAR 2:100
160.380	704 KAR 19:002	186.040	601 KAR 9:135
160.476	702 KAR 4:160	186.050	601 KAR 9:135
160.613-160.617	103 KAR 3:010	186.051	601 KAR 9:135
160.6154	103 KAR 3:010	186.180	601 KAR 9:135
161.020	16 KAR 2:120	186.240	601 KAR 9:135
	16 KAR 3:010	186.410	601 KAR 13:110
	16 KAR 6:030	186.535	601 KAR 13:110
161.027	16 KAR 6:030	186.570	921 KAR 1:410
161.028	16 KAR 2:120	186.574	601 KAR 13:110
	16 KAR 3:010	186A.115	601 KAR 9:090
161.030	16 KAR 2:120	186A.500-550	601 KAR 9:090
	16 KAR 3:010	189.010-210	601 KAR 9:090
	16 KAR 6:030	189.125	922 KAR 2:100
161.100	16 KAR 2:120		922 KAR 2:120
161.220	102 KAR 1:320	189.337	603 KAR 5:050
	102 KAR 1:340	189A.010	601 KAR 13:110
	102 KAR 1:350	190.090	806 KAR 5:051
161.470	102 KAR 1:225	194A.025	907 KAR 17:005
161.480	102 KAR 1:320		907 KAR 17:010
161.507	102 KAR 1:350		907 KAR 17:015
161.515	102 KAR 1:350		907 KAR 17:020
161.520	102 KAR 1:310		907 KAR 17:025
161.540	702 KAR 3:130		907 KAR 17:030
161.545	102 KAR 1:350	194A.050	902 KAR 18:010



KRS SECTION	REGULATION	KRS SECTION	REGULATION
	902 KAR 18:020	198B.672	815 KAR 8:060
	902 KAR 18:030	198B.684	815 KAR 8:060
	902 KAR 18:060	198B.990	815 KAR 7:120
	902 KAR 18:070	198B.4003	815 KAR 4:030
	902 KAR 18:080		815 KAR 4:040
	908 KAR 1:400	198B.4009	815 KAR 4:030
	921 KAR 1:001		815 KAR 4:040
	922 KAR 2:100		815 KAR 4:060
194A.060	907 KAR 3:170	198B.4011	815 KAR 4:030
	910 KAR 1:190		815 KAR 4:060
	910 KAR 1:240	198B.4013	815 KAR 4:040
194A.070	908 KAR 1:400		815 KAR 4:060
194A.125	907 KAR 3:170	198B.4023	815 KAR 4:030
194A.505	902 KAR 18:010		815 KAR 4:040
	902 KAR 18:020		815 KAR 4:060
	902 KAR 18:030	198B.4025	815 KAR 4:030
	902 KAR 18:060		815 KAR 4:040
	902 KAR 18:070		815 KAR 4:060
	902 KAR 18:080	198B.4027	815 KAR 4:030
194A.700-729	910 KAR 1:240	198B.4033	815 KAR 4:030
194A.990	902 KAR 18:010	198B.6401	815 KAR 22:010
	902 KAR 18:020	198B.6405	815 KAR 22:010
	902 KAR 18:030	198B.6409	815 KAR 22:010
	902 KAR 18:060	198B.6411	815 KAR 22:010
	902 KAR 18:070	198B.6415	815 KAR 22:010
	902 KAR 18:080	198B.6417	815 KAR 22:010
196	501 KAR 6:020	199.011	910 KAR 1:260
	501 KAR 6:040		922 KAR 2:090
	501 KAR 6:070		922 KAR 2:100
	501 KAR 6:130		922 KAR 2:110
	501 KAR 6:140		922 KAR 2:180
	501 KAR 6:230	199.892	922 KAR 2:090
	501 KAR 6:270	199.894	922 KAR 2:090
	501 KAR 6:999		922 KAR 2:100
196.030	501 KAR 16:290		922 KAR 2:110
	501 KAR 16:310		922 KAR 2:120
	501 KAR 16:330	199.895	922 KAR 2:090
196.070	501 KAR 16:290		922 KAR 2:100
	501 KAR 16:310	199.896	922 KAR 2:090
	501 KAR 16:330		922 KAR 2:100
196.180	501 KAR 16:290		922 KAR 2:110
	501 KAR 16:310		922 KAR 2:120
	501 KAR 16:330		922 KAR 2:180
197	501 KAR 6:020		922 KAR 2:190
	501 KAR 6:040	199.897	922 KAR 2:100
	501 KAR 6:070		922 KAR 2:110
	501 KAR 6:130	199.898	922 KAR 2:090
	501 KAR 6:140		922 KAR 2:100
	501 KAR 6:230		922 KAR 2:110
	501 KAR 6:270		922 KAR 2:120
	501 KAR 6:999		922 KAR 2:180
198B.010	815 KAR 7:120	199.990	922 KAR 2:190
198B.030	815 KAR 4:060	199.8982	922 KAR 2:100
198B.040	815 KAR 7:070		922 KAR 2:180
	815 KAR 7:110	199.8994	922 KAR 2:180
	815 KAR 7:120	200.080-120	505 KAR 1:160
198B.050	815 KAR 7:070	200.650 - 200.676	902 KAR 30:001
	815 KAR 7:110	200.654	902 KAR 30:120
	815 KAR 7:120	200.656	902 KAR 30:160
	815 KAR 20:195	200.660	902 KAR 30:130
198B.060	815 KAR 7:070	200.662	902 KAR 30:110
	815 KAR 7:110	200.664	902 KAR 30:110
	815 KAR 7:120		902 KAR 30:130
198B.070	815 KAR 7:110	200.666	902 KAR 30:150
198B.080	815 KAR 7:120	200.668	902 KAR 30:110
198B.090	815 KAR 7:070		902 KAR 30:120
198B.095	815 KAR 7:070	200.670	902 KAR 30:110
198B.110	815 KAR 7:120	200.672	902 KAR 30:180
	815 KAR 10:060		902 KAR 30:200
198B.260	815 KAR 7:120	205.170	921 KAR 2:060
198B.490	815 KAR 4:027	205.201	910 KAR 1:190
198B.658	815 KAR 8:060	205.203	910 KAR 1:190
198B.660	815 KAR 8:060	205.211	921 KAR 2:055
198B.664	815 KAR 8:060	205.231	921 KAR 2:055

KRS SECTION	REGULATION	KRS SECTION	REGULATION
205.237	921 KAR 2:055		900 KAR 6:130
205.455	910 KAR 1:190	216B.040	900 KAR 6:125
	910 KAR 1:260		900 KAR 6:130
205.460	910 KAR 1:190	216B.061	900 KAR 6:085
205.465	910 KAR 1:190	216B.062	900 KAR 6:060
205.510	907 KAR 3:170	216B.085	900 KAR 6:090
205.520	907 KAR 1:145	216B.086	900 KAR 6:090
	907 KAR 1:155	216B.090	900 KAR 6:090
	907 KAR 9:005	216B.095	900 KAR 6:075
	907 KAR 9:010		900 KAR 6:090
	907 KAR 12:010		900 KAR 6:125
	907 KAR 12:020	216B.105	907 KAR 1:055
205.559	907 KAR 3:170	216B.130	900 KAR 6:030
205.560	907 KAR 1:055		907 KAR 1:055
	907 KAR 3:170	216B.400	201 KAR 20:411
	907 KAR 14:005	216B.450	907 KAR 9:005
205.594	921 KAR 1:410		907 KAR 9:010
205.595	921 KAR 1:410	216B.455	900 KAR 6:030
205.705	921 KAR 1:380		900 KAR 6:075
205.710-205.800	921 KAR 1:001		907 KAR 9:005
	921 KAR 1:380		907 KAR 9:010
	921 KAR 1:400	216B.459	907 KAR 9:005
205.710-205.802	921 KAR 1:410		907 KAR 9:010
205.745	103 KAR 3:010	216B.990	900 KAR 6:030
205.990	921 KAR 1:400		900 KAR 6:060
205.992	921 KAR 1:380		900 KAR 6:075
205.5605	907 KAR 1:145		900 KAR 6:085
	907 KAR 12:010		900 KAR 6:090
205.5606	907 KAR 1:145		900 KAR 6:130
	907 KAR 12:010		902 KAR 20:420
205.5607	907 KAR 1:145		907 KAR 1:055
	907 KAR 12:010	216B.0615	900 KAR 6:085
209.020	921 KAR 2:015	217	922 KAR 2:120
209.030	910 KAR 1:240	217.015	301 KAR 1:155
209.160	103 KAR 3:010	217B	302 KAR 27:050
209A.030	910 KAR 1:190		302 KAR 28:020
210.710	907 KAR 3:050		302 KAR 28:050
210.720	907 KAR 3:050		302 KAR 29:020
210.730	907 KAR 3:050		302 KAR 29:060
211.350-211.380	922 KAR 2:120	217B.190	302 KAR 29:050
212.626	815 KAR 7:110	217B.515	302 KAR 29:050
213.046	921 KAR 1:380	217B.520	302 KAR 29:050
	921 KAR 1:400	217B.525	302 KAR 29:050
214.010	922 KAR 2:100	217B.545	302 KAR 29:050
	922 KAR 2:110	218A.010	902 KAR 55:110
	922 KAR 2:180	218A.010-218A.050	902 KAR 55:015
214.036	922 KAR 2:100	218A.172	201 KAR 9:001
	922 KAR 2:110		201 KAR 25:090
214.610	201 KAR 9:310	218A.175	201 KAR 9:250
	201 KAR 22:040		902 KAR 20:420
214.615	201 KAR 8:532	218A.202	201 KAR 9:230
	201 KAR 9:310		902 KAR 55:110
	201 KAR 22:020	218A.205	201 KAR 2:020
214.620	201 KAR 9:310		201 KAR 2:050
216.2920-216.2929	900 KAR 7:030		201 KAR 2:061
216.300	910 KAR 1:240		201 KAR 5:010
216.530	921 KAR 2:015		201 KAR 5:030
216.557	921 KAR 2:015		201 KAR 5:130
216.595	910 KAR 1:240		201 KAR 9:081
216.750	921 KAR 2:015		201 KAR 9:200
216.765	921 KAR 2:015		201 KAR 9:210
216.789	910 KAR 1:240		201 KAR 9:220
216.793	910 KAR 1:240		201 KAR 9:240
216B.010	900 KAR 6:060		201 KAR 9:260
	900 KAR 6:075		201 KAR 9:310
	900 KAR 6:085		201 KAR 20:056
	900 KAR 6:090		201 KAR 20:057
	900 KAR 6:130		201 KAR 20:161
	907 KAR 1:055		201 KAR 20:215
216B.010 - 216B.130	900 KAR 5:020		201 KAR 25:011
216B.010 - 216B.131	902 KAR 20:420		201 KAR 25:021
	921 KAR 2:015		201 KAR 25:031
216B.015	900 KAR 6:030		201 KAR 25:051
216B.020	900 KAR 6:125		201 KAR 25:090

KRS SECTION	REGULATION	KRS SECTION	REGULATION
218A.240	902 KAR 55:110	235.010	301 KAR 1:015
	906 KAR 1:160	235.205	301 KAR 6:020
218A.435	501 KAR 11:011	235.990	301 KAR 1:015
218A.1446	906 KAR 1:160	236.318	815 KAR 7:110
222.221	908 KAR 1:400	237.110	921 KAR 1:410
224.01-010	401 KAR 5:055	241.060	804 KAR 9:040
	401 KAR 5:060		804 KAR 9:050
	401 KAR 5:320	241.065	804 KAR 9:040
	401 KAR 10:001		804 KAR 9:050
	401 KAR 10:026	241.075	804 KAR 9:040
	401 KAR 10:030		804 KAR 9:050
	401 KAR 10:031	241.125	804 KAR 9:040
	401 KAR 51:001	243.030	804 KAR 9:040
224.01-070	401 KAR 5:055		804 KAR 9:050
224.01-310	103 KAR 3:010	243.710	103 KAR 3:010
224.01-400	401 KAR 5:055	243.720	103 KAR 3:010
	401 KAR 5:060	243.730	103 KAR 3:010
	401 KAR 10:001	243.850	103 KAR 3:010
	401 KAR 10:026	243.884	103 KAR 3:010
	401 KAR 10:030	247.232	302 KAR 16:091
	401 KAR 10:031	248.756	103 KAR 3:010
224.10-100	401 KAR 5:320	278	807 KAR 5:006
	401 KAR 51:017	278.010	807 KAR 5:011
224.10-670	401 KAR 5:320		807 KAR 5:076
224.16-050	401 KAR 10:001	278.020	807 KAR 5:001
	401 KAR 10:026	278.030	807 KAR 5:011
	401 KAR 10:030		807 KAR 5:076
	401 KAR 10:031	278.160	807 KAR 5:011
224.16-070	401 KAR 10:001		807 KAR 5:076
	401 KAR 10:026	278.170	807 KAR 5:011
	401 KAR 10:030	278.180	807 KAR 5:011
	401 KAR 10:031		807 KAR 5:076
224.20-100	401 KAR 51:001	278.185	807 KAR 5:011
	401 KAR 51:052		807 KAR 5:076
224.20-110	401 KAR 51:001	278.190	807 KAR 5:011
	401 KAR 51:052		807 KAR 5:076
224.20-120	401 KAR 51:001	278.300	807 KAR 5:001
	401 KAR 51:052	278.310	807 KAR 5:076
224.70-100	401 KAR 5:055	278.380	807 KAR 5:076
	401 KAR 5:060	281.615 - 281.670	601 KAR 1:146
	401 KAR 5:320	281A.120	502 KAR 10:120
224.70-100 - 224.70-140	401 KAR 10:001	281A.130	502 KAR 10:120
	401 KAR 10:026	281A.150	502 KAR 10:120
	401 KAR 10:030	281A.160	502 KAR 10:120
	401 KAR 10:031	281A.170	502 KAR 10:120
224.70-110	401 KAR 5:320	299.530	103 KAR 3:010
224.70-120	401 KAR 5:055	304.1-040	806 KAR 10:060
	401 KAR 5:060	304.1-050	806 KAR 17:555
224.71-100 - 224.71-145	401 KAR 10:001	304.2-110	806 KAR 10:060
	401 KAR 10:026	304.4-030	103 KAR 3:010
	401 KAR 10:030	304.5-070	806 KAR 5:051
	401 KAR 10:031	304.7-361	806 KAR 7:110
224.73-100 - 224.73-120	401 KAR 10:001	304.7-405	806 KAR 7:110
	401 KAR 10:026	304.7-417	806 KAR 7:110
	401 KAR 10:030	304.7-419	806 KAR 7:110
	401 KAR 10:031	304.7-421	806 KAR 7:110
224.99-010	401 KAR 5:055	304.7-457	806 KAR 7:110
	401 KAR 5:060	304.7-469	806 KAR 7:110
227.220	922 KAR 2:120	304.9-105	806 KAR 9:211
227.300	815 KAR 7:120	304.9-260	806 KAR 9:211
	815 KAR 10:060	304.9-270	806 KAR 9:211
227.320	815 KAR 10:060	304.9-330	806 KAR 9:211
227.330	815 KAR 10:060	304.9-430	806 KAR 9:211
227.480	815 KAR 35:020	304.10-030	806 KAR 10:060
227.487	815 KAR 35:020	304.10-040	806 KAR 10:060
227.491	815 KAR 35:020	304.10-140	806 KAR 10:060
227.550	815 KAR 7:120	304.11-050	103 KAR 3:010
227.990	815 KAR 10:060	304.14-120	806 KAR 17:555
227A.010	815 KAR 35:060	304.14-430 - 304.14-450	806 KAR 17:555
227A.060	815 KAR 35:060	304.17A-095 - 304.17A-0954	806 KAR 17:555
227A.100	815 KAR 35:060	304.040 - 304.075	201 KAR 8:532
234.140	815 KAR 10:060	304.49-220	103 KAR 3:010
234.321	103 KAR 3:010	309.304	201 KAR 39:030
234.370	103 KAR 3:010		201 KAR 39:050

KRS SECTION	REGULATION	KRS SECTION	REGULATION
309.312	201 KAR 39:030	311A.095	202 KAR 7:330
	201 KAR 39:050	311A.100	202 KAR 7:330
309.314	201 KAR 39:050	311A.110	202 KAR 7:330
309.331	201 KAR 45:010		202 KAR 7:601
	201 KAR 45:050	311A.115	202 KAR 7:601
309.335	201 KAR 45:010	311A.120	202 KAR 7:601
	201 KAR 45:020	311A.127	202 KAR 7:330
309.337	201 KAR 45:040	311A.130	202 KAR 7:601
309.339	201 KAR 45:050	311A.145	202 KAR 7:330
309.352	201 KAR 42:080	311A.150	202 KAR 7:330
309.355	201 KAR 42:080	311A.155	202 KAR 7:520
309.357	201 KAR 42:020		202 KAR 7:530
	201 KAR 42:040		202 KAR 7:540
309.358	201 KAR 42:035	311A.170	201 KAR 20:400
	201 KAR 42:070	311A.190	202 KAR 7:520
	201 KAR 42:080		202 KAR 7:530
309.359	201 KAR 42:035		202 KAR 7:540
	201 KAR 42:070	311A.195	202 KAR 7:330
309.361	201 KAR 42:040	313.010	201 KAR 8:532
309.362	201 KAR 42:020	313.022	201 KAR 8:520
	201 KAR 42:040	313.030	201 KAR 8:520
309.363	201 KAR 42:080		201 KAR 8:532
310.005	910 KAR 1:190	313.035	201 KAR 8:532
310.021	201 KAR 33:015	313.060	201 KAR 8:540
	910 KAR 1:190	313.080	201 KAR 8:532
310.031	201 KAR 33:015	313.085	201 KAR 8:540
	910 KAR 1:190	313.100	201 KAR 8:520
310.041	201 KAR 45:030	313.130	201 KAR 8:532
311.420	201 KAR 25:011	313.245	201 KAR 8:532
311.450	201 KAR 25:021	314.01	922 KAR 2:100
	201 KAR 25:031	314.011	201 KAR 20:056
311.490	201 KAR 25:051		201 KAR 20:057
311.530 - 311.620	201 KAR 9:001		201 KAR 20:059
	201 KAR 9:081		201 KAR 20:161
	201 KAR 9:200		201 KAR 20:215
	201 KAR 9:210		201 KAR 20:220
	201 KAR 9:220		201 KAR 20:400
	201 KAR 9:230		922 KAR 2:110
	201 KAR 9:240		922 KAR 2:120
	201 KAR 9:250		922 KAR 2:180
	201 KAR 9:260	314.021	201 KAR 20:400
311.565	201 KAR 9:310	314.031	201 KAR 20:161
311.601	201 KAR 9:310	314.041	201 KAR 20:230
311.990	201 KAR 9:001		201 KAR 20:370
	201 KAR 9:081	314.042	201 KAR 20:056
	201 KAR 9:200		201 KAR 20:057
	201 KAR 9:210		201 KAR 20:370
	201 KAR 9:220	314.051	201 KAR 20:230
	201 KAR 9:230		201 KAR 20:370
	201 KAR 9:240	314.071	201 KAR 20:161
	201 KAR 9:250		201 KAR 20:230
	201 KAR 9:260		201 KAR 20:370
311A.010	202 KAR 7:330	314.073	201 KAR 20:215
	202 KAR 7:520		201 KAR 20:220
311A.020	202 KAR 7:330		201 KAR 20:230
	202 KAR 7:530		201 KAR 20:381
	202 KAR 7:540	314.091	201 KAR 20:056
311A.025	202 KAR 7:330		201 KAR 20:161
311A.030	202 KAR 7:520		201 KAR 20:400
311A.035	202 KAR 7:520	314.107	201 KAR 20:161
	202 KAR 7:530		201 KAR 20:370
	202 KAR 7:540	314.131	201 KAR 20:220
311A.045	202 KAR 7:530	314.142	201 KAR 20:411
	202 KAR 7:540	314.161	201 KAR 20:056
311A.050	202 KAR 7:330	314.193	201 KAR 20:057
311A.055	202 KAR 7:330	314.470	201 KAR 20:056
	202 KAR 7:520		201 KAR 20:161
311A.060	202 KAR 7:330		201 KAR 20:500
	202 KAR 7:520	314.991	201 KAR 20:161
	202 KAR 7:530		201 KAR 20:215
	202 KAR 7:540		201 KAR 20:411
311A.065	202 KAR 7:330	315.010	201 KAR 2:040
311A.075	202 KAR 7:330		201 KAR 2:074
311A.090	202 KAR 7:330		201 KAR 2:340

KRS SECTION	REGULATION	KRS SECTION	REGULATION
315.020	201 KAR 2:040	323.010	702 KAR 4:160
	201 KAR 2:074	323A.010	702 KAR 4:160
	201 KAR 2:205	324A.010	201 KAR 30:030
	201 KAR 2:340		201 KAR 30:050
315.030	201 KAR 2:074	324A.020	201 KAR 30:070
315.035	201 KAR 2:050		201 KAR 30:110
	201 KAR 2:340	324A.030	201 KAR 30:030
315.036	201 KAR 2:050	324A.035	201 KAR 30:030
315.050	201 KAR 2:040		201 KAR 30:050
	201 KAR 2:050		201 KAR 30:125
315.060	201 KAR 2:050		201 KAR 30:180
315.050	201 KAR 2:020		201 KAR 30:190
315.110	201 KAR 2:050	324A.040	201 KAR 30:030
315.120	201 KAR 2:050		201 KAR 30:050
315.121	201 KAR 2:074		201 KAR 30:190
315.131	201 KAR 2:061	324A.045	201 KAR 30:125
315.191	201 KAR 2:040	324A.050	201 KAR 30:070
	201 KAR 2:061	324A.052	201 KAR 30:030
	201 KAR 2:205		201 KAR 30:070
	201 KAR 2:340	324A.065	201 KAR 30:110
315.210	201 KAR 2:030	327.010	201 KAR 22:001
315.300	201 KAR 2:205		201 KAR 22:045
315.335	201 KAR 2:205	327.040	201 KAR 22:035
315.402	201 KAR 2:050		201 KAR 22:053
315.512	201 KAR 2:350	327.050	201 KAR 22:020
315.514	201 KAR 2:350		201 KAR 22:040
315.518	201 KAR 2:050	327.060	201 KAR 22:020
	201 KAR 2:350	327.070	201 KAR 22:020
315.520	201 KAR 2:050		201 KAR 22:040
	201 KAR 2:350		201 KAR 22:045
315.0351	201 KAR 2:050		201 KAR 22:053
	201 KAR 2:205	327.080	201 KAR 22:020
317.410	201 KAR 14:105	332.204	601 KAR 13:110
317.440	201 KAR 14:105	332.206	601 KAR 13:110
318	922 KAR 2:120	332.210	601 KAR 13:110
318.010	815 KAR 20:020	334A.030	16 KAR 2:120
	815 KAR 20:195	334A.033	16 KAR 2:120
318.015	815 KAR 20:020	334A.035	16 KAR 2:120
318.054	815 KAR 20:034	334A.050	16 KAR 2:120
318.130	815 KAR 20:020	334A.060	16 KAR 2:120
	815 KAR 20:034	334A.170	201 KAR 17:090
318.150	815 KAR 20:020	334A.200	201 KAR 17:110
318.160	815 KAR 20:191	339.230	815 KAR 35:060
318.200	815 KAR 20:020	342.640	702 KAR 3:130
319B.010	201 KAR 44:090	350.010	405 KAR 5:032
319B.030	201 KAR 44:090	350.130	405 KAR 5:032
	201 KAR 44:120	350.240	405 KAR 5:032
319B.040	201 KAR 44:400	350.300	405 KAR 5:032
319B.110	201 KAR 44:090	351.175	103 KAR 3:010
319B.130	201 KAR 44:110	367.83801	40 KAR 2:330
319C.050	201 KAR 43:050	367.83805	40 KAR 2:330
	201 KAR 43:060	367.83807	40 KAR 2:330
	201 KAR 43:080	371.405	702 KAR 4:160
319C.060	201 KAR 43:030	371.410	702 KAR 4:160
	201 KAR 43:050	382.800-382.860	418 KAR 1:040
	201 KAR 43:060	395.470	103 KAR 3:010
	201 KAR 43:070	403.160	921 KAR 1:400
	201 KAR 43:080	403.190	102 KAR 1:320
319C.070	201 KAR 43:060	403.210-403.240	921 KAR 1:001
319C.080	201 KAR 43:030		921 KAR 1:400
319C.110	201 KAR 43:060	403.211	921 KAR 1:380
320.220	201 KAR 5:010	403.211-403.215	921 KAR 1:410
320.250	201 KAR 5:010	405.060	921 KAR 1:410
320.270	201 KAR 5:010	405.405-405.991	921 KAR 1:410
320.280	201 KAR 5:030	405.430	921 KAR 1:380
322.010	702 KAR 4:160		921 KAR 1:400
322.060	201 KAR 18:040	405.440	921 KAR 1:001
322.090	201 KAR 18:040		921 KAR 1:400
322.100	201 KAR 18:040	405.467	921 KAR 1:380
322.110	201 KAR 18:040	405.520	921 KAR 1:001
322.120	201 KAR 18:040		921 KAR 1:380
322.160	201 KAR 18:040	405.991	921 KAR 1:400
322.170	201 KAR 18:040	406.021	921 KAR 1:380
322.290	201 KAR 18:192		921 KAR 1:400

KRS SECTION	REGULATION	KRS SECTION	REGULATION
406.025	921 KAR 1:380		815 KAR 35:060
	921 KAR 1:400	31 C.F.R.	921 KAR 1:410
407.5101-407.5902	921 KAR 1:001	33 C.F.R.	401 KAR 5:055
	921 KAR 1:380	34 C.F.R.	11 KAR 4:080
	921 KAR 1:410		902 KAR 30:001
413.120	103 KAR 3:010		902 KAR 30:110
415.174	907 KAR 3:170		902 KAR 30:120
415.184	907 KAR 3:170		902 KAR 30:130
421.500-421-550	201 KAR 20:411		902 KAR 30:150
422.317	201 KAR 8:540		902 KAR 30:160
	907 KAR 3:170		902 KAR 30:180
424.260	702 KAR 3:130		902 KAR 30:200
	702 KAR 4:160	40 C.F.R.	401 KAR 5:055
427.120	921 KAR 1:410		401 KAR 5:060
427.125	921 KAR 1:410		401 KAR 5:320
431.213 - 431.270	501 KAR 16:290		401 KAR 10:001
	501 KAR 16:310		401 KAR 51:001
	501 KAR 16:330		401 KAR 51:017
431.300-431.307	907 KAR 3:170		401 KAR 51:052
433.902	830 KAR 1:010	42 C.F.R.	105 KAR 1:140
434.840-434.860	907 KAR 3:170		907 KAR 1:055
439	501 KAR 6:020		907 KAR 1:145
	501 KAR 6:040		907 KAR 1:155
	501 KAR 6:070		907 KAR 3:170
	501 KAR 6:130		907 KAR 12:010
	501 KAR 6:140		907 KAR 12:020
	501 KAR 6:230		907 KAR 17:005
	501 KAR 6:270		907 KAR 17:010
	501 KAR 6:999		907 KAR 17:015
440.50	907 KAR 3:170		907 KAR 17:020
440.130	907 KAR 1:055		907 KAR 17:025
440.230	907 KAR 1:055		907 KAR 17:030
446.010	418 KAR 1:010	45 C.F.R.	105 KAR 1:140
447.272	907 KAR 1:155		907 KAR 1:055
	907 KAR 12:020		921 KAR 1:001
447.3251	907 KAR 1:055		921 KAR 1:380
454.220	921 KAR 1:400		921 KAR 1:400
514	910 KAR 1:260		921 KAR 1:410
527.070	922 KAR 2:100		921 KAR 2:055
	922 KAR 2:120		922 KAR 2:090
	922 KAR 2:180		922 KAR 2:100
532.130 - 532.140	501 KAR 16:290		922 KAR 2:110
600-645	505 KAR 1:160		922 KAR 2:120
600.020	922 KAR 2:090		922 KAR 2:180
	922 KAR 2:100	48 C.F.R.	907 KAR 1:055
610.170	921 KAR 1:380	49 C.F.R.	502 KAR 10:120
620.020	922 KAR 2:090		807 KAR 5:006
	922 KAR 2:100		922 KAR 2:100
	922 KAR 2:110		922 KAR 2:120
	922 KAR 2:180	59 C.F.R.	301 KAR 2:224
620.030	922 KAR 2:100	7 U.S.C.	302 KAR 27:050
	922 KAR 2:110		302 KAR 28:050
	922 KAR 2:120		302 KAR 29:060
2 C.F.R.	202 KAR 7:520		921 KAR 3:030
7 C.F.R.	902 KAR 18:010		921 KAR 3:042
	902 KAR 18:020		921 KAR 3:060
	902 KAR 18:030	8 U.S.C.	921 KAR 2:015
	902 KAR 18:060	10 U.S.C.	202 KAR 7:330
	902 KAR 18:070	12 U.S.C.	201 KAR 30:050
	902 KAR 18:080		201 KAR 30:110
	921 KAR 3:030		201 KAR 30:125
	921 KAR 3:042		201 KAR 30:190
	921 KAR 3:050	15 U.S.C.	806 KAR 7:110
	921 KAR 3:060		921 KAR 1:410
16 C.F.R.	922 KAR 2:100	20 U.S.C.	11 KAR 4:080
	922 KAR 2:120		703 KAR 5:225
20 C.F.R.	921 KAR 2:015		902 KAR 30:001
21 C.F.R.	902 KAR 55:015		902 KAR 30:110
23 C.F.R.	603 KAR 5:050		902 KAR 30:120
26 C.F.R.	102 KAR 1:225		902 KAR 30:130
	102 KAR 1:230		902 KAR 30:150
	105 KAR 1:140		902 KAR 30:160
	921 KAR 3:050		902 KAR 30:180
29 C.F.R.	105 KAR 1:140		902 KAR 30:200

KRS SECTION	REGULATION	KRS SECTION	REGULATION
21 U.S.C.	902 KAR 18:010 902 KAR 18:020 902 KAR 18:030 902 KAR 18:060 902 KAR 18:070 902 KAR 18:080		
23 U.S.C.	202 KAR 7:540		
26 U.S.C.	102 KAR 1:225 102 KAR 1:230 102 KAR 1:320 105 KAR 1:140 105 KAR 1:430 306 KAR 1:011		
30 U.S.C.	401 KAR 10:030 921 KAR 2:055		
33 U.S.C.	401 KAR 5:055 401 KAR 5:060 401 KAR 5:320		
38 U.S.C.	17 KAR 3:040 102 KAR 1:225 921 KAR 2:055		
42 U.S.C.	201 KAR 8:540 202 KAR 7:540 401 KAR 5:055 401 KAR 5:060 401 KAR 51:001 401 KAR 51:017 401 KAR 51:052 806 KAR 17:555 907 KAR 1:055 907 KAR 1:056E 907 KAR 1:145 907 KAR 1:155 907 KAR 1:711E 907 KAR 12:010 907 KAR 12:020 907 KAR 17:005 907 KAR 17:010 907 KAR 17:015 907 KAR 17:020 907 KAR 17:025 907 KAR 17:030 910 KAR 1:190 910 KAR 1:260 921 KAR 1:001 921 KAR 1:380 921 KAR 1:400 921 KAR 1:410 921 KAR 2:015 921 KAR 2:055 921 KAR 2:060 921 KAR 3:030 922 KAR 2:090 922 KAR 2:100 922 KAR 2:120 922 KAR 2:180 921 KAR 2:055		
45 U.S.C.			
49 U.S.C.	502 KAR 10:120 601 KAR 9:135 807 KAR 5:006		
Pub.L.110-245	105 KAR 1:430		

## TECHNICAL AMENDMENT INDEX

Regulation Number	Effective Date	Regulation Number	Effective Date
----------------------	-------------------	----------------------	-------------------

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2012 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

‡ - A technical amendment was made during the promulgation process to this administrative regulation pursuant to KRS 13A.320(d).

13 KAR 1:020		3/13/2013
201 KAR 19:025		11/21/2012
201 KAR 19:035		11/21/2012
201 KAR 19:060		11/21/2012
201 KAR 19:087		11/21/2012
201 KAR 19:100		11/21/2012
201 KAR 19:310		11/21/2012
201 KAR 19:340		11/21/2012
201 KAR 20:310		7/23/2012
201 KAR 44:020		8/28/2012
301 KAR 2:178	‡	3/12/2012
503 KAR 1:100		10/19/12
803 KAR 2:180		7/12/2012
803 KAR 2:304		7/12/2012
803 KAR 2:305		7/12/2012
803 KAR 2:311		7/12/2012
803 KAR 2:315		7/12/2012
803 KAR 2:319		7/12/2012
803 KAR 2:408		7/12/2012
803 KAR 2:600		7/12/2012
807 KAR 5:006		1/30/2013
807 KAR 5:022		1/30/2013
807 KAR 5:031		1/30/2013
807 KAR 5:041		1/30/2013
807 KAR 5:046		1/30/2013
807 KAR 5:063		1/30/2013
807 KAR 5:066		1/30/2013
807 KAR 5:069		1/30/2013
807 KAR 5:071		1/30/2013
807 KAR 5:080		1/30/2013
807 KAR 5:090		1/30/2013
807 KAR 5:120		1/30/2013
810 KAR 1:028		10/1/2012
815 KAR 10:060	‡	1/7/2013
902 KAR 20:250		12/10/12
902 KAR 20:260		12/10/12
902 KAR 20:275		12/10/12
902 KAR 20:410		12/10/12
908 KAR 3:050		8/9/2012
911 KAR 1:070		8/2/2012
921 KAR 2:270		7/5/2012
922 KAR 1:430		7/5/2012



## SUBJECT INDEX

### AGRICULTURE, DEPARTMENT OF

Agriculture Pest Control  
Certification; 302 KAR 27:050  
Amusement Rides  
Rides and attractions not included in the definition of amusement ride or attraction; 302 KAR 16:091  
Ornamental Turf Lawn and Interior Plantscape Pest Control  
Certification; 302 KAR 28:050  
General provisions; 302 KAR 28:020  
Structural Pest Control  
Certification; 302 KAR 29:060  
Commercial structural pest control and fumigation; 302 KAR 29:050  
Structural pest control; general provisions; 302 KAR 29:020

### AIR QUALITY, DIVISION OF

Attainment and Maintenance of the National Ambient Air Quality Standards  
Definitions for 401 KAR Chapter 51; 401 KAR 51:001  
Prevention of significant deterioration of air quality; 401 KAR 51:017  
Review of new sources in or impacting upon nonattainment areas; 401 KAR 51:052

### BUILDING CODE ENFORCEMENT, DIVISION OF

Building Codes Enforcement; Division of  
Criteria for expanded local jurisdiction; 815 KAR 7:110  
Kentucky Building Code; 815 KAR 7:120  
The Kentucky Certified Building Inspector Program; 815 KAR 7:070  
Elevator Safety  
Elevator contractor licensing requirements; 815 KAR 4:030  
Elevator mechanic licensing requirements; 815 KAR 4:040  
Requirements for approval of continuing education courses and providers; 815 KAR 4:060

### COMMUNITY BASED SERVICES, DEPARTMENT FOR

Food Stamp Program  
Administrative disqualification hearings and penalties; 921 KAR 3:060  
Application process; 921 KAR 3:030  
Claims and additional administrative provisions; 921 KAR 3:050  
Supplemental Nutrition Assistance Program Employment and Training Program; 921 KAR 3:042  
K-TAP, Kentucky Works, Welfare to Work, State Supplementation  
Delegation of power for oaths and affirmations; 921 KAR 2:060  
Hearings and appeals; 921 KAR 2:055  
Supplemental programs for persons who are aged, blind, or have a disability; 921 KAR 2:015

### ECONOMIC DEVELOPMENT, CABINET FOR

Economic Development Finance Authority  
Applications for Kentucky Incentive Program; 307 KAR 1:005  
Kentucky Enterprise Initiative Act; 307 KAR 4:020  
Repeal of 306 KAR 1:010, 1:020, 1:030, 1:040, 1:050, 1:060, 1:070 and 1:090; 306 KAR 1:011  
Kentucky Business Investment Program  
Repeal of 307 KAR 8:010; 307 KAR 8:011  
Kentucky Reinvestment Act  
Application for Kentucky Reinvestment Act Program; 307 KAR 9:010

### EDUCATION, DEPARTMENT OF

Alternative Education Program  
Alternative education programs; 704 KAR 19:002  
Assessment and Accountability  
Implementation of Intervention Options in Priority Schools and Districts; 703 KAR 5:250  
Repeal of 703 KAR 5:120 and 703 KAR 5:180; 703 KAR 5:121  
Facilities Management  
Capital construction process; 702 KAR 4:160  
General Administration  
School health services; 702 KAR 1:160

Assessment and Accountability  
Accountability Definitions and Procedures; 703 KAR 5:240  
Procedures for the inclusion of special populations in the state-required assessment and accountability programs; 703 KAR 5:070  
Repeal of 703 KAR 5:001, 020, 040, 050, 060, 130 and 160; 703 KAR 5:002  
School and district accountability, recognition, support, and consequences; 703 KAR 5:225  
Kentucky Assistive Technology Loan Corporation  
General eligibility criteria for assistive technology loans; 789 KAR 1:010  
Kindergartens and Nursery Schools  
Common Kindergarten entry screener; 704 KAR 5:070  
Office of Chief State School Officer  
Districts of innovation; 701 KAR 5:140  
Use of local monies to reduce unmet technology needs; 701 KAR 5:110  
Office of Instruction  
Commonwealth Diploma Program; 704 KAR 3:340  
Minimum requirements for high school graduation; 704 KAR 3:305  
The Use of Response-to-Intervention in Kindergarten through Grade 3; 704 KAR 3:095  
Use of Restraint and Seclusion in Public Schools; 704 KAR 7:160  
School Administration and Finance  
Internal accounting; 702 KAR 3:130

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Education, Department of; Titles 702-704 KAR (*See Education, Department of*)

### EDUCATION PROFESSIONAL STANDARDS BOARD

Administrative Certificates  
Certification for school superintendent; 16 KAR 3:010  
Assessment  
Examination prerequisites for principal certification; 16 KAR 6:030  
Examination prerequisites for teacher certification; 16 KAR 6:010  
Advanced Certification and Rank  
Continuing education option for certificate renewal and rank change; 16 KAR 8:030  
Teaching Certificates  
Emergency certification and out-of-field teaching; 16 KAR 2:120

### ENERGY AND ENVIRONMENT CABINET

Environmental Protection, Department of  
Air Quality, Division of (*See Air Quality, Division of; 401 KAR Chapter 51*)  
Public Service Commission  
Utilities  
Alternative rate adjustment procedure for small utilities; 807 KAR 5:076  
General Rules; 807 KAR 5:006  
Rules of procedure; 807 KAR 5:001  
Tariffs; 807 KAR 5:011  
Water, Division of (*See Water Quality, Division of; 401 KAR Chapter 5*)

### ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Air Quality, Division of (*See Air Quality, Division of; 401 KAR Chapter 51*)  
Antidegradation policy implementation methodology; 401 KAR 10:030  
Definitions for 401 KAR Chapter 10; 401 KAR 10:001  
Designation of uses of surface waters; 401 KAR 10:026  
Surface water standards; 401 KAR 10:031

### FINANCE AND ADMINISTRATION CABINET

Kentucky Retirement Systems (*See Kentucky Retirement Systems; KAR Title 105*)  
Kentucky Teacher' Retirement System; (*See Kentucky Teachers'*

## SUBJECT INDEX

*Retirement System; KAR Title 102)*

### FISH AND WILDLIFE RESOURCES, DEPARTMENT OF

#### Fish

- Boat and motor restrictions; 301 KAR 1:015
- Commercial fishing gear; 301 KAR 1:146
- Commercial fishing requirements; 301 KAR 1:155
- Taking of fish by nontraditional fishing methods; 301 KAR 1:410

#### Game

- Black bear; 301 KAR 2:300
- Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas; 301 KAR 2:178
- Dove, wood duck, teal, and other migratory game bird hunting; 301 KAR 2:225
- Elk depredation permits, landowner cooperators permits, and quota hunts; 301 KAR 2:132
- Falconry, raptor take, and raptor propagation; 301 KAR 2:195
- Hunting; 301 KAR 2:185
- Importation of game birds; 301 KAR 2:084
- Seasons, methods, and limits for small game; 301 KAR 2:122
- Shooting areas, dog training areas, commercial foxhound training enclosures; and bobwhite shoot-to-train; 301 KAR 2:041
- Small game and furbearer hunting and trapping on public areas; 301 KAR 2:049
- Spring wild turkey hunting; 301 KAR 2:142
- Transportation and holding of live exotic wildlife; 301 KAR 2:082
- Transportation and holding of live native wildlife; 301 KAR 2:081
- Waterfowl hunting requirements on public lands; 301 KAR 2:222
- Waterfowl hunting zones; 301 KAR 2:224
- Waterfowl seasons and limits; 301 KAR 2:221

#### Hunting and Fishing

- License, tag, and permit fees; 301 KAR 3:022
- Public use of Otter Creek Outdoor recreation area; 301 KAR 3:012

#### Water Patrol

- Boating safety equipment; 301 KAR 6:020

#### Wildlife

- Scientific and educational collecting permits; 301 KAR 4:070

### GENERAL GOVERNMENT CABINET

Agriculture, Department of (*See Agriculture, Department of; KAR Title 302*)

#### Applied Behavior Analysis Licensing Board

- Complaint and disciplinary process; 201 KAR 43:060
- Fees; 201 KAR 43:030
- Renewals; 201 KAR 43:080
- Requirements for supervision; 201 KAR 43:050
- Supervisees; 201 KAR 43:070

#### Barbering; Board of

Barbering school enrollment and postgraduate requirements; 201 KAR 14:105

#### Dentistry; Board of

- Dental practices and prescription writing; 201 KAR 8:540
- Fees and Fines; 201 KAR 8:520
- Licensure of dental hygienists; 201 KAR 8:562
- Licensure of dentists; 201 KAR 8:532

Kentucky Real Estate Appraisers Board (*See Kentucky Real Estate Appraisers Board; 201 KAR Chapter 30*)

#### Diabetes Educators; Board of Licensed

- Code of ethics; 201 KAR 45:050
- Continuing education; 201 KAR 45:040
- Fees; 201 KAR 45:010
- Renewal, reinstatement and inactive status; 201 KAR 45:030
- Supervision and work experience; 201 KAR 45:020

#### Interpreters for the Deaf and Hard of Hearing; Board of

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

Renewal of licenses. Extension of temporary licenses and reinstatement; 201 KAR 39:050

#### Licensure and Certification for Dietitians and Nutritionists; Board of

- Application; approved programs; 201 KAR 33:015

#### Marriage and Family Therapists, Board of

Supervision of marriage and family therapist associates; 201 KAR 32:035

#### Massage Therapy; Board of

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

Endorsement; 201 KAR 42:070

Fees; 201 KAR 42:020

Programs of massage therapy instruction; 201 KAR 42:080

Renewal; 201 KAR 42:020

Medical Licensure, Board of (*See Medical Licensure, Board of; 201 KAR Chapter 9*)

Nursing, Board of (*See Nursing, Board of; 201 KAR Chapter 20*)

#### Ophthalmic Dispensers; Board of

Licensing; application; examination; experience; renewal; and inactive status; 201 KAR 13:040

#### Optometric Examiners; Board of

Annual courses of study required; 201 KAR 5:030

Application for licensure; endorsement; 201 KAR 5:010

Controlled substances; 201 KAR 5:130

#### Pharmacy, Board of

Examination; 201 KAR 2:020

Home medical equipment service providers; 201 KAR 2:350

Licenses and permits; fees; 201 KAR 2:050

License transfer; 201 KAR 2:030

Pharmacist-in-charge; 201 KAR 2:205

Pharmacy services in hospitals or other organized health care facilities; 201 KAR 2:074

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

Registration of pharmacist interns; 201 KAR 2:040

Special pharmacy permit for clinical practice; 201 KAR 2:340

Physical Therapy, Board of (*See Physical Therapy, Board of; 201 KAR Chapter 22*)

#### Podiatry; Board of

Annual renewal of licenses, fees; 201 KAR 25:021

Approved schools; examination application; fees; 201 KAR 25:011

Continuing education; 201 KAR 25:031

Prescribing and dispensing controlled substances; 201 KAR 25:090

Professional engineers and land surveyors, Board of Licensure for Continuing professional development for professional land surveyors; 201 KAR 18:192

Fees; 201 KAR 18:040

#### Prosthetics, Orthotics, and Pedorthics; Board of

Inactive status; 201 KAR 44:100

Licensure by endorsement; 201 KAR 44:110

Post residency registration; 201 KAR 44:120

Procedure for complaints and hearings involving licenses: temporary suspension; 201 KAR 25:051

Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter on or after January 1, 2013; 201 KAR 44:090

#### Speech-Language pathology and audiology; Board of

Continuing education requirements; 201 KAR 17:090

Telehealth and telepractice; 201 KAR 17:110

#### State Investment Commission

Guidelines for money market instruments; 200 KAR 14:091

Qualified investments; 200 KAR 14:011

Repurchase agreement; 200 KAR 14:081

Military Assistance Trust Funds

National Guard adoption benefit program; 106 KAR 2:030

### HEALTH AND FAMILY SERVICES, CABINET FOR

#### Aging and Independent Living, Department for

##### Aging Services

Nutrition program for older persons; 910 KAR 1:190

#### Audits and Investigations; Division of

Monitoring system for prescription controlled substances; 902 KAR 55:110

Schedule I substances; 902 KAR 55:015

#### Certificate of Need

Certificate of Need annual surveys, and registration requirements for new Magnetic Resonance Imaging units; 900 KAR 6:125

Certificate of Need criteria for physician exemption; 900 KAR 6:130

## SUBJECT INDEX

Certificate of Need expenditure minimums; 900 KAR 6:030  
Certificate of Need filing, hearing, and show cause hearing; 900 KAR 6:090  
Certificate of Need nonsubstantive review; 900 KAR 6:075  
Implementation of outstanding Certificates of Need if ownership has changed; 900 KAR 6:085  
Timetable for submission of Certificate of Need applications; 900 KAR 6:060  
Child care; Division of  
    Certification of family child-care homes; 922 KAR 2:100  
    Child-care center health and safety standards; 922 KAR 2:120  
    Child-care center licensure; 922 KAR 2:090  
    Child-care center provider requirements; 922 KAR 2:110  
    Civil penalties; 922 KAR 2:190  
    Requirements for registered child care providers in the Child-care Assistance program; 922 KAR 2:180  
Commissioner's Office  
    Telehealth consultation coverage and reimbursement; 907 KAR 3:170  
Community Alternatives; Division of  
    Certification of assisted-living communities; 910 KAR 1:240  
    Kentucky Family Caregiver program; 910 KAR 1:260  
    New supports for community living waiver service and coverage policies; 907 KAR 12:010  
Community Based Services, Department for; KAR Title 921 (See *Community Based Services, Department for*)  
Data Reporting and Public Use Data Sets  
    Data reporting by health care providers; 900 KAR 7:030  
Health Care; Division of  
    Pain management facilities; 902 KAR 20:420  
Income Support; Department for  
    Child support collection and enforcement; 921 KAR 1:410  
    Child support enforcement program application and inter governmental process; 921 KAR 1:380  
    Definitions; 921 KAR 1:001  
    Establishment, review, and modification of child support and medical support orders; 921 KAR 1:400  
Inspector General; Office of  
    Monitoring system for products containing ephedrine, pseudoephedrine, or phenylpropanolamine; 906 KAR 1:160  
Kentucky Health Information  
    Kentucky health information exchange participation; 900 KAR 9:010  
Kentucky Early Intervention System  
    Assessment, service planning, and assistive technology; 902 KAR 30:120  
    Coverage and payment for services; 902 KAR 30:200  
    Covered services; 902 KAR 30:160  
    Definitions; 902 KAR 30:001  
    Evaluation and eligibility; 902 KAR 30:120  
    Personnel qualifications; 902 KAR 30:150  
    Point of Entry and service coordination; 902 KAR 30:110  
    Procedural safeguards; 902 KAR 30:180  
Medicaid Services; Department for 907 KAR Chapter 1 (See *Medicaid Services; Department of*)  
    Health care-acquired conditions and other provider preventable conditions; 907 KAR 14:005  
Mental Health and Mental Retardation Services  
    Per diem rates; 908 KAR 3:050  
State Health Plan  
    State Health Plan for facilities and services; 900 KAR 5:020  
Substance Abuse  
    Procedures for substance abuse prevention; 908 KAR 1:400  
WIC  
    Definitions for 902 KAR Chapter 18; 902 KAR 18:010  
    Eligibility, certification periods, and time frames for processing applicants; 902 KAR 18:020  
    Local agency and vendor hearing process and administrative appeal process; 902 KAR 18:080  
    Participant abuse; 902 KAR 18:030  
    Participant access determination and civil money penalty; 902 KAR 18:070  
    Vendor violations and sanctions; 902 KAR 18:060

## HOUSING, BUILDINGS AND CONSTRUCTION, DEPARTMENT OF

Building Code Enforcement, Division of; 815 KAR Chapters 4-8  
(See *Building Code Enforcement, Division of*)  
Electrical  
    Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060; 815 KAR 35:060  
Elevator Safety  
    Reporting incidents involving personal injury or death; 815 KAR 4:027  
Fire Protection Sprinkler Contractors and Inspectors  
    Requirements for approval of continuing education courses and providers; 815 KAR 22:010  
Fire Prevention; Division of  
    Kentucky standards of safety; 815 KAR 10:060  
HVAC; Division of  
    Requirements for approval of continuing education courses and providers; 815 KAR 8:060  
Plumbing  
    Joints and connections; 815 KAR 20:100  
    Medical gas piping installations; 815 KAR 20:195  
    Minimum fixture requirements; 815 KAR 20:191  
    Parts or materials list; 815 KAR 20:020  
    Requirements for approval of continuing education courses and providers; 815 KAR 20:034

## INSURANCE, DEPARTMENT OF

Agents, Consultants, Solicitors and Adjusters  
    806 KAR 9:211. Repeal of 806 KAR 9:210  
Authorization of Insurers and General Requirements  
    Risk-based capital for insurers; 806 KAR 3:190  
Health Insurance Contracts  
    ICARE Program employer eligibility, application process, and requirements; 806 KAR 17:545  
    ICARE Program high-cost conditions; 806 KAR 17:540  
    ICARE Program requirements; 806 KAR 17:555  
Investments  
    Derivative instruments; 806 KAR 7:110  
Kinds of Insurance; Limits of Risk; Reinsurance  
    Repeal of 806 KAR 5:050; 806 KAR 5:051  
Surplus Lines  
    Cancellation of financial responsibility; 806 KAR 10:060

## JUSTICE AND PUBLIC SAFETY CABINET

Juvenile Justice; Department of  
Child Welfare  
    Department of Juvenile Justice Policies and Procedures: treatment program for juvenile sexual offenders; 505 KAR 1:160  
Kentucky Crime Commission  
    Kentucky Correctional Institution for Women; 501 KAR 6:070  
    Repeal of 500 KAR 5:005 and 5:015; 500 KAR 5:006  
Kentucky Law Enforcement Council  
    Career Development Program; 503 KAR 1:170  
Kentucky State Police; Department of; 502 KAR Chapter 11 (See *Kentucky State Police; Department of*)  
Asset Forfeiture  
    Repeal 501 KAR 11:010; 501 KAR 11:011  
Capital Punishment  
    Lethal injection protocols; 501 KAR 16:330  
    Pre-execution medical actions; 501 KAR 16:310  
    Preliminary and post-execution procedures concerning condemned person; 501 KAR 16:290  
Office of the Secretary  
    Bell County Forestry Camp; 501 KAR 6:140  
    Corrections policies and procedures; 501 KAR 6:020  
    Corrections secured policies and procedures; 501 KAR 6:999  
    Kentucky State Penitentiary; 501 KAR 6:040  
    Little Sandy Correctional Complex; 501 KAR 6:230  
    Luther Luckett Correctional Complex; 501 KAR 6:050  
    Probation and parole policies and procedures; 501 KAR 6:280  
    Probation and parole policies and procedures; 501 KAR 6:270  
    Procedures for recommendation of early termination of probation and review of compliance of supervised individuals; 501 KAR 6:260  
    Roederer Correctional Complex; 501 KAR 6:110

## SUBJECT INDEX

Western Kentucky Correctional Complex; 501 KAR 6:130

### KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Board of Emergency Medical Services

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

Emergency Medical Services data collection, management, and compliance; 202 KAR 7:540

Requirements for examination, certification, and recertification of the advanced emergency medical technician; 202 KAR 7:330

Training, education, and continuing education; 202 KAR 7:601

### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Division of Student and Administrative Services

Kentucky Loan Program; 11 KAR 3:100

Student aid applications; 11 KAR 4:080

Teacher Scholarship Loan Program

Teacher scholarships; 11 KAR 8:030.

### KENTUCKY HORSE RACING COMMISSION

Harness

Disciplinary measures and penalties; 811 KAR 1:095

Drug, medication, and substance classification schedule and withdrawal guidelines; 811 KAR 1:093

Medication; testing procedures; prohibited practices; 811 KAR 1:090

Quarter Horse, Appaloosa, and Arabian Racing

Disciplinary measures and penalties; 811 KAR 2:100

Drug, medication, and substance classification schedule and withdrawal guidelines; 811 KAR 2:093

Medication; testing procedures; prohibited practices; 811 KAR 2:096

Thoroughbred Racing

Disciplinary measures and penalties; 810 KAR 1:028

Drug, medication, and substance classification schedule and withdrawal guidelines; 810 KAR 1:040

Medication; testing procedures; prohibited practices; 810 KAR 1:018

### KENTUCKY REAL ESTATE APPRAISERS BOARD

Appraiser roster, transmission, fees, deletions, notification, and hearing; 201 KAR 30:110

Continuing education for appraisers; 201 KAR 30:125

Distance education standards; 201 KAR 30:180

Educational requirements for certification; 201 KAR 30:190

Examination and experience requirement; 201 KAR 30:050

Grievances; 201 KAR 30:070

Types of appraisers required in federally related transactions; certification and licensure; 201 KAR 30:030

### KENTUCKY RETIREMENT SYSTEMS

General Rules

401(h) account established under 26 USC 401(h); 105 KAR 1:420

Employer's Administrative Duties; 105 KAR 1:140

Federal taxation limitation year; 105 KAR 1:400

General compliance with federal tax laws; 105 KAR 1:430

### KENTUCKY STATE POLICE; DEPARTMENT OF

Driver Training

Hazardous materials endorsement requirements; 502 KAR 10:120

### KENTUCKY TEACHERS' RETIREMENT SYSTEM

General Rules

Application for retirement; 102 KAR 1:070

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

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

Full actuarial cost purchase; 102 KAR 1:350

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

Limitations on benefits; 102 KAR 1:230

Qualified domestic relations orders; 102 KAR 1:320

### LABOR CABINET

Workplace Standards, Department of; 803 Chapter 2 (*See Workplace Standards, Department of*)

### MEDICAID SERVICES; DEPARTMENT FOR

Definitions for administrative regulations located in Chapter 17 of Title 907 of the Kentucky Administrative Regulations; 907 KAR 17:005

Managed care organization operational and related requirements and policies; 907 KAR 17:030

Managed care organization requirements and policies related to utilization management and quality; 907 KAR 17:025

Managed care organization requirements and policies relating to enrollees; 907 KAR 17:010

Managed care organization service and service coverage requirements and policies; 907 KAR 17:020

Managed care organization requirements and policies relating to providers; 907 KAR 17:015

Payments for supports for community living services for an individual with an intellectual or developmental disability; 907 KAR 1:155

Payments for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural clinic services; 907 KAR 1:055

Repeal of 907 KAR 1:418 and 907 KAR 1:427; 907 KAR 1:056

Repeal of 907 KAR 1:705 and 907 KAR 1:710; 907 KAR 1:711E

Reimbursement for New Supports for Community Living Psychiatric Residential Treatment Facility Services and Reimbursement

Level I and II psychiatric residential treatment facility service and coverage policies; 907 KAR 9:005

Reimbursement for Level I and II psychiatric residential treatment facility services; 907 KAR 9:010

Waiver services; 907 KAR 12:020

Quality Living; Division of

Kentucky Family Caregiver Program

Supports for community living services for an individual with an intellectual or developmental disability; 907 KAR 1:145

### MEDICAL LICENSURE; BOARD OF

Continuing medical education; 201 KAR 9:310

Criminal background checks required for all new applicants; 201 KAR 9:210

Definitions for terms used in KRS 218A.172; 201 KAR 9:001

Disciplinary proceedings; 201 KAR 9:081

Emergency orders and hearings; appeals and other proceedings; 201 KAR 9:240

National practitioner data bank reports; 201 KAR 9:200

Professional standards for prescribing and dispensing controlled substances; 201 KAR 9:260

Registration and oversight of pain management facilities; 201 KAR 9:250

Restriction upon dispensing of Schedule II Controlled Substances and Schedule III Controlled Substances Containing Hydrocodone; 201 KAR 9:220

Required registration in the KASPER System; Legal Requirements for prescribing controlled substances in the Commonwealth of Kentucky; enforcement; 201 KAR 9:230

### NATURAL RESOURCES; DEPARTMENT FOR

Bond and Insurance Requirements

General bonding provisions; 405 KAR 10:015

General requirements for liability insurance; 405 KAR 10:030

Repeal of 405 KAR 10:010 and 10:020; 405 KAR 10:011E

Performance Standards for Surface Mining Activities

Contemporaneous reclamation; 405 KAR 16:020

Surface Effects of Noncoal Mining

Permit requirements; 405 KAR 5:032

Technical and Administrative Support; Division of

Administrative procedures of the board; 418 KAR 1:020

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

Grant applications; 418 KAR 1:040

## SUBJECT INDEX

Repeal of 418 KAR 1:030; 418 KAR 1:031  
Management; 418 KAR 1:060  
Procedures for acquisition of land; 418 KAR 1:050  
Remedies; 418 KAR 1:070

### NURSING, BOARD OF

Advanced practice registered nurse controlled substances prescriptions; 201 KAR 20:059  
Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization; 201 KAR 20:056  
Applications for licensure; 201 KAR 20:370  
Alternative program; 201 KAR 20:450  
Continuing competency requirements; 201 KAR 20:215  
Delegation of nursing tasks; 201 KAR 20:400  
Investigation and disposition; 201 KAR 20:161  
Nursing continuing education provider approval; 201 KAR 20:220  
Nurse licensure compact; 201 KAR 20:500  
Renewal; 201 KAR 20:230  
Repeal of 201 KAR 20:200 and 201 KAR 20:380; 201 KAR 20:381  
Scope and standards of practice of advanced practice registered nurses; 201 KAR 20:057  
Sexual assault nurse examiner program standards and credential requirements; 201 KAR 20:411  
Voluntary relinquishment of a license or credential; 201 KAR 20:510

### OFFICE OF THE INSPECTOR GENERAL

Division of Consumer Protection  
Mold remediation; 40 KAR 2:330

### PHYSICAL THERAPY, BOARD OF

A credential holder's change of name, employment, or address; 201 KAR 22:035  
Code of ethical standards and standards of practice for physical therapists and physical therapist assistants; 201 KAR 22:053  
Continued competency requirements and procedures; 201 KAR 22:045  
Definitions for 201 KAR Chapter 22; 201 KAR 22:001  
Eligibility and credentialing procedure; 201 KAR 22:020  
Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant; 201 KAR 22:040

### PERSONNEL CABINET

Office of the Secretary  
Plan Year handbook for the Public Employee Health Insurance Program; 101 KAR 2:210

### POSTSECONDARY EDUCATION; COUNCIL ON

Nonpublic College  
Private college licensing; 13 KAR 1:020

### PUBLIC PROTECTION CABINET

Alcoholic Beverage Control, Division of  
Licensing  
Entertainment destination center license; 804 KAR 4:370  
Quotas  
Retail Liquor drink license quota; 804 KAR 9:050  
Retail liquor package license quota; 804 KAR 9:040  
Housing, Buildings, and Construction, Department of 815 KAR Chapter 25 (*Housing, Buildings, and Construction, Department of*)  
Insurance, Department of; Title 806 Chapters 2, 14-17 (*See Insurance, Department of*)  
Kentucky Horse Racing Commission; KAR Titles 810 and 811 (*See Kentucky Horse Racing Commission*)  
Secondary Metals Recyclers  
Forms for application, certificate of registration and fees; 830 KAR 1:010

### REVENUE, DEPARTMENT OF

Ad Valorem Tax; Administration  
Installment payment plan guidelines for third party purchasers of certificates of delinquency; 103 KAR 5:220  
Forms  
General Administrative Forms Manual; 103 KAR 3:010  
Income Tax Forms Manual; 103 KAR 3:040  
Kentucky Tax Amnesty Application; 103 KAR 3:060  
Property and Severance Forms manual; 103 KAR 3:030  
Sales and Use Tax; Administration and Accounting  
Disaster area relief sales and use tax refunds; 103 KAR 31:170

### TRANSPORTATION CABINET

Audits; Office of  
Fair market rental or lease value of vehicles operated pursuant to a U-drive-it permit; 601 KAR 1:146  
Aviation; Department of  
Airport zoning map; 602 KAR 50:050  
Jurisdiction of the Kentucky Airport Zoning Commission; 602 KAR 50:030  
Driver Improvement  
Driver education programs; 601 KAR 13:110  
Motor Carriers; Division of  
Overweight or over dimensional farm equipment; 601 KAR 1:019  
Special overweight or overdimensional motor vehicle load permits; 601 KAR 1:018  
Motor Vehicle Tax  
Apportioned registration; 601 KAR 9:135  
Procedures for inspecting vehicles; 601 KAR 9:090  
Traffic  
Uniform traffic control devices; 603 KAR 5:050

### TOURISM, ARTS AND HERITAGE CABINET

Fish and Wildlife Resources, Department of, Title 301 Chapters 1-4 (*See Fish and Wildlife Resources, Department of*)  
Kentucky Historical Society  
Museum Unclaimed Property; 300 KAR 5:010  
Parks, Department of  
Campgrounds; 304 KAR 1:040  
Kentucky Proud Promotion Program; 304 KAR 1:080

### WATER, DIVISION OF

Designation of uses of surface water, "  
KPDES application requirements; 401 KAR 5:060  
Scope and applicability of the KPDES Program; 401 KAR 5:055  
Wastewater Laboratory Certification Program; 401 KAR 5:320

### WORKPLACE STANDARDS, DEPARTMENT OF

Occupational Safety and Health  
Adoption of 29 C.F.R. Part 1926.250-252; 803 KAR 2:407  
Commercial diving operations; 803 KAR 2:319  
Fire protection and prevention; 803 KAR 2:405  
General; 803 KAR 2:300  
General environmental controls; 803 KAR 2:309  
Hazardous materials; 803 KAR 2:307  
Maritime employment; 803 KAR 2:500  
Materials handling and storage; 803 KAR 2:313  
Occupational health and environmental controls; 803 KAR 2:403  
Special industries; 803 KAR 2:317  
Toxic and hazardous substances; 803 KAR 2:320 and 2:425  
Welding, cutting, and brazing; 803 KAR 2:316

### VETERANS AFFAIRS, DEPARTMENT OF

Office of Kentucky Veterans Centers  
Admission to state veterans' nursing homes; 17 KAR 3:040  
Calculation of resident charges at state veterans' nursing homes; 17 KAR 3:010