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

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MEETING NOTICE: ARRS
The Administrative Regulation Review Subcommittee is tentatively scheduled to meet May 14, 2012 at 1:00 p.m. in room 149 Capitol Annex. See tentative agenda on pages 2109-2110 of this Administrative Register.

EARRS MEETING NOTICE
The Education Assessment and Accountability Review Subcommittee is tentatively scheduled to meet at 1:00 p.m., Tuesday, May 7, 2013 in room 149, Capitol Annex, Frankfort, Kentucky.
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KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

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Office of Kentucky Veterans’ Centers

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 (Withdrawn by agency)

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201 KAR 20:400. Delegation of nursing tasks. (Comments Received)

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907 KAR 1:055 & E. Payments for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural health clinic services. (E* expires 8/28/2013) (Comments Received; SOC ext.)
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.
STATEMENT OF EMERGENCY
907 KAR 3:015E

This emergency administrative regulation is being promulgated to supplement reimbursement for certain primary care evaluation and management services or vaccines provided by primary care physicians who qualify for the supplemental reimbursement. The supplemental reimbursement will be made for the designated services provided from January 1, 2013 through December 31, 2014. This action must be implemented on an emergency basis to comply with a federal mandate (Title V, Subtitle F, Section 5501 of the Affordable Care Act; 42 C.F.R. 447.400; 42 C.F.R. 447.405; 42 C.F.R. 447.410; and 42 C.F.R. 447.415.) 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 HAYNES, Secretary

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

907 KAR 3:015E. Supplemental payments for certain primary care and vaccines.

RELATES TO: KRS 205.520, 205.560;
EFFECTIVE: April 3, 2013

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the policies and requirements regarding Medicaid program supplemental payments for certain primary care services and vaccines in accordance with Title V, Subtitle F, Section 5501 of the Affordable Care Act (42 U.S.C. 1395i and 42 U.S.C. 1395w-4(c)(2)(B)), 42 C.F.R. 447.405, 42 C.F.R. 447.410, and 42 C.F.R. 447.415.

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

(2) "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

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

(4) "Eligible evaluation and management service" means a service:
(a) Which qualifies for supplemental reimbursement in accordance with Section 3(1)(a), (b), and (c)(f) of this administrative regulation; and
(b) For which there is a corresponding paid claim.

(5) "Eligible provider" means a provider who qualifies for supplemental reimbursement in accordance with Section 2 of this administrative regulation.

(6) "Eligible vaccine" means a vaccine:
(a) Which qualifies for supplemental reimbursement in accordance with Section 3(1)(a), (b) and (c)(2) of this administrative regulation; and
(b) For which there is a corresponding paid claim.

(7) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(8) "Managed care organization" or "MCO" 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.

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

(10) "Medicaid program" means Kentucky's program of services and benefits covered by the Department for Medicaid Services or managed care organizations.

(11) "Personal supervision" means being professionally responsible for the services rendered by an advanced practice registered nurse or a physician assistant.

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

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

(14) "Provider" is defined by KRS 205.8451(7).

(15) "Recipient" is defined in KRS 205.8451(9).

Section 2. Conditions to Qualify for Supplemental Reimbursement for Primary Care Services and Vaccines. (1) To qualify for a supplemental payment, a provider shall:
(a) Be currently enrolled with the Medicaid program in accordance with 907 KAR 1.672;
(b)1. Be currently participating in the Medicaid program in accordance with 907 KAR 1.671;

2. Comply with 907 KAR 1.671;

(c) Be a primary care physician practicing in one (1) of the following areas:
1. Family medicine;
2. General internal medicine; or
3. Pediatric medicine; and
(d) Attest to being a primary care physician and to one (1) of the following:
1. Currently having board certification as a primary care physician by the:
   a. American Board of Medical Specialties;
   b. American Board of Physician Specialties; or
   c. American Osteopathic Association;
2. Unless a newly eligible physician or physician without a prior billing history, having provided the following evaluation and management services or vaccines in an amount that equals at least sixty (60) percent of Medicaid codes billed to the Medicaid program during the most recently completed calendar year:
   a. Evaluation and management CPT codes:
      (i) Within the range of 99201 through 99499; and
      (ii) That are covered by the department in accordance with 907 KAR 3:010 or;
   b. Vaccine codes which are covered by the department in accordance with 907 KAR 1.680 (regardless of the age of the recipient) or 907 KAR 3:010;
3. If a newly eligible physician, having provided the services or vaccines referenced in subparagraph 2a or 2b of this paragraph in an amount that equals at least sixty (60) percent of Medicaid codes billed to the Medicaid program during the prior month; or
4. Being an eligible primary care physician:
   a. Without a billing history; and
   b. For whom sixty (60) percent of total Medicaid billings shall be of codes referenced in subparagraph 2a or 2b of this paragraph.

(2) Services or vaccines which meet the qualifying criteria in Section 3 of this administrative regulation and which are provided by a physician assistant or advanced practice registered nurse working under the personal supervision of a qualifying primary care physician shall qualify for the supplemental reimbursement.

Section 3. Supplemental Reimbursement for Primary Care Services and Vaccines. (1) Supplemental reimbursement shall be made, as established in subsections (2) and (3) of this section, for providing a service or vaccine:
(a) Provided on a day on or after January 1, 2013 until midnight December 31, 2014:
1. To a recipient; and
2. By a:
a. Provider who qualifies for the supplemental reimbursement pursuant to Section 2 of this administrative regulation; or
b. An APRN or a physician assistant working under the personal supervision of a primary care physician who qualifies for the supplemental reimbursement pursuant to Section 2 of this administrative regulation;

(b) That is medically necessary for the given recipient; and
(c) That is:
1. An evaluation and management service which:
   a. Corresponds to a CPT code within the range of 99201 through 99499; and
   b. Is currently covered by the department in accordance with 907 KAR 3:010; or
2. Billed using a vaccine code which is covered by the department in accordance with 907 KAR 1:680 (regardless of the age of the recipient) or 907 KAR 3:010.

(2)(a) For a given quarter of paid claims associated with eligible evaluation and management services provided by an eligible provider to recipients who were not enrolled in a managed care organization and for which:

1. DMS had an established rate as of July 1, 2009, the department shall make a lump sum payment that represents the difference between:
   a. The DMS established rates as of July 1, 2009 for the claims in aggregate for the quarter; and
   b. What the provider would have received for the same paid claims in aggregate for the same quarter if the provider's reimbursement for the claims had been the amount established in 42 C.F.R. 447.405(a); or
2. DMS did not have an established rate as of July 1, 2009; but established a rate prior to January 1, 2013, the department shall make a lump sum payment that represents the difference between:
   a. The DMS established rates as of December 31, 2012 for the claims in aggregate for the quarter; and
   b. What the provider would have received for the same paid claims in aggregate for the same quarter if the provider's reimbursement for the claims had been the amount established in 42 C.F.R. 447.405(a).

(b) For a given quarter of paid claims associated with eligible vaccines provided by all eligible providers to recipients who were not enrolled in a managed care organization and for which:

1. DMS had an established rate as of July 1, 2009, the department shall make a lump sum payment that represents the difference between:
   a. The DMS established rates as of July 1, 2009 for the claims in aggregate for the quarter; and
   b. What the provider would have received for the same paid claims in aggregate for the same quarter if the provider's reimbursement for the claims had been the amount established in 42 C.F.R. 447.405(b); or
2. DMS did not have an established rate as of July 1, 2009; but established a rate prior to January 1, 2013, the department shall make a lump sum payment that represents the difference between:
   a. The DMS established rates as of December 31, 2012 for the claims in aggregate for the quarter; and
   b. What the provider would have received for the same paid claims in aggregate for the same quarter if the provider's reimbursement for the claims had been the amount established in 42 C.F.R. 447.405(b).

(3)(a) For a given quarter of paid claims associated with eligible evaluation and management services provided by all eligible providers to recipients who were enrolled in a given managed care organization and for which:

1. Department shall send funds to the managed care organization representing the aggregate supplemental reimbursement amount for the paid claims; and
2. Managed care organization shall:
   a. Within fifteen (15) business days of receiving the funds referenced in subparagraph 1. of this paragraph, supplement reimbursement to each eligible provider in an amount determined using the methodology described in subsection (2)(a) of this section; and
   b. Submit documentation to the department demonstrating that the supplemental reimbursement referenced in subparagraph 1 of this paragraph was made to all eligible providers for the corresponding quarter.

(b) For a given quarter of paid claims associated with eligible vaccines provided by all eligible providers to recipients who were enrolled in a given managed care organization and for which:

1. Department shall send funds to the managed care organization representing the aggregate supplemental reimbursement amount for the paid claims; and
2. Managed care organization shall:
   a. Within fifteen (15) business days of receiving the funds referenced in subparagraph 1 of this paragraph, supplement reimbursement to each eligible provider in an amount determined using the methodology described in subsection (2)(b) of this section; and
   b. Submit documentation to the department demonstrating that the supplemental reimbursement referenced in subparagraph 1 of this paragraph was made to all eligible providers for the corresponding quarter.


(2) Any policy or requirement regarding payments for physician or primary care services or vaccines established in any other administrative regulation within Title 907 of the Kentucky Administrative Regulations shall not apply to the supplemental payments referenced in subsection (1) of this section.

Section 5. Auditing. (1) A provider shall be subject to departmental review or audit.

(2) The department shall be authorized to take action regarding fraud or abuse in accordance with:
   a. 907 KAR 1:671; or
   b. KRS 205.8453.

Section 6. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:
   (1) Denies or does not provide federal financial participation for the policy; or
   (2) Disapproves the policy.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: April 11, 2013
FILED WITH LRC: April 3, 2013 at 2 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 policies and requirements regarding supplemental Medicaid program payments for certain primary care evaluation and management services and vaccines. To qualify for the supplemental payments, providers must attest to being board certified as primary care physicians, having provided a certain volume of evaluation and management services or vaccines that will equal at least sixty (60) percent of their Medicaid billing.
   b. The necessity of this administrative regulation: This administrative regulation is necessary to comply with a federal mandate.
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 complying with a Medicaid program federal mandate.

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 complying with a Medicaid program federal mandate.

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

a. How the amendment will change this existing administrative regulation: This is a new administrative regulation.

b. The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

c. How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

d. How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

3. List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation will affect Medicaid primary care physicians who qualify for the supplemental payments. DMS has identified 3,363 primary care physicians who meet the criteria to qualify for the supplemental reimbursement.

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

a. List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will have to attest to meeting the qualifications for the supplemental payments. The Department for Medicaid Services (DMS) has created an option for providers to submit the attestation online.

b. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Providers would experience administrative costs associated with the attestation.

c. As a result of compliance, what benefits will accrue to the entities identified in question (3): Providers who qualify will benefit by receiving supplemental reimbursement for providing the designated primary care services and vaccines during the enhancement period (January 1, 2013 through December 31, 2014).

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

a. Initially: The Department for Medicaid Services (DMS) estimates that supplemental payments may cost $64.7 million (100 percent federal funds) for calendar year 2013.

b. On a continuing basis: DMS estimates that supplemental payments may cost $64.7 million (100 percent federal funds) for calendar year 2014.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are entirely federal funds authorized under the Social Security Act, Title XIX.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

8. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

9. Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. KRS 205.520(3) states, "Fur- ther, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be im- posed or opportunity that may be presented by federal law. Noth- ing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. The federal mandate regarding primary care services is for Medicaid programs to reimburse qualifying primary care physi- cians for qualifying primary care services based on the lesser of the Medicare Part B fee schedule rate or the primary care physi- cian's actual billed charge for the services. The federal mandate regarding vaccine administration is for Medicaid programs to reim- burse qualifying primary care physicians for the qualifying vaccine administration services at the lesser of the Medicare fee schedule rate or the regional maximum administration fee.

4. Will this administrative regulation impose stricter require- ments, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter, additional or different requirements than those required by the federal mandate.

5. 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.

6. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by 42 C.F.R. 447.405. 42 C.F.R. 447.410. 42 C.F.R. 447.415 and this administrative regulation.

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

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

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

8. Estimate the effect of this administrative regulation on state expenditures or revenues for the first year of implementation:

a. How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) estimates that supplemental payments may cost $64.7 million (100 percent federal funds) for calendar year 2013.

b. How much will it cost to administer this program for subsequent years? DMS estimates that supplemental payments may cost $64.7 million (100 percent federal funds) for calendar year 2014.

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: No additional expenditures are necessary to implement this amendment.
STATEMENT OF EMERGENCY
921 KAR 3:090E

This emergency administrative regulation is necessary to adjust the monthly benefit amounts for the Simplified Assistance for the Elderly Program (SAFE). SAFE is a demonstration project approved by the United States Department of Agriculture, Food and Nutrition Service (FNS). It is designed to improve access and delivery of benefits and increase participation of elderly Supplemental Security Income (SSI) recipients in the Supplemental Nutrition Assistance Program (SNAP), the food benefit program for low-income households. SAFE must be cost neutral in relation to the regular SNAP. During the most recent evaluation of the project, SAFE was found to no longer be cost neutral. Adjustments in the monthly benefits amounts are necessary to comply with federal mandates governing the demonstration project, avoid detrimental financial consequences for the state administering agency or federal discontinuation of SAFE, and continue to meet health and welfare needs of the elderly and disabled served through SAFE. An ordinary administrative regulation would not allow the agency to meet the federally required implementation date of April 1, 2013. The ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Emergency Amendment)

921 KAR 3:090E. Simplified assistance for the elderly program or "SAFE".


STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4
EFFECTIVE: March 28, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 delegates the administration of the Supplemental Nutrition Assistance Program (SNAP) to the state agency. This administrative regulation establishes requirements for the Simplified Assistance for the Elderly Program, a demonstration project administered by the cabinet to improve access to SNAP for elderly and disabled individuals.

Section 1. Definitions. (1) "Regular SNAP benefits" means SNAP benefits received in accordance with the procedures specified in:
(a) 921 KAR 3:020, Financial Requirements;
(b) 921 KAR 3:025, Technical Requirements;
(c) 921 KAR 3:030, Application Process; and
(d) 921 KAR 3:035, Certification Process.
(2) "Shelter costs" means monthly rent or mortgage expenses as stated by the applicant.
(3) "Simplified Assistance for the Elderly" or "SAFE" means an optional SNAP program for SSI participants who are age sixty (60) or older.
(4) "State Data Exchange" or "SDX" means files administered by the Social Security Administration that provide states with eligibility and demographic data relating to SSI applicants and participants.

Section 2. SAFE Program Procedures. Unless a different procedure or process for a SNAP requirement is specified in this administrative regulation, all SNAP requirements specified in 921 KAR Chapter 3 shall apply to SAFE, including the process for:
(1) A fair hearing;
(2) An administrative disqualification hearing;
(3) An appeal;
(4) A disqualification;
(5) A claim and collection of a claim; and
(6) EBT issuance.

Section 3. Eligibility for SAFE. (1) An individual may qualify for SAFE benefits if the individual:
(a) Is a Kentucky resident;
(b) Is:
1. A current SSI recipient; or
2. SSI eligible, but SSI benefits are currently in suspense;
(c) Is age sixty (60) or older;
(d) Is not institutionalized;
(e) Is:
1. Single, widowed, divorced, or separated; or
2. Married and living with a spouse who meets the criteria specified in subsection (1) of this section, the household:
(a) Shall not be eligible for SAFE; and
(b) May apply for regular SNAP benefits in accordance in 921 KAR 3:030.
(2) The cabinet shall use SDX to verify an applicant's marital and institutional status.
(3) If a household member does not meet the criteria listed in subsection (1) of this section, the household:
(a) Shall not be eligible for SAFE; and
(b) May apply for regular SNAP benefits in accordance in 921 KAR 3:030.
(4) An individual who meets the criteria of subsection (1) of this section may apply for regular SNAP benefits instead of SAFE benefits.
(5) An individual shall not receive SAFE benefits and regular SNAP benefits at the same time.

Section 4. SAFE Application Process. (1) Through use of the SDX files, the cabinet shall:
(a) Identify SSI participants who are potentially eligible for SAFE; and
(b) Mail each identified SSI household a SF-1, Simplified Assistance for the Elderly (SAFE) Application, and a return envelope.
(2) A SAFE application shall be considered filed if the SF-1 is:
(a) Signed; and
(b) Received at the Department for Community Based Services, Division of Family Support.
(3) In accordance with 7 C.F.R. 273.2(g), the cabinet shall provide an eligible household an opportunity to participate within thirty (30) days of the date the application is filed.

Section 5. SAFE Certification Process. (1) The cabinet shall process a SAFE application without requiring an interview.
(2) Information necessary to certify a SAFE application shall be obtained from SDX with the exception of the information provided by the applicant on the SF-1 or the SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form; and
(3) The cabinet shall certify an eligible household for SAFE benefits for up to thirty-six (36) months.
(4) In accordance with 7 C.F.R. 273.10(g), the cabinet shall send an applicant a notice upon certification or denial.
(5) The cabinet shall send a SF-2 to a SAFE household in the month preceding the last month of the household's certification period.

Section 6. SAFE Benefits. (1) The cabinet shall provide a SAFE household a standard monthly benefit amount approved by the U.S. Department of Agriculture's Food and Nutrition Service.
(2) The standard SAFE benefit amounts shall be based on:
(a) Shelter costs;
(b) Household size; and
(c) The average benefits received by a similar household in the regular SNAP.

Section 7. Changes in Household Circumstances. (1) A household receiving SAFE benefits shall not be required to report
any changes during the certification period.

(2) The cabinet shall process changes in household circumstances based on information received from SDX.

(3) If information voluntarily reported by the household is contradictory to SDX data, the cabinet shall not act upon the information unless the information is a change in a household member's:

(a) Name;
(b) Date of birth; or
(c) Address.

(4) Unless a change in household circumstance results in a change in benefits, the cabinet shall not provide a SAFE household with notification of a change being made in household circumstances.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "SF-1, Simplified Assistance for the Elderly (SAFE) Application", edition 04/13[02/11]; and
(b) "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", edition 04/13[02/11].

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: March 19, 2013
FILED WITH LRC: March 28, 2013 at 3 p.m.
CONTACT PERSON: Tricia Orme, 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: Justin Dearinger
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Simplified Assistance for the Elderly (SAFE) Program, a demonstration project administered by the Cabinet to improve access to the Supplemental Nutrition Assistance Program (SNAP) for elderly and disabled individuals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform application standards for the SAFE program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet for Health and Family Services has responsibility under 7 C.F.R. 271.4 to administer the SNAP program which includes the SAFE demonstration project.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for the SAFE program.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will change the monthly allotments received by recipients which are contained on the forms, SF-1, Simplified Assistance for the Elderly (SAFE) Application and SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form. These forms are incorporated by reference and used in the application and recertification process. The non-discrimination statement contained on these forms is updated to meet federal requirements. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation will change the monthly allotment received by recipients and the forms used in administering the SAFE program. The changes are being made to comply with federal requirements to maintain cost neutrality within the demonstration project. The amendment to this administrative regulation is necessary to also comply with federal programmatic requirements regarding nondiscrimination and to avoid possibility for federally imposed corrective action or penalty.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by implementing the application requirements of 7 C.F.R. 273.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by adjusting the monthly benefit amounts and the forms incorporated by reference to meet the federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the 12,306 households that are currently participating in SAFE. All SAFE recipients and potential applicants are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment to this administrative regulation will not require any additional actions on the part of SAFE program applicants or recipients.

(b) Is complying with this administrative regulation or amendment: This amendment to this administrative regulation will not create a cost to SAFE program applicants or recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will affect SAFE benefits for: one (1) person households with monthly shelter expenses of $189 or less must have their monthly benefit reduced from $111 to $97 ($4). The changes in the monthly allotment are required by the United States Department of Agriculture, Food and Nutrition Service to maintain cost neutrality and to continue operating the demonstration project which simplifies the application and recertification process for elderly recipients who receive Supplemental Security Income.

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

(a) Initially: No additional funding is required initially to implement the administrative regulation.

(b) On a continuing basis: No additional funding is required on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100 per cent federally funded by the United States Department of Agriculture. Program administrative costs are funded 50 per cent federal and 50 per cent state and have been appropriated in the enacted 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: An increase in fees or funding is not necessary to amend this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 7 C.F.R. 273.2
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 Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 7 C.F.R. 271.4, 7 C.F.R. 273.2

(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 for the first year?
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the state or local government for subsequent years.
(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program for the first year.
(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

STATEMENT OF EMERGENCY
922 KAR 1:130E

This emergency administrative regulation is necessary to meet an imminent threat to public health, safety, and welfare through modifications of the Kinship Care Program and other benefits available to prospective nonparental relative caregivers of children placed by the Cabinet for Health and Family Services (Cabinet).

The modifications will: (1) allow the Cabinet to continue the same level of benefits to children currently served by the Kinship Care Program; (2) ensure future benefits to children to be placed by the Cabinet with a nonparental relative caregiver; and (3) align the Cabinet’s programmatic costs with available state and federal funding. The Cabinet’s ability to continue to support children in the Kinship Care Program or future nonparental relative placement will preserve their health, safety, and welfare through the children’s avoidance of, or diversion from, foster care and through the preservation of family continuity for the children. An ordinary administrative regulation would not allow the agency sufficient time to effect these modifications without negative consequence to benefit levels of children currently in the Kinship Care Program or future benefits available to children placed with a nonparental relative caregiver by the Cabinet. This ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Commissioner’s Office
(Emergency Amendment)

922 KAR 1:130E. Kinship Care Program.

RELATES TO: KRS 194A.060[194B.060], 199.462(1), 205.175, 205.177, 205.210, 205.211, 205.720(1), 403.270, 403.280, 405.020(3), (4), 605.020(1), [15], (20), [50], [48], (55), (56), 620.050, 620.080, 620.090, 620.130(2), 620.230(2), 45 C.F.R. 264.30, [1355.20], 42 U.S.C. 601-619, 671(a)(20)(A)

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(1), (2), (3), 605.120(5), (6), 605.150(1)

EFFECTIVE: March 28, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its program. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer the public assistance programs. KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601-619 and federal regulations. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement provisions of KRS Chapter 605, Administrative Matters. KRS 605.120(5) authorizes the cabinet to the extent funds are available, to establish a program for kinship care that provides a permanent placement for a child who is or would otherwise be placed in foster care due to abuse, neglect, or the death of both parents. KRS 605.120(6) requires the cabinet to promulgate administrative regulations establishing uniform conditions and requirements regarding eligibility, financial assistance and payment rates, and support and case-management services for kinship care. This administrative regulation establishes the Kinship Care Program in Kentucky.

Section 1. Definitions. (1) "Adolescent member of the household" means a youth who:
(a) Resides in the home of an individual who applies for approval to be a kinship caregiver; and
(b) Is age twelve (12) through age seventeen (17).
(2) "Adult member of the household" means an adult who:
(a) Resides in the home of an individual who applies for approval to be a kinship caregiver; and
(b) Is age eighteen (18) or older.
(3) "Caretaker relative" means a relative:
(a) With whom the child is, or shall be, placed by the cabinet; and
(b) Who is seeking to qualify as a kinship caregiver.
(4) "Case permanency plan" is defined at KRS 620.020(1).
(5) "Child" means an individual:
(a) Age fifteen (15) or under;
(b) Age sixteen (16), seventeen (17), or eighteen (18) in regular full-time attendance in elementary, middle, or high school, or equivalent level of vocational or technical school; or
(c) Under age eighteen (18) and a graduate of high school or equivalent;
(6) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky’s Temporary Assistance for Needy Families money payment program established in 921 KAR Chapter 2.
(7) "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the cabinet as an alterna-
Section 2. Initial Eligibility Determination for A Child. (1)(a) Effective April 1, 2013, the cabinet shall not consider a child for initial eligibility in the Kinship Care Program if the cabinet: (b) Other cabinet resources for a prospective or existing permanent relative placement may include: 1. K-TAP for a child if an application is made in accordance with 922 KAR 2:006 and 921 KAR 2:016; 2. Health benefits for a child if an application is made in accordance with 907 KAR 1:610, 907 KAR 4:020, or 907 KAR 4:030; 3. Supplemental Nutrition Assistance Program (SNAP) benefits for a household if an application is made in accordance with 921 KAR 3:030; or 4. Relative placement support benefit in accordance with 922 KAR 1:400, to the extent funds are available. (2) To the extent funds are available, the cabinet may consider a child for initial eligibility in the Kinship Care Program if the cabinet: (a) Determines that the child is at risk of removal from the child's home with the child's biological or adoptive parent and would otherwise be placed in foster care, or is in the custody of the cabinet and residing in foster care due to: (i) A cabinet investigation, pursuant to 922 KAR 1:330, that resulted in a substantiation of abuse or neglect; (ii) Within 120 calendar days of placement in the home of the caretaker relative; and (b) Prior to April 1, 2013; or 2. The death of both parents; or (2) Places the child with a caretaker relative prior to April 1, 2013, due to: 1. Abuse or neglect as provided in paragraph (a)(1) of this subsection; or 2. Death of both parents. (3) Prior to April 1, 2013, the cabinet may consider a child for the Kinship Care Program if the child is placed with a caretaker relative in Kentucky by another state pursuant to KRS 615.030, and the cabinet receives from the other state agency responsible for the child's placement verification of: (a) A finding of substantiated abuse or neglect within 120 calendar days of the child's placement, as determined by the state agency responsible for the child's placement; or (b) The death of both parents. (4) Prior to April 1, 2013, the cabinet may consider a child placed with a caretaker relative in another state for the Kinship Care Program if the: (a) Child and caretaker relative become a resident of Kentucky within forty-five (45) calendar days of the child's placement; (b) Caretaker relative applies for the Kinship Care Program within forty-five (45) calendar days of the child's placement; and (c) Other state agency responsible for the child's placement provides verification that the placement was due to: 1. A finding of substantiated abuse or neglect within 120 days of the child's placement, as determined by the state agency responsible for the child's placement; or 2. The death of both parents. (5) The cabinet shall offer the Kinship Care Program benefits shall be available to a child: (a) Placed by the cabinet with a nonparental relative in accordance with 922 KAR 1:490; (b) Be approved in accordance with 922 KAR 1:490; and (b) Whose initial eligibility determination for the Kinship Care Program took place prior to April 1, 2013, to a nonparental relative who has received a child from the cabinet for placement. Section 3. Initial Eligibility Determination Process for Child's Relative. (1) The caretaker relative of the child and an adult member of the household shall: (a) Undergo a: 1. Criminal records check in accordance with 922 KAR 1:490; 2. Child abuse and neglect check conducted by the cabinet in accordance with 922 KAR 1:490; and (b) Be approved in accordance with 922 KAR 1:490. (2) Each adolescent household member of the caretaker relative's home shall: (a) Undergo a child abuse and neglect check, conducted by the cabinet in accordance with 922 KAR 1:490; and (b) Be approved in accordance with 922 KAR 1:490. (3) The caretaker relative, each adult member of the household and each adolescent member of the household shall agree to undergo a relative home evaluation. Section 4. Relative Home Evaluation. (1) The cabinet shall utilize the “DPP-1276 Relative Home Evaluation” to verify a relative home evaluation for the Kinship Care Program. (2) During a relative home evaluation, the cabinet shall consider the caretaker relative's: (a) Willingness and ability to: 1. Protect the child from abuse or neglect; 2. Assume permanent custody; 3. Understand and agree to the “KC-01 Kinship Care Program Statement of Rights and Responsibilities”; 4. Participate in the child's case permanency plan; 5. Access: a. Transportation; b. Telephone; c. Medical services; d. First aid supplies; and e. School; 6. Provide full-time care; and 7. Accommodate for the child within the home, including: a. Providing for the child's sleeping and eating; b. Maintaining adequate heat and ventilation in the home; c. Using active smoke detectors in the home; and d. Assuring the child's inaccessibility to: (i) Medication; (ii) Alcoholic beverages; (iii) Poisonous or cleaning materials; (iv) Ammunition; (v) Firearms; and (vi) Unsupervised contact with a birth parent; and (b) Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family, including verification of: (3)(a) The cabinet shall indicate the need for any start-up costs, as described in Section 14 of this administrative regulation, with the “DPP-1276 Relative Home Evaluation”. (b) Start-up costs shall no longer be available effective April 1, 2013. Section 5. Completion of Initial Eligibility Determination. (1) To satisfactorily complete the initial eligibility determination, a caretaker relative of a child shall meet the following requirements to qualify as a kinship caregiver: (a) Achieve a satisfactory relative home evaluation, described in Section 4 of this administrative regulation, from cabinet staff; (b) Meet approval criteria established in Section 3 of this administrative regulation for criminal records checks; (c) Meet approval criteria established in Section 3 of this administrative regulation for child abuse and neglect checks, conducted by the cabinet; and (d) Agree to and sign the “KC-01 Kinship Care Program Statement of Rights and Responsibilities”. (2) The child's designated cabinet worker shall utilize Form “KIM-78KC Kinship Care Financial Assistance Application”, to refer the caretaker relative[kinship caregiver] and child to the appropriate cabinet staff for an eligibility determination of the Kinship Care Program’s financial assistance for the child. (3) Prior to the financial assistance eligibility determination by the cabinet for receipt of the Kinship Care Program's financial assistance, the “KIM-78KC Kinship Care Financial Assistance Application” shall be signed and dated by: (a) The designated cabinet worker assigned to the child; and (b) The caretaker relative with whom the child is placed; or 2. A representative authorized in writing to act on behalf of the caretaker relative. (4) A caretaker relative who fails to satisfactorily complete the
initial eligibility determination required by subsection (1) of this section to qualify as a kinship caregiver shall not be eligible to receive financial assistance from the Kinship Care Program for the child.

Section 6. Application Process for the Kinship Care Program. (1) The date of the "KIM-78KC, Application for Kinship Care Financial Assistance", shall be:
   (a) Within the timeframes established in Section 2 of this administrative regulation; or
   (b) In accordance with Section 12 of this administrative regulation.

(2) The caretaker relative shall be the primary source of a child's information and shall be required to:
   (a) Furnish verification of income, resources, and technical eligibility, as required by Section 8 of this administrative regulation; and
   (b) Give written consent to those contacts necessary to verify or determine any factor pertinent to the decision of eligibility.

(3) The application shall be processed in the county of residence of the caretaker relative.

(4) If the caretaker relative is unable to go to the local department office to complete the application process, the caretaker relative may:
   (a) Designate an authorized representative; or
   (b) Request a home visit.

(5) The caretaker relative may be:
   (a) Assisted by an individual of his or her choice in the application process; or
   (b) Accompanied by an individual of his choice during a contact with the cabinet.

(6) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for a person who is:
   (a) Deaf; or
   (b) Hard of hearing.

(7) Interpreter services shall be provided for a non-English speaking individual as specified in 921 KAR 2:035, Section 1.

(8) If informed in writing of an appointment or necessary information to be provided by the caretaker relative, failure of the caretaker relative to appear for a scheduled interview or provide required information at the time requested shall be a failure to present adequate proof of eligibility.

Section 7. Timeframe for Eligibility Determination. (1) A decision shall be made regarding eligibility for Kinship Care Program financial assistance and payment issued within forty-five (45) calendar days of the date the "KIM-78KC Kinship Care Financial Assistance Application" is signed by the caretaker relative or representative.

(2) Exception to the time standard established in subsection (1) of this section may be provided by the cabinet if the caretaker relative or cabinet requires additional time to obtain verification necessary for an eligibility determination.

(3) The case record shall document the reason for not meeting the timeframe established in subsection (1) of this section.

(4) Failure to process an application within the timeframe shall not be used as a basis for denial for the Kinship Care Program.

(5) Use or disclosure of information obtained from the caretaker relative, child, or household, exclusively for the Kinship Care Program, shall be restricted pursuant to KRS 61.870 to 61.884, 194A.060(194B.060), 205.175, 205.177, and 620.050.

Section 8. Eligibility Determination for Financial Assistance Under the Kinship Care Program. (1) Except as provided in this administrative regulation, to be eligible a child shall meet technical eligibility requirements that are established for a K-TAP child in accordance with 921 KAR 2:006.

(2) The resource limit and countable resources of the child shall be the same as a K-TAP child in accordance with 921 KAR 2:016, Section 3.

(3) Except for the maximum payment scale and child's income limit in Section 11(1) of this administrative regulation, countable income of the child shall be the same as a K-TAP child in accordance with 921 KAR 2:016, Section 4(1).

(4) A child eligible for the Kinship Care Program living in the home with a sibling receiving K-TAP shall not be considered a sibling in a K-TAP benefit group in accordance with 921 KAR 2:050.

(5) Income and resources of a caretaker relative shall be disregarded when determining eligibility benefits for the child.

(6) A child shall not be concurrently eligible for a payment from the Kinship Care Program and:
   (a) A foster care payment as established in 922 KAR 1:350 or 922 KAR 1:360;
   (b) A K-TAP payment as established in 921 KAR 2:016; or
   (c) An SSI payment as established in 42 U.S.C. 1382.

(7) The kinship caregiver shall cooperate in the child support activities pursuant to 42 U.S.C. 608(a)(2) and 921 KAR 2:006, Section 18. If the approved kinship caregiver refuses to cooperate with a child support activity, kinship care financial assistance shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate number of eligible members, as established in Section 11(1) of this administrative regulation.

(8) The cabinet shall attempt to obtain a protective payee to administer the Kinship Care payment on behalf of the child in the manner as for a K-TAP child in accordance with 921 KAR 2:050, Section 115(b).

(9) As a condition of eligibility of the Kinship Care Program for a child, the caretaker relative shall make an assignment of rights to the state for support, as required by 42 U.S.C. 608(a)(3) and KRS 205.720(1). The assignment shall:
   (a) Include members of the case for whom support rights apply; and
   (b) Be completed at the time of application for Kinship Care Program financial assistance.

(10) If all technical and financial eligibility factors are met, the effective date of eligibility for Kinship Care financial assistance shall be the date of placement of the child in the home of the kinship caregiver that is listed on the "KIM-78KC Kinship Care Financial Assistance Application".

Section 9. Ineligible Child for the Kinship Care Program. A child shall not be eligible for the Kinship Care Program if the:

(1) Child applying for the Kinship Care Program does not have a KIM-78KC signed by the cabinet worker designated to monitor the child's permanency, safety, and well being;

(2) Child's parental relative resides with the child or has legal custody of the child, including joint custody; and receiving Kinship Care Program benefits does not have a designated cabinet worker to monitor the child's permanency, safety, and well being, unless the kinship caregiver has pursued permanent custody of the child;

(3) Prospective caretaker relative of a child declines by form KC-01 the initial offer of the Kinship Care Program and related benefits;

(4) Child or caretaker relative lives in or relocates to another state;

(5) Child's removal is based on a cabinet finding of dependency, in accordance with 922 KAR 1:330, except for a finding of dependency based on the death of both parents of the child; and

(6) Child no longer meets the definition of a "child" in Section 1 of this administrative regulation.

(7) Child's initial eligibility determination for the Kinship Care Program is made on or after April 1, 2013.

Section 10. Permanency for the Child. (1) Pursuant to KRS 620.090, the cabinet shall recommend to the court that the caretaker relative[Kinship caregiver] be granted temporary custody of the child, and the caretaker relative shall agree to take temporary custody of the child.

(2) A judicial authority granting temporary custody to the cabinet, pursuant to KRS 620.080, shall not be used to deny the caretaker relative's access to the Kinship Care Program.

(3) In accordance with 922 KAR 1:140, the child's designated worker shall develop a case permanency plan pursuant to KRS...
620.230(2) and conduct regular visits with the child.

(4) Prior to the 12th month of placement into the kinship care-
giver's home the cabinet shall:
(a) Review the case permanency plan and placement to de-
termine if Kinship Care is in the best interest of the child;
(b) Prepare a court report recommendation pertaining to per-
custody of the child; and
(c) Request that the case be redocketed for court action to
determine permanent custody pursuant to KRS 620.027, if appro-
riate.

(5) To continue receiving the Kinship Care Program financial
assistance, the kinship caregiver shall pursue permanent custody
of the child without undue delay on the part of the kinship caregiv-
er.

(6) The kinship caregiver shall meet the criteria of pursuing
permanent custody, as required in subsection (5) of this section, if
a petition for permanent custody of the child is filed no later than
thirty (30) calendar days after the 12th month of:
(a) Receiving financial assistance from the Kinship Care Pro-
gram; or
(b) Signing the KC-01[KC-14].

(7) If the kinship caregiver is not pursuing permanent custody
of the child as required in subsections (5) and (6) of this section,
the child shall not be eligible for the Kinship Care Program and the
character shall:
(a) Discontinue Kinship Care Program benefits for the child;
(b) Notify the overseeing court in accordance with KRS
620.130(2); and
(c) Accept an application for K-TAP for the child in accordance
with 921 KAR 2:006 and 921 KAR 2:016.

Section 11. Kinship Care Payment. (1) The maximum monthly
payment scale and child’s income limit shall be as follows:

<table>
<thead>
<tr>
<th>Number of Eligible Children</th>
<th>Maximum Monthly Payment and Income Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Child</td>
<td>$300</td>
</tr>
<tr>
<td>2 Children</td>
<td>$600</td>
</tr>
<tr>
<td>3 Children</td>
<td>$900</td>
</tr>
<tr>
<td>4 Children</td>
<td>$1,200</td>
</tr>
<tr>
<td>5 Children</td>
<td>$1,500</td>
</tr>
<tr>
<td>6 or More Children</td>
<td>$1,800</td>
</tr>
</tbody>
</table>

(2) [Except as provided by Section 8(7)(b) of this administrative
regulation.] The kinship caregiver shall not be eligible for Kinship
Care financial assistance, but shall be the payee for the eligible
child’s kinship care benefits.

(3) The caretaker relative shall not receive the Kinship Care
financial assistance for a child:
(a) Until approval of an application for the Kinship Care Pro-
gram’s financial assistance; or
(b) Prior to the application date for the Kinship Care Program's
financial assistance.

Section 12. Eligibility Shall Follow the Child. To the extent
funds are available, a child’s initial eligibility determination made
prior to April 1, 2013 the initial finding of substantiated abuse or
neglect of the child, as specified in Section 2 of this administrative
regulation, may shall be used for a reapplication and redetermina-
ion of eligibility for financial assistance under the Kinship Care
Program if:
(1) The child leaves the home of the kinship caregiver and the

cabinet:
(a) Places the child with another caretaker relative due to:
1. Death of the kinship caregiver;
2. An illness or injury of the kinship caregiver, as supported by
medical documentation, that inhibits adequate care of the child; or
3. Active duty in military service of the kinship caregiver; or
(b) Returns the child to the kinship caregiver if the absence is
temporary in accordance with:
1. Section 16(2) of this administrative regulation; or
2. Paragraph (a) 2 or 3 of this subsection; or
(2) A child who is discontinued from the Kinship Care Program
due to SSI eligibility subsequently becomes ineligible for SSI.

Section 13. Eligibility Redetermination. (1) The cabinet shall
redetermine eligibility if a report or information about a change in
circumstance is received.
(2) The cabinet shall redetermine eligibility every twelve (12)
months to reassess a Kinship Care case for continued eligibility
and financial assistance.

(3) [If the] kinship caregiver shall be responsible for reporting
within ten (10) calendar days a change in circumstance that may
affect eligibility or the amount of financial assistance.

(4) A kinship caregiver shall be responsible for requirements
during eligibility redetermination for continued Kinship Care Pro-
gram financial assistance pursuant to Sections 6(2) and 6(8) of this
administrative regulation.

Section 14. Start-up Costs. (1) To the extent funds are avail-
able, a one (1) time start-up amount may be provided prior to April
1, 2013, for the purpose of supplying a child's immediate need for:
(a) Clothing;
(b) School supplies;
(c) Additional furniture;
(d) A deposit for a larger apartment; or [and]
(e) An essential documentable cost up to the maximum al-

gowed in subsection (2) of this section.

(2) The total amount of assistance allowed for the Kinship Care
program for start-up costs shall not exceed the maximum amount for
the appropriate number of eligible children in the Kinship Care
Program as follows:

<table>
<thead>
<tr>
<th>Number of Eligible Children</th>
<th>Maximum Payment Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$350</td>
</tr>
<tr>
<td>2</td>
<td>$700</td>
</tr>
<tr>
<td>3</td>
<td>$1,050</td>
</tr>
<tr>
<td>4</td>
<td>$1,400</td>
</tr>
<tr>
<td>5</td>
<td>$1,750</td>
</tr>
<tr>
<td>6 or more</td>
<td>$2,100</td>
</tr>
</tbody>
</table>

(3) The amount of an eligible start-up cost payment shall be
issued by check directly to a vendor providing the needed service
item listed in subsection (1) of this section.

Section 15. Supportive Services. (1) To the extent funds are
available, the following services may be provided as needed on a
case-by-case basis to ensure a placement is not disrupted:
(a) [Respite care;]
(b) Family counseling;
(c) Parenting training; or
(d) Referral to an available support group or other commu-
nity-based services.
(2) The cabinet shall provide services or facilitate access to
services, including case-management services, described in the
child’s case permanency plan for at least six (6) months begin-
ing with the date of placement of the child with the caretaker
relative or (b) Until the caretaker relative has permanent custody
of the child.
(3) To the extent funds are available, a child in Kinship Care
shall be eligible for an educational bonus under the same condi-
tions as a K-TAP recipient, as described at 921 KAR 2:017, Section
11.

(a) If child care assistance is requested, the cabinet shall
refer the kinship caregiver to the area child care broker:
(b) Eligibility for child care assistance shall be determined in
accordance with criteria established in 922 KAR 2:160; and
(c) Eligibility for the Kinship Care Program shall not establish
entitlement to a child care subsidy payment.

Section 16. Discontinuance from the Kinship Care Program. (1)
Financial assistance under the Kinship Care Program shall not be
provided to a child:
(a) If the kinship caregiver fails to meet eligibility redetermi-
nation requirements as specified in Section 13 of this administrative
regulation;
(b) Who meets a criterion in accordance with Section 9 of this
administrative regulation; or
(c) Who is absent from the home of the kinship caregiver for a
VOLUME 39, NUMBER 11 – MAY 1, 2013

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: Justin Dearinger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kinship Care Program to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Kinship Care Program to the extent funding is available.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Kinship Care Program in Kentucky to the extent that funds are available.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes through its establishment and the Kinship Care Program in Kentucky to the extent that funds are available.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will sunset provisions of the Kinship Care Program to align programmatic costs with existing state and federal funding and will make other technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of this administrative regulation: The amendment to this administrative regulation is necessary to maintain programmatic costs of the Kinship Care Program within available state and federal funding and to avoid negative consequence to the benefit amounts available to current children in the Kinship Care Program. In addition, companion administrative regulations will ensure that children subject to future nonparental relative placements by the cabinet will have supportive services and benefits aligned with available resources.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing and maintaining the Kinship Care Program to the extent funding is available.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its establishment and maintenance of the Kinship Care Program to the extent funds are available.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: During the month of January 2013, there were 11,348 children receiving benefits through the Kinship Care Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new or different action will be required of the regulated entities as result of the amendment 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 new or different costs will be required of the regulated entities as a result of the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will preserve current benefit levels for existing beneficiaries in the Kinship Care Program. Regulated entities will maintain current benefit levels if other technical and financial eligibility requirements are met.

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

(a) Initially: There will be no new costs to the agency to implement this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

(b) On a continuing basis: There will be no new costs to the agency to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding used for the implementation and enforcement of this administrative regulation includes federal funds made available through the Temporary Assistance for Needy Families Block Grant (TANF) and state match or state maintenance of effort funds for TANF.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-609
2. State compliance standards. KRS 194A.050(1), 205.200(2), (3), 605.120(5), (6), 605.150(1)
3. Minimum or uniform standards contained in the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5.2 Tiering or tiering exceptions. This administrative regulation is not tiered.

5.3 Joint action. This administrative regulation is not a joint action.

5.4 Notice. This administrative regulation was advertised in the Kentucky Register.

5.5 Costs. This administrative regulation will not generate any new revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no new costs to the agency to implement this administrative regulation for the first year. Without the amendment, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

(d) How much will it cost to administer this program for subsequent years? There will be no new costs to the agency 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:

STATEMENT OF EMERGENCY
922 KAR 1:140E

This emergency administrative regulation is necessary to meet an imminent threat to public health, safety, and welfare through modifications of the Kinship Care Program and other benefits available to prospective nonparental relative caregivers of children placed by the Cabinet for Health and Family Services (Cabinet). The modifications will: (1) allow the Cabinet to continue the same level of benefits to children currently served by the Kinship Care Program; (2) ensure future benefits to children to be placed by the Cabinet with a nonparental relative caregiver; and (3) align the Cabinet’s programmatic costs with available state and federal funding. The Cabinet’s ability to continue to support children in the Kinship Care Program or future nonparental relative placement will preserve their health, safety, and welfare through the children’s avoidance of, or diversion from, foster care and through the preservation of family continuity for the children. An ordinary administrative regulation would not allow the agency sufficient time to effect these modifications without negative consequence to benefit levels of children currently in the Kinship Care Program or future benefits available to children placed with a nonparental relative caregiver by the Cabinet. This ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Emergency Amendment)


EFFECTIVE: March 28, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds

- 2122 -
and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. Pursuant to the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. Sections 620 to 679, KRS 199.467 requires the Secretary for Health and Family Services to promulgate administrative regulations establishing specific goals for the cabinet, for each fiscal year, regarding the maximum number of children who will remain in foster care longer than twenty four (24) months, and describing the steps to be taken to achieve the goals. KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. This administrative regulation establishes the maximum number of children remaining in foster care longer than twenty four (24) months, and establishes permanency services available to children in placement.

Section 1. Definitions. (1) “Absent parent search” means cabinet initiated efforts to locate a biological or legal parent, or a relative.
(2) “Cabinet” is defined by KRS 199.011(2) and 600.020(6).
(3) “Case permanency plan” is defined by KRS 620.020(1).
(4) “Concurrent planning” means the cabinet simultaneously plans for:
(a) The return of a child in the custody of the cabinet to the child’s parent; and
(b) Another permanency goal for the child if return to parent is not achieved within fifteen (15) of the last twenty two (22) months, in accordance with 42 U.S.C. 671(a)(16).
(5) “Parent” is defined by 42 U.S.C. 675(2).
(6) “Reasonable efforts” is defined at KRS 620.020(11)(40).
(7) “Relative” means an individual related to a child by blood, marriage, or adoption to a child.
(8) “Sufficient progress” means compliance with case permanency plan objectives that support the safe return of the child to the child’s parent.

Section 2. Children in Care. Unless the secretary of the cabinet or designee approves an exception based on overall trends in the foster care population, the maximum number of children who receive foster care in excess of twenty four (24) months shall be 3,000 during a state fiscal year.

Section 3. Permanency Planning. (1) In a court permanency hearing held pursuant to KRS 610.125, the cabinet shall demonstrate that reasonable efforts to return the child to the child’s parent:
(a) Have been unsuccessful; or
(b) Are not required under the provisions of KRS 610.127.
(2) A child shall be removed from the child’s home if:
(a) An emergency custody order has been obtained pursuant to KRS 620.060; or
(b) A temporary custody order has been obtained pursuant to KRS 620.090; or
(c) A court orders the removal pursuant to KRS 620.140(1)(d).
(3) Upon removal of a child from the child’s home, the placement shall be:
(a) Selected according to the least restrictive appropriate placement available, as required by KRS 620.090(2); and
(b) Closest in proximity to the child’s home, in accordance with KRS 199.801(1) and (b) A child placed with a relative shall be considered for the Kinship Care Program, as established in 922 KAR 1:30.
(4) In the provision of permanency services, the cabinet shall meet the requirements of the:
(b) Multiracial Placement Act as amended by the Interethic Adoption Provisions of 1996 in accordance with 42 U.S.C. 622(b)(9), 671(a)(32), and 1996.
(3) An absent parent search shall:
(a) Be conducted within thirty (30) days of a child entering the custody of the cabinet;
(b) Be conducted to gather as much information as possible related to the person and the person’s location which may include:
   1. Date of birth;
   2. Social Security number;
   3. Present or previous employers; and
   4. Present or most recent address; and
(c) Include a written record of all search attempts, written correspondence, and telephone contacts with any person to assist in locating a parent or relative.
(6) If a relative placement is in the best interest of the child, the cabinet shall:
(a) Use an absent parent search to locate a relative;
(b) Complete any home evaluation with consideration given to the relative’s:
   1. Willingness and ability to:
      a. Protect the child from abuse or neglect;
      b. Participate in the child’s case permanency plan;
      c. Access;
      i. Transportation;
      ii. Telephone;
      iii. Medical services;
      iv. First aid supplies; and
      v. School;
      d. Provide full-time care;
      e. Provide for the child’s sleeping and eating;
      f. Maintain adequate heat and ventilation in the home;
      g. Use active smoke detectors in the home; and
      h. Assure the child’s inaccessibility to:
         (i) Medication;
         (ii) Alcohol beverages;
         (iii) Poisons or cleaning materials;
         (iv) Firearms or ammunition; and
         (v) Unsupervised contact with the birth parent; and
   2. Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child’s extended family.
(7) If the case conference held in compliance with KRS 620.180(2)(a) results in the child being placed in the custody of the cabinet, the cabinet shall develop and document a case permanency plan, using Form DPP-1281, Family Case Plan. (8) The case permanency plan shall identify the permanency goal described in Section 4(2) of this administrative regulation.
(9) Concurrent planning shall be considered:
(a) During development of the case permanency plan; and
(b) At the six (6) month case review.

Section 4. Permanency Goals. (1) A permanency goal for a child in the custody of the cabinet shall be established according to the particular needs and best interest of the child.
(2) A permanency goal shall include one (1) of the following:
(a) Return to parent; or
(b) Adoption;
(c) Permanent relative placement;
(d) Legal guardianship;
(e) Another planned permanent living arrangement; or
(f) Emancipation.

Section 5. Return to Parent. (1) The cabinet shall recommend to the court that a child in the custody of the cabinet is returned to the parent if the cabinet determines:
(a) A family has made sufficient progress toward completing the case permanency plan; and
(b) Return to the parent is in the best interest of the child.
(2) If the cabinet determines that a family has not made sufficient progress towards achieving the objectives specified in the case permanency plan, the cabinet shall seek a court order for:
(a) A change in the permanency goal; and
(b) Termination of parental rights or civil action.
(3) If the court determines that a circumstance occurs that negates the requirement to make reasonable efforts to reunify the child and family, as described in KRS 610.127, the cabinet shall select a permanency goal other than return to parent.

Section 6. Adoption. (1) The permanency goal for a child in the
custody of the cabinet shall be adoption if:
(a) The parent pursues voluntary termination of parental rights pursuant to KRS 625.040; or
(b) The cabinet pursues involuntary termination of parental rights:
1. Pursuant to KRS 625.090; or
2. If the child has been in foster care for fifteen (15) of the most recent twenty-two (22) months pursuant to 42 U.S.C. 675.
(2) The cabinet shall request an exception for proceeding with involuntary termination of parental rights pursuant to subsection (1)(b) of this section, if:
(a) A relative placement has been secured;
(b) Termination is not in the best interest of the child, for a compelling reason:
1. Documented in the case permanency plan; and
2. Monitored on a continual basis; or
(c) A service necessary for return to parent has not been provided within the time period specified in the case permanency plan.
(3) Cabinet staff shall consider involuntary termination of parental rights at each permanency hearing held pursuant to KRS 610.125(1).

Section 7. Permanent Relative Placement. The permanency goal for a child in the custody of the cabinet shall be permanent relative placement if:
(1) Return to the parent is not in the child's best interest; and
(2) The cabinet determines that a relative who does not pursue adoption or legal guardianship is able to provide a permanent home for the child.

Section 8. Legal Guardianship. (1) The permanency goal for a child in the custody of the cabinet shall be legal guardianship if the cabinet determines that:
(a) Return to the parent or adoption is not in the child's best interest.
(b) There is an identified adult willing to seek legal guardianship of this child; and
(c) Legal guardianship by the adult identified in subsection (1)(b) of this section is in the child's best interest.
(2) Legal guardianship shall be requested pursuant to KRS 620.140(1)(c).

Section 9. Another Planned Permanent Living Arrangement. (1) The permanency goal for a child in the custody of the cabinet shall be another planned permanent living arrangement if:
(a) An unsuccessful effort has been made to place the child for adoption or with a relative, and the child has been placed on a national adoption register;
(b) Other permanency goal options have been exhausted and are no longer appropriate due to the specific circumstances of the child;
(c) The cabinet has reviewed documentation that a goal of another planned permanent living arrangement is in the best interest of the child;
(d) The court has determined that another planned permanent living arrangement is in the best interest of the child to be placed; and
(e) The child has formed psychological ties with those with whom the child lives, and adoption and guardianship have been discussed with the care provider and are not viable alternatives.
(2) Approval shall be obtained from the commissioner or designee prior to the establishment of another planned permanent living arrangement as a permanency goal for a child:
(a) Under the age of sixteen (16); or
(b) Placed with a private child caring agency.

Section 10. Emancipation. (1) The permanency goal for a child in the custody of the cabinet shall be emancipation when:
(a) The youth is age sixteen (16) or older;
(b) Other permanency options have been considered and are not appropriate due to the specific circumstances of the child.
(2) If emancipation is established as a permanency goal, the youth shall be referred to an independent living program administered by the cabinet.

Section 11. Permanency Services. (1) The cabinet shall provide services for a child in the custody of the cabinet so that permanency is achieved.
(2) Permanency services may include:
(a) Ongoing case work and monitoring of the family to:
1. Maintain the child safely in the child's home; and
2. Ensure safe return of the child if the goal is return to the parent;
(b) Adoption assistance pursuant to 922 KAR 1:050 or 922 KAR 1:060;
(c) Postfinalization adoption assistance if adoption assistance has not been previously approved pursuant to KRS 199.555 and 199.557;
(d) Postadoption placement stabilization services as described in 922 KAR 1:530; or
(e) Referral to other cabinet and community resources necessary for the achievement or maintenance of the child's permanency goal. Other cabinet resources for a prospective or existing permanent relative placement may include:
1. The Kentucky Transitional Assistance Program (K-TAP) for a child if an application is made in accordance with 922 KAR 2:006 and 921 KAR 2:016;
2. Health benefits for a child if an application is made in accordance with 907 KAR 1:610, 907 KAR 4:020, or 907 KAR 4:030;
3. Supplemental Nutrition Assistance Program (SNAP) benefits for a household if an application is made in accordance with 921 KAR 3:030; or
4. Relative placement support benefit in accordance with 922 KAR 1:400, to the extent funds are available.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: March 19, 2013
FILED WITH LRC: March 28, 2013 at 3 p.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Justin Dearinger
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the maximum number of children remaining in foster care longer than twenty-four months, and establishes permanency services available to children in placement.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the maximum number of children remaining in foster care longer than twenty-four months, and permanency services available to children in placement.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the maximum number of children remaining in foster care longer than twenty-four months, and permanency services available to children in placement.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing the maximum number of children remaining in foster care longer than twenty-four months, and permanency services available to children in placement.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates provisions pertaining to the Kinship Care Program and per-
manent relative placement for consistency with the concurrent amendments to 922 KAR 1:130 governing the Kinship Care Program and 922 KAR 1:400 governing Supportive Services. It also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to maintain programmatic costs of the Kinship Care Program and relative caregiver placements within available state and federal funding. This and companion amendments are necessary to avoid negative consequence to the benefit amounts available to current children in the Kinship Care Program and to ensure that children subject to future nonparental relative placements by the cabinet have supportive services and benefits conforming to available funding resources.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by aligning and updating permanency services for children who are placed by the cabinet with a nonparental relative congruent with available state and federal funding.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes through its alignment and update of permanency services for children placed by the cabinet with a nonparental relative. The amendment assures that programmatic costs conform to available state and federal funding resources.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: During the month of January 2013, there were 11,348 children receiving benefits through the Kinship Care Program and 284 children in state custody who were placed with relatives. Approximately 300 new children are placed by the cabinet with caretaker relatives as an alternative to foster care each month.

(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 new or different action will be required of the regulated entities as result of the amendment 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 new or different costs will be required of the regulated entities as result of the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children currently receiving benefits in the Kinship Care Program will maintain eligibility for the same level of benefits if other technical and financial eligibility requirements are met. Children subject to future nonparental relative placements by the cabinet will have supportive services and benefits aligned with available funding resources.

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

(a) Initially: There will be no new costs to the agency to implement this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

(b) On a continuing basis: There will be no new costs to the agency to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds used for the implementation and enforcement of this administrative regulation include federal Titles IV-B and IV-E of the Social Security Act, federal Temporary Assistance for Needy Families Block Grant (TANF), federal Social Services Block Grant (SSBG), restricted funds derived from Medicaid, and state funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. KRS 194A.050(1), 199.467, 620.180


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

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 Cabinet for Health and Family Services, Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.467, 620.180, 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 622, 670-679b, 1996, 1996b

(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? These programs and services have been operational for a number of years. They do not produce any revenue for the state. This administrative regulation will not generate any new revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no new costs to the agency to implement this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

(d) How much will it cost to administer this program for subse-
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quent years? There will be no new costs to the agency to imple-
ment 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 regu-
lation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

STATEMENT OF EMERGENCY
922 KAR 1:320E

This emergency administrative regulation is necessary to meet an
imminent threat to public health, safety, and welfare through modifi-
cations of the Kinship Care Program and other benefits available to
prospective nonparental relative caregivers of children
placed by the Cabinet for Health and Family Services (Cabinet).
The modifications will: (1) allow the Cabinet to continue the same
level of benefits to children currently served by the Kinship Care
Program; (2) ensure future benefits to children to be placed by the
Cabinet with a nonparental relative caregiver; and (3) align the
Cabinet’s programmatic costs with available state and federal fund-
ing. The Cabinet’s ability to continue to support children in the
Kinship Care Program or future nonparental relative placement will
promote the health, safety, and welfare through the children’s
avoidance of, or diversion from, foster care and through the pre-
servation of family continuity for the children. This emergency ad-
ministrative regulation aligns hearing rights and responsibilities for
the Kinship Care Program congruent with other concurrent emer-
gency amendments to administrative regulations. An ordinary ad-
ministrative regulation would not allow the agency sufficient time to
effect these modifications without negative consequences to ben-
efit levels of children currently in the Kinship Care Program or future
benefits available to children placed with a nonparental relative
caregiver by the Cabinet. This ordinary administrative regulation is
identical to the emergency administrative regulation. This emer-
gency administrative regulation shall be replaced by an ordinary
administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Commissioner’s Office
(Emergency Amendment)

922 KAR 1:320E. Service appeals.

RELATES TO: KRS Chapter 13B, 194A.005, 194A.030(8),
199.555(2), 199.557, 209.020(4), (5), 209A.020(4), (5),
600.020(43)(442), 605.090(1)(b), (6), 620.020(1), 620.180(2)(a)(1),
620.230, 45 C.F.R. 98.98.2, 205.10, 1355.21(b), 1355.30(p), 29
U.S.C. 794, 42 U.S.C. 625, 629a, 671(a)(23), 673, 675, 9958-
9858

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2),
194A.050(1)

EFFECTIVE: March 28, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS
194A.010(2) designates the Cabinet for Health and Family Servic-
es as the primary state agency responsible for leadership in pro-
tecting and promoting the well-being of Kentuckians through the
delivery of quality human services. KRS 194A.050(1) requires the
Secretary of the Cabinet for Health and Family Services to promul-
gate administrative regulations necessary to implement programs
mandated by federal law or to qualify for the receipt of federal
funds, including 45 C.F.R. 205.10, made applicable to titles IV-B
and IV-E programs by references in 45 C.F.R. 1355.21(b) and
1355.30(p). This administrative regulation establishes procedures
related to appeals and complaints for benefits and services under
922 KAR Chapters 1 through 5.

Section 1. Definitions. (1) “Adoption assistance” means a pay-
ment under:
(a) KRS 199.555(2) and 922 KAR 1:050, State-funded adop-
tion assistance; or
(b) KRS 199.557 and 922 KAR 1:060, Federal Title IV-E adop-
tion assistance.
(2) “Adult” is defined by KRS 209.020(4) or 209A.020(4).
(3) “Caretaker relative” means a relative:
(a) With whom a child is, or shall be, placed by the cabinet; and
(b) Who is seeking to qualify as a kinship caregiver in accor-
dance with 922 KAR 1:130, Kinship Care Program.
(4) “Case plan” is described in 922 KAR 1:430, Child Protec-
tive Services In-home Case Planning and Service Delivery, for a
child who remains in the home.
(5) “Case permanency plan” is defined by KRS 620.230(1) and
described in KRS 620.230 for a child placed outside the home.
(6) “Case planning conference” means a meeting in which a
case plan or a case permanency plan is developed or modified in
accordance with KRS 620.180(2)(a).
(7) “Child care assistance” means subsidy benefits as de-
scribed by 922 KAR 2:160, Child Care Assistance Program.
(8) “Child welfare services” is defined by 42 U.S.C. 625 and
described in 42 U.S.C. 629a.
(9) “Commissioner” means the Commissioner of the Depart-
ment for Community Based Services or designee.
“Contract agency” means a business or organization that
offers child welfare, adult or domestic violence protective, or child
care services to the public through a contract or agreement with
the cabinet.
(11) “General adult services” means a voluntary preventative
service in accordance with 922 KAR 5:090. General adult services.
(12) “Good cause” means justification for failure to carry for-
ward a legal obligation related to an appeal in accordance with
Section 6(7) of this administrative regulation.
“Kinship caregiver” means a qualified caretaker relative of a
child with whom the child is placed by the cabinet as an alterna-
tive to foster care in accordance with 922 KAR 1:130, Kinship Care
Program.
(14) “Parent” is defined by:
(a) KRS 600.020(43)(442) and 42 U.S.C. 675(2) for child wel-
fare benefits and services; or
(b) 45 C.F.R. 98.2 for child care assistance.
(15) “Protective services” is defined by KRS 209.020(5) or
209A.020(5).
(16) “Registered child care provider” means a caregiver regis-
tered under 922 KAR 2:180, Requirements for registered child care
providers in the Child Care Assistance Program.
(17) “Resource home” means a home in which an individual
has been approved by the cabinet in accordance with 922 KAR 1:350, Family preparation, to:
(a) Provide foster care services for a child placed by the cabi-
net;
(b) Adopt a child:
1. Whose parents’ parental rights have been terminated; and
2. Who is under the custodial control of the cabinet; or
(c) Provide respite service for a family approved to care for a
child under the custodial control of the cabinet.

Section 2. Right to Appeal. (1) A parent may request review of
the following through an administrative hearing:
(a) Denial, reduction, modification, suspension, or termina-
tion of child welfare services provided by the cabinet;
(b) Closure of a child protective services case in accordance
with:
1. 922 KAR 1:330, Section 11(3); or
2. 922 KAR 1:430, Section 4(4)(b); or
(c) Failure by the cabinet to:
1. Respond with reasonable promptness to a request for child
welfare services provided by the cabinet;
2. Complete a case plan, or case permanency plan;
3. Provide or refer for services as specified in the case plan or
case permanency plan; or
4. Meet the mandated time frames for child protective services
specified in 922 KAR 1:330.
(2) A resource home parent or adoptive parent may request review of the following through an administrative hearing:
(a) Failure by the cabinet to:
1. Process reimbursement to a resource home with reasonable promptness;
2. Provide information required by KRS 605.090(1)(b) and (6);
3. Advise an adoptive parent of the availability of adoption assistance in accordance with 922 KAR 1:050, Approval of adoption assistance, or 922 KAR 1:060, Federal Title IV-E adoption assistance; or
4. Provide an adoptive parent, except as otherwise required by law, with known relevant facts regarding the: a. Child; b. Child's background prior to finalization of the adoption; and c. Child's biological family;
(b) Determination of ineligibility for adoption assistance upon execution of an adoptive placement agreement under 922 KAR 1:050, Approval of adoption assistance, or 922 KAR 1:060, Federal Title IV-E adoption assistance; or
(c) Denial of a request for a change in payment level due to a change in circumstances of an adoptive parent or child at the time of renewal of an adoption assistance agreement under 922 KAR 1:050, Approval of adoption assistance, or 922 KAR 1:060, Federal Title IV-E adoption assistance; or
(d) Closure of a resource home under 922 KAR 1:350, Family preservation, unless a provision of Section 3(1)(f), (g), (h), or (i) of this administrative regulation applies.
(3) An approved and available adoptive parent outside the jurisdiction with responsibility for handling the case of an adoptive child may request an administrative hearing for the cabinet's denial or delay in placement of the child for adoption pursuant to 42 U.S.C. 671(a)(23).
(a) A kinship caregiver may request an administrative hearing pursuant to 922 KAR 1:130, Section 19; Pursuant to 922 KAR 1:130, Section 19(1), a kinship caregiver may request an administrative hearing under the provisions of this administrative regulation for denial by the cabinet of:
1. Supportive services to facilitate the child's placement with the kinship caregiver; or
2. A request for startup costs to facilitate the child's adjustment to the environment with the kinship caregiver.
(b) Pursuant to 922 KAR 1:130, Section 19(2), a kinship caregiver who is dissatisfied with an action or inaction on the part of the cabinet relating to financial assistance under the Kinship Care Program may request an administrative hearing under the provisions of 921 KAR 2:055, Hearings and appeals.
(4) An applicant determined by the cabinet to be ineligible in accordance with 922 KAR 1:130, Section 19(1), a kinship caregiver may request an administrative hearing pursuant to 922 KAR 1:450, Section 3.
(5) An applicant determined by the cabinet to be ineligible for a tuition waiver may request an administrative hearing pursuant to 922 KAR 1:450, Section 3.
(6) An applicant determined by the cabinet to be ineligible for an educational and training voucher may request an administrative hearing pursuant to 922 KAR 1:500, Section 5.
(7) An adult may request review of the following through an administrative hearing:
(a) A matter in which a court:
1. Has previously made a judicial determination or issued an order on the same issue being appealed; or
2. Is currently engaged in legal proceedings regarding the same issue being appealed;
(b) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;
(c) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;
(d) Failure to submit a written request for appeal within the time frame established by Section 6(4)(b) of this administrative regulation;
(e) A decision to deny:
1. Approval of an individual seeking to provide foster or adoptive services in accordance with 922 KAR 1:350 or 922 KAR 1:310; or
2. A caretaker relative approval as a kinship caregiver if the:
   a. Caretaker relative fails to meet the provisions of 922 KAR 1:130, Section 5; or
   b. Child is ineligible in accordance with 922 KAR 1:130, Section 9;
(f) Removal of a foster child from a resource home if the resource home parent or another individual residing in the home has been found by the cabinet to have abused, neglected, or exploited a child and the:
1. Resource home parent or other individual waived the right to appeal the substantiated incident; or
2. Substantiated incident was upheld after:
   a. An administrative hearing; or
   b. Judicial review;
(g) Removal of a child from a resource home for the purpose of:
1. Achieving a permanency goal described by 922 KAR 1:140, Foster care and adoption permanency services; or
2. Reuniting the child with a sibling at the next placement;
(h) Closure of a resource home if the cabinet has not placed a child in the home within the previous two (2) years;
(i) Closure of a resource home according to the terms of the contract between the cabinet and the resource home;
(j) A situation where state or federal law requires adjustment of a payment or grant, except when a payment or grant computation is incorrect;
(k) The per diem rate of reimbursement paid to a resource home parent who provides foster care services; or
(l) Decision to not recommend a resource home parent in accordance with 922 KAR 1:350, Section 9(12) for enrollment in specialized training as an emergency shelter, medically fragile, specialized medically fragile, or care plus resource home.
(2) A complaint of discrimination may be filed with the cabinet's Office of Human Resource Management in accordance with 920 KAR 1:090.
Section 4. Service Complaints. (1) If a matter is not subject to review through an administrative hearing, a parent, caretaker relative, kinship caregiver, or an adult may:
(a) Attempt to resolve the issue by submitting a written complaint to the service region administrator or designee within thirty (30) calendar days after the date of the cabinet action or alleged act; or
(b) Contact the cabinet's Office of the Ombudsman if the mat-
Section 5. Appeal of a Child Abuse or Neglect Investigative Finding. An individual who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's finding through an administrative hearing in accordance with 922 KAR 1:480, Appeal of child abuse and neglect investigative findings.

Section 6. Request for Appeal. (1) The cabinet shall provide a copy of the: 
(a) DPP-154, Protection and Permanency Service Appeal Request, to an individual: 
1. At each case planning conference;
2. Upon denial, reduction, modification, suspension, or termination of a benefit or services, the cabinet shall continue to provide federally-funded assistance in accordance with 45 C.F.R. 205.10(a)(6) pending the outcome of the appeal.
3. Upon determination that a student is not eligible for a tuition waiver or education and training voucher;
(b) DCC-88, Child Care Service Appeal Request, to an individual: 
1. Upon the denial, reduction, or termination of child care assistance;
2. In accordance with 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program for: 
(a) Withdrawal or denial of child care registration application, not at the request of the applicant; or 
(b) Revocation or closure of a registered child care provider, not at the request of the provider;
3. Upon a reduction or revocation of a child care provider's STARS level in accordance with: 
(a) 922 KAR 2:170, STARS for KIDS NOW Program Type I licensed child-care centers; or 
(b) 922 KAR 2:210, STARS for KIDS NOW Program for Type II licensed and certified family child-care homes; or
4. Upon a revocation of a trainer's credential in accordance with 922 KAR 2:240, Kentucky Early Care and Education Trainer's Credential and training approval.
(2) At least ten (10) days prior to the denial, reduction, modification, suspension, or termination of a benefit or services, the cabinet shall hand-deliver or mail a: 
(a) DPP-154A, Protection and Permanency Notice of Intended Action;
(b) DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals; or 
(c) Notice in accordance with 922 KAR 2:160, Section 12(7).
(3) The cabinet may take emergency action under KRS 13B.125.
(4) A request for appeal shall: 
(a) Be written by the appellant, with the assistance of the cabinet or contract agency if the appellant is unable to comply without assistance;
(b) Be submitted to the cabinet no later than thirty (30) calendar days from the date the notice provided in accordance with subsection (2) of this section was issued; or 
2. Of the occurrence of the disputed action;
(c) Describe the: 
1. Cabinet action in dispute; or
2. Alleged act; 
(d) Specify: 
1. The reason the appellant disputes the cabinet's action; and
2. Name of each cabinet staff person involved with the disputed action, if known; and
3. Date of the cabinet action or alleged act in dispute; and
(e) Include the notice provided in accordance with subsection (2) of this section, if available.
(5)(a) Upon receipt of a written request for appeal, the cabinet shall determine whether the matter is subject to review through an administrative hearing. 
(b) If the matter is not subject to review, the cabinet shall inform the individual in writing that: 
1. Matter is not appealable; and 
2. Resolution of the matter may be pursued through the service complaint process described in Section 4 of this administrative regulation.
(6) If the cabinet receives a written request for appeal within ten (10) calendar days from the date the notice provided in accordance with subsection (2) of this section was issued or date of the disputed action and the matter is appealable, the cabinet shall continue to provide federally-funded assistance in accordance with 45 C.F.R. 205.10(a)(6) pending the outcome of the appeal.
(7) The cabinet shall not dismiss a request for appeal if an appellant demonstrates good cause. Justification may include: 
(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or 
(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to: 
1. Submit a written request for appeal; or 
2. Participate in a proceeding related to an administrative hearing.
Section 7. Administrative Hearing. (1) Each administrative hearing conducted by the cabinet or designee shall comply with KRS Chapter 13B.
(2) Unless waived by the appellant, final administrative action shall be taken in accordance with the ninety (90) day time frame established by KRS 13B.120(4).
Section 8. Contract Agencies. (1) A contract agency shall offer a complaint process consistent with: 
(a) Section 4 of this administrative regulation; or 
(b) Provisions of the contract or agreement between the contract agency and the cabinet, if the provisions are different from Section 4 of this administrative regulation.
(2)(a) An individual dissatisfied with a final written decision rendered by a contract agency in response to a complaint may request that the commissioner review the complaint and the final decision.
(b) A request for review shall be submitted to the commissioner
within ten (10) days of the contract agency’s final decision.

(c) Upon completion of the review, the commissioner shall render a written order regarding the complaint within thirty (30) days unless:

1. There are extenuating circumstances prolong the review of the complaint; and
2. The commissioner notifies the client of the need for an extension to the timeframe specified in this subparagraph.

(d) The contract agency shall abide by the order.

Section 9. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) “DCC-88, Child Service Appeal Request”, edition 11/09;
(b) “DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals”, edition 11/09;
(c) “DPP-154, Protection and Permanency Service Appeal Request”, edition 11/09; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: March 19, 2013
FILED WITH LRC: March 28, 2013 at 3 p.m.
CONTACT PERSON: Tricia Orme, 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: Justin Dearinger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures related to service appeals and complaints for benefits and services under 922 KAR Chapter 1 through 45.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide service appeal and complaint procedures as expressly permitted by 922 KAR Chapters 1 through 5 and Kentucky Revised Statutes.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with due process standards set forth in KRS Chapter 13B and 45 C.F.R. 205.10.
(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 KRS Chapter 13B and 45 C.F.R. 205.10 by establishing procedures related to due process and service complaints.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation aligns hearing rights and responsibilities for the Kinship Care Program with other concurrent amendments to administrative regulations. The amendment also makes other technical corrections in accordance with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: This and companion amendments are necessary to avoid negative consequence to the benefit amounts available to current children in the Kinship Care Program and to ensure that children subject to future nonparental relative placements by the contract agency to implement this administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the due process standards in KRS Chapter 13B and 45 C.F.R. 205.10.
(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of KRS Chapter 13B and 45 C.F.R. 205.10 by establishing procedures related to due process and service complaints.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts individuals who request an administrative hearing or submit a service complaint to the cabinet as permitted by 922 KAR Chapters 1 through 5 or Kentucky Revised Statute.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation clarifies the service appeal and complaint procedures, and matters which are subject to review through an administrative hearing or service complaint before the cabinet. The amendment is technical and conforming in nature.
(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 the regulated entities as a result of this amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation ensures alignment with other administrative regulations and greater clarity regarding the cabinet’s procedures for service appeals and complaints.

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

(a) Initially: There will be no new costs to the agency to implement this administrative regulation. Without this and companion amendments, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.
(b) On a continuing basis: There will be no new costs to the agency to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Social Services Block Grant, Child Care and Development Fund Block Grant, Title IV-E (of the Social Security Act) funds are federal funds that support the implementation and enforcement of this administrative regulation. State General Funds are also utilized.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 205.10, 1355.21(b), 1355.30(p), 29 U.S.C. 794, 42 U.S.C. 625, 629a, 671(a)(23), 673, 675, 9858-9858q

2. State compliance standards. KRS Chapter 13B, 194A.010(2), 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 205.10, 1355.21(b), 1355.30(p), 29 U.S.C. 794, 42 U.S.C. 625, 629a, 671(a)(23), 673, 675, 9858-9858q

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

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) for 4A.010(2), 194A.050(1), 45 C.F.R. 205.100, 1355.21(b), 1355.30(p)

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, 194A.010(2), 194A.050(1), 45 C.F.R. 205.100, 1355.21(b), 1355.30(p)

(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 any new revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no new costs to the agency to implement this administrative regulation. Without this and companion amendments, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be met on the Kinship Care Program.

(d) How much will it cost to administer this program for subsequent years? There will be no new costs to the agency 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:

STATEMENT OF EMERGENCY
922 KAR 1:400E

This emergency administrative regulation is necessary to meet an imminent threat to public health, safety, and welfare through modifications of the Kinship Care Program and other benefits available to prospective nonparental relative caregivers of children placed by the Cabinet for Health and Family Services (Cabinet). The modifications will: (1) allow the Cabinet to continue the same level of benefits to children currently served by the Kinship Care Program; (2) ensure future benefits to children to be placed by the Cabinet with a nonparental relative caregiver; and (3) align the Cabinet’s programmatic costs with available state and federal funding. The Cabinet’s ability to continue to support children in the Kinship Care Program or future nonparental relative placement will preserve their health, safety, and welfare through the children’s avoidance of, or diversion from, foster care and through the preservation of family continuity for the children. An ordinary administrative regulation would not allow the agency sufficient time to effect these modifications without negative consequence to benefit levels of children currently in the Kinship Care Program or future benefits available to children placed with a nonparental relative caregiver by the Cabinet. This ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEFAN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Emergency Amendment)

922 KAR 1:400E. Supportive services.


EFFECTIVE: March 28, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill responsibilities vested in the cabinet. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(4), which authorizes the cabinet to perform services to a youth currently or formerly in foster care, necessary for the protection of children. 2006 Ky. Acts Ch. 252 Part I, H.109(9) requires the cabinet to promulgate an administrative regulation to implement the Foster Youth Transitional Assistance Program. This administrative regulation establishes standards for provision of supportive services to a family receiving ongoing case management services or to safely maintain a child in the child’s(b) home through the cabinet, to the extent funds are available.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 194A.005(1), 600.020(6), 209A.020(2), and 209A.020(2).
(a) "Case permanency plan" is defined by KRS 620.020(1).
(b) "Child" is defined by KRS 199.011(4), 600.020(8), and as extended by KRS 610.110(6).
(c) "Intensive family-based support services" means the goal of keeping the family united or if removal of a child is necessary, placing the child in the least restrictive setting consistent with his or her individual needs.
(d) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky’s Temporary Assistance for Needy Families Program, a money payment program for a child who is deprived of parental support or care, as described at KAR 210.020, Section 1(9).
(e) "Kentucky Works" means a program that assists: a) Recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or b) Former K-TAP recipient with job retention service.
(f) "Preventative assistance" means a service to provide emergency funds to a family during crisis.
(g) "Paraprofessional attendant" means a person with a high school diploma or bachelor's degree and training related to the services he or she provides, under the supervision of a licensed professional.
(h) "Rehabilitative services" means medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his or her practice under state law, for maximum reduction of physical or mental disability and restoration of a recipient to his or her best possible functional level.
(i) "Relative placement support benefit" means a monetary benefit to address a child's immediate need during the cabinet's placement of the child with a nonparental relative.
(j) "Safety net services" means: a) A short-term intervention or maintenance service to help an individual or family develop and maintain skills and abilities to prevent out-of-home placement for a child in that family; or b) Monetary benefits to assist in maintaining self-sufficiency.

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Section 2. Child Care Services. The cabinet may refer an individual or family for child care services pursuant to 922 KAR 2:160 if the individual or family:

1. Makes a request for assistance for child care expenses;
2. Needs child care for protection or prevention of child abuse, neglect or exploitation; or

Section 3. Child Support Service. The cabinet may make a referral for child support services, by means of the process described at 921 KAR 1:380, on behalf of a child entering out-of-home care services.

1. Voluntary commitment agreement; or
2. Court order assigning legal responsibility for the child to the cabinet.

Section 4. Intensive Family-based Support Services. (1) Intensive family-based support services shall be provided through a contractual agreement, for the purpose of:

(a) Stabilizing a child in the child’s own home or foster home;
(b) Preventing further hospitalization or institutionalization; and
(c) Enabling a child and the child’s family to improve their lives.

(2) An intensive family-based support service may be provided to a child with one (1) or more of the following:

(a) Mental retardation or developmental disability;
(b) Emotional or behavioral disturbance;
(c) Dual diagnosis;
(d) Risk of institutionalization; or
(e) Need for aftercare services following release from an institution or other highly structured setting.

(3) Except for the assessment and discharge planning, intensive family-based support services shall not start while a child is in a hospital or an institution.

(4) Intensive family-based support services shall be available to a family with a child living in a:

(a) Biological home;
(b) Foster home; or
(c) Adoptive placement.

(5) The cabinet may make a referral for intensive family-based support services which may include the following:

(a) A comprehensive assessment, to include:
1. Review of medical, psychiatric, social and educational assessments conducted within the last twelve (12) months; and
2. An in-home assessment;
(b) If appropriate, discharge planning provided through the service provider’s involvement with a foster or biological family, the child, and the hospital or institution to ensure:
1. A coordinated approach upon discharge; and
2. That communication is clear regarding behaviors, goals, and recommended interventions;
(c) Planned support services provided to assist with routine day-to-day activity that is crucial to stabilization of a child within the family unit;
(d) Family intervention services, such as behavioral and family counseling, to assist a child and family in:
1. Identifying and resolving issues underlying the dysfunctional behaviors within a family; or
2. Eliminating barriers to change;
(e) Respite care services provided to allow a biological or a foster parent relief for a designated period of time from the stress of caring for an emotionally disturbed or physically disabled child or to allow time to attend to other needs;
(f) A paraprofessional attendant to provide direct in-home services to a child, or a biological or foster parent, as identified in the case plan;
(g) Purchase of care in an alternate living unit, as a component of an intensive family-based support services contract;

(h) Art or music therapy from a qualified professional;
(i) Educational consultation and support;
(j) Crisis intervention;
(k) Skill development; or
(l) Other service identified in the case plan.

(6) The type, frequency, intensity, and duration of services shall be determined according to each individual situation.

(7) A family case plan shall be developed to address:

(a) Family strengths and needs;
(b) Goals, objectives, and tasks;
(c) Time frames; and
(d) Anticipated outcomes.

Section 5. Safety Net Services. (1) Safety net services shall be provided for a former K-TAP recipient who:

(a) Has total income at or below 200 percent of federal poverty level; and
(b) Is no longer eligible for K-TAP benefits due to:

Failure to comply with Kentucky Works requirements of 921 KAR 2:370, Section 7(2)(b); or
2. Reaching benefit time limitations established at 921 KAR 2:006, Section 21.

(2) A safety net service shall include contact with the family and may address the following:

(a) Assistance to the individual or family to identify the problem and resources available to improve the situation;
(b) Linkage to the appropriate resources; or
(c) Intervention in a crisis situation including:
1. Fuel shortage;
2. Utility shutoff;
3. Insufficient food, clothing, housing, or employment; or
4. Response to an inquiry regarding the family situation.

(3)(a) The cabinet may authorize fund distribution to an appropriate vendor, in order to provide for a family’s safety net services.

(b) Up to a total of $635 may be paid over a period of four (4) months during the[a] twelve (12) month period following an event specified in subsection (1)(b) of this section.

Section 6. Medicaid Services. (1) Rehabilitative services shall be provided to a Medicaid-eligible child under the age of twenty-one (21) who meets the Department for Community Based Services’ conditions and circumstances as a child in the custody of, or under the supervision of, or at risk of being in the custody of, the cabinet.

(2) Targeted case management services shall be provided to a Medicaid-eligible individual in accordance with 907 KAR 3:020, Section 3(1).

Section 7. Preventative Assistance. (1) Preventative assistance services shall be provided in order to:

(a) Assist an individual who is identified at risk and is in need of protective services intervention;
(b) Prevent the removal of a child from his or her home; or
(c) Facilitate the return of a child to his or her natural parents.

(2) Preventative funds may be utilized for:

(a) Shelter;
(b) Food;
(c) Clothing;
(d) Utilities; or
(e) Other necessary services.

(3) The cabinet may authorize up to $600 in a state fiscal year to the appropriate vendor for a family.

Section 8. K-TAP Determination for Domestic Violence Victims. If a report of alleged domestic violence is made the cabinet shall:

(1) Attempt to arrange a face-to-face interview with the alleged victim to conduct an assessment or investigation, according to the procedure established at 921 KAR 2:006, Section 25, and, if necessary, offer protective and general adult services; and
(2) Upon completion of the assessment or investigation, provide information to K-TAP whether the reported victim:

(a) Is in a domestic violence situation; and
(b) Has agreed to services.
Section 9. Relative Placement Support Benefit. (1) Effective April 1, 2013, to the extent that funds are available, the cabinet shall provide a one (1) time relative placement support benefit:

(a) To facilitate the cabinet’s placement of a child with a nonparental relative;

(b) If the cabinet determines that a child is at risk of being placed in foster care, or is in the custody of the cabinet and residing in foster care due to:

1. A cabinet investigation pursuant to 922 KAR 1:330 that resulted in a substantiation of abuse or neglect naming the child’s biological or adoptive parent as the perpetrator; or

2. The death of both parents;

(c) That will provide for a child’s immediate need for:

1. Clothing;
2. School supplies;
3. Additional furniture;
4. A deposit for a larger apartment; or

(d) That does not exceed the maximum amount for the appropriate number of eligible children as follows:

<table>
<thead>
<tr>
<th>Number of Eligible Children</th>
<th>Maximum Payment Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$350</td>
</tr>
<tr>
<td>2</td>
<td>$700</td>
</tr>
<tr>
<td>3</td>
<td>$1,050</td>
</tr>
<tr>
<td>4</td>
<td>$1,400</td>
</tr>
<tr>
<td>5</td>
<td>$1,750</td>
</tr>
<tr>
<td>6 or more</td>
<td>$2,100</td>
</tr>
</tbody>
</table>

(2) The relative placement support benefit shall be issued by check directly to a vendor providing the needed service or item listed in subsection (1)(c) of this section.

(3) The cabinet shall indicate the need for a relative placement support benefit in the relative’s home evaluation in accordance with 922 KAR 1:140.

(4) In accordance with Kentucky’s Title IV-A Temporary Assistance for Needy Families Block Grant state plan, the cabinet shall prioritize a child for the relative placement support benefit if the child is:

(a) Placed with a relative whose household income is at or below 200% of the federal poverty level as determined annually by the U.S. Department of Health and Human Services; or

(b) Determined eligible for K-TAP.

Section 11. Improper Payments. The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 12. State Plan. A copy of the state’s Title IV-A Temporary Assistance for Needy Families state plan may be obtained by a request in writing made to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

Foster Youth Transitional Assistance (FYTA). (1) In accordance with 800 Federal Acts ch. 232, Part 1, H.R. 10, grants or vouchers from the Foster Youth Transitional Assistance program shall be provided to a youth who:

(a) Was in foster care on the youth’s eighteenth birthday;
(b) Is currently in foster care; or
2. Was formerly in foster care; and

(c) Is:

1. Currently working;
2. Currently working and attending a community college; or
3. Currently working and attending a four (4) year college or university.

(2) A recipient in the FYTA program shall submit documentation of program eligibility under paragraph (c) of this section to the cabinet monthly.

(3) A youth shall utilize funds for transitional assistance into independence for the following:

(a) Housing;
(b) Clothing;
(c) Transportation;
(d) Tuition;
(e) Medical services;
(f) Dental services; or

(g) Other expenses that the cabinet may authorize for the youth.

(4) For each state fiscal year, the cabinet may authorize:

(a) Up to $7,500 per working youth; or

(b) Up to $10,000 per working youth also attending:

1. Community college;
2. Four (4) year college or university.

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: March 19, 2013
FILED WITH LRC: March 28, 2013 at 3 p.m.
CONTACT PERSON: Tricia Orme, 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: Justin Dearinger
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the provision of supportive services to a family receiving ongoing case management services or to safely maintain a child in the child’s home through the cabinet, to the extent funds are available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for the provision of supportive services to a family receiving ongoing case management services or to safely maintain a child in the child’s home through the cabinet, to the extent funds are available.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing supportive services for vulnerable children and families to the extent funds are available.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing supportive services for vulnerable children and families to the extent funds are available.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation adds a new supportive service for children placed by the cabinet with a nonparental relative. The service is one-time and may be used for an item that addresses an immediate need of the child being
placed to help secure the placement and promote its stability. The service replaces a similar service formerly available under the Kinship Care Program. The amendment also makes other technical corrections in accordance with KRS Chapter 13A.

The need of the agency to implement this administrative regulation: This and companion amendments are necessary to avoid negative consequence to the benefit amounts available to current children in the Kinship Care Program and to ensure that children subject to future nonparental relative placements by the cabinet have supportive services and benefits conforming to available funding resources. Relative placements help the child avoid foster care and preserve family continuity for the child.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing supportive services for a child placed by the cabinet with a nonparental relative.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by establishing a supportive service for children and families served by the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: During the month of January 2013, there were 11,348 children receiving benefits through the Kinship Care Program and 284 children in state custody who were placed with relatives. Approximately 300 new children will be placed by the cabinet with caretaker relatives as an alternative to foster care each month.

(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 will be no new action required of the child or the nonparental relative caregiver accepting the child for placement as a result of this amendment. The cabinet’s social service worker and supervisor will assess the need for the new service as a part of the relative’s home evaluation.

(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 the regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The service included in this amendment is one-time and may be for an item that addresses an immediate need of the child being placed with a nonparental relative to help secure the placement and promote its stability. Relative placements function to promote the permanency and wellbeing of children through the avoidance of foster care and preservation of family continuity for the child.

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

(a) Initially: There will be no new costs to the agency to implement this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

(b) On a continuing basis: There will be no new costs to the agency to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding sources to be used for the implementation and enforcement of this administrative regulation include the federal funds from the Temporary Assistance for Needy Families Block Grant (TANF) and Social Service Block Grant (SSBG); Restricted Funds (derived from Medicaid), General Funds; and state funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

**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 Cabinet for Health and Family Services, Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.130(4), 605.150

(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 applied in a like manner statewide. -

(a) How much revenue will this administrative regulation generate for the state of local government (including cities, counties, fire departments, or school districts) for the first year? These programs and services have been operational for a number of years. They do not produce any revenue for the state. This administrative regulation will not generate any new revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no new costs to the agency to implement this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

(d) How much will it cost to administer this program for subsequent years? There will be no new costs to the agency 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:**
STATEMENT OF EMERGENCY
922 KAR 2:090E

This emergency administrative regulation is necessary to meet an imminent threat to public health, safety, and welfare through enhancements to licensed child-care provider standards to deter, and authorize appropriate agency response to, child care provider fraud, abuse, and repeated or significantly deficient practices. Enhancement of these provider standards and agency enforcement will specifically promote the best interests of children served by licensed child-care providers and preserve their health, safety, and well-being while in licensed providers' care. Additionally, this emergency administrative regulation will prevent a loss of federal and state funding for Kentucky child care through measures supporting overall licensed child-care centers' quality. An ordinary administrative regulation would not allow the agency sufficient time to implement measures to foster provider integrity, quality, and respond appropriately to child care provider fraud, abuse, and repeated or significantly deficient practices. This ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care

(Emergency Amendment)

922 KAR 2:090E. Child-care center licensure.


STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), (6)

EFFECTIVE: March 27, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to establish licensure standards and a child care center will specifically promote the best interests of children served by licensed child care through measures supporting overall licensed child-care centers' quality. An ordinary administrative regulation would not allow the agency sufficient time to implement measures to foster provider integrity, quality, and respond appropriately to child care provider fraud, abuse, and repeated or significantly deficient practices. This ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Sex Offender Registry to de

Section 2. Child-care Centers. The following child-care centers shall meet the requirements of this administrative regulation:

1. A written statement from each partner assuring that the partner
2. Proof that each individual is twenty
3. If the applicant for licensure is a:
   a. Sole proprietor;
   b. Corporation;
   c. Limited liability company;
   d. Partnership;
   e. Association; or
   f. Organization, such as:
      1. Board of education,
      2. Private school;
      3. Faith-based organization;

4. Government agency; or
5. Institution.

[7][46] "Nontraditional hours" means the hours of:
   a. 7 p.m. through 5 a.m. Monday through Friday; or
   b. 7 p.m. on Friday until 5 a.m. on Monday.

[8][24] "Parent" is defined by 45 C.F.R. 98.2.

[9][48] "Premises" means the building and contiguous property in which child care is licensed.

[10][49] "Secretary" is defined by KRS 199.011(1).

[11][44] "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

Section 3. Exempt Child Care Settings. The following child-care settings shall be exempt from licensure requirements of this administrative regulation, 922 KAR 2:110, and 922 KAR 2:120:

1. Summer camps certified by the cabinet as youth camps which serve school-age children;
2. Kindergarten through grade 12 in private schools while school is in session;
3. All programs and preschools regulated by the Kentucky Department of Education governed by KRS Chapter 157;
4. Summer programs operated by a religious organization which a child attends no longer than two (2) weeks;
5. Child care provided while parents are on the premises, other than the employment and educational site of parents;
6. Child care programs operated by the armed forces located on a military base;
7. Child care provided by educational programs that include parent involvement with the care of the child and the development of parenting skills;
8. Facilities operated by a religious organization while religious services are being conducted; and
9. A program providing instructional and educational programs for:
   a. That operates for a maximum of twenty (20) hours per week;
   b. Which a child attends for no more than ten (10) hours per week.

Section 4. Application. (1) An applicant for a license shall submit to the cabinet a completed OIG-DRCC-01, Child Care Center License Application.

2. Approval of an applicant for initial licensure shall result in the issuance of a preliminary license for a probationary period not to exceed six (6) months.

3. The issuance of a preliminary license, or the issuance or reapproval of a regular license, shall be governed under the provisions of Sections 4 through 7 of this administrative regulation.

[4][32] If the applicant for licensure is a:
   a. Corporation or a limited liability company, the application shall include a current certificate of existence or authorization from the Secretary of State; or
   b. Partnership, the application shall include:
      1. A written statement from each partner assuring that the partnership is current and viable; and
      2. Proof that each individual is twenty-one (21) years or older by photo identification or birth certificate.

[5][44] If the status of a corporation, partnership, or ownership of the child-care center changes, the new entity shall submit a completed OIG-DRCC-01.
(6)(5) If ownership of a child-care center changes and the cabinet approves preliminary licensure upon inspection of the child-care center under the new ownership, the effective date on the preliminary license shall be the date of the approved inspection under the new ownership.

(7) The cabinet shall return the OIG-DRCC-01 and accompanying fee to an applicant if the applicant:
(a) Has an ownership interest in a facility that is licensed or regulated by the cabinet, and that is subject to a finding of fraud or other investigation by:
1. The cabinet’s Office of Inspector General; or
2. An agency with investigative authority; and
(b) is requesting a:
1. Change in ownership; or
2. License for a new facility.

(8) An applicant or an applicant’s lead representative shall submit to background checks in accordance with Section 6(4) of this administrative regulation to confirm compliance with Section 11(7)(j) of this administrative regulation even if the applicant for licensure will not be serving as the child-care center’s director, employee, volunteer, or another person with supervisory or disciplinary control over, or having unsupervised contact with, a child.

(9)(8) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

Section 5. Evacuation Plan. (1) A licensed child-care center shall have a written evacuation plan in the event of a fire, natural disaster, or other threatening situation that may pose a health or safety hazard for a child in care in accordance with KRS 199.895.

(2) The cabinet shall post an online template of an evacuation plan that:
(a) Fullfills requirements of KRS199.895;
(b) Is optional for a child-care center’s use; and
(c) Is available to a licensed child-care center without charge.

Section 6. License Issuance. (1) The cabinet shall monitor a child-care center that operates under a preliminary license issued pursuant to Section 4(2) of this administrative regulation.

(2) Upon completion of the probationary period required in Section 4(2) of this administrative regulation, the cabinet shall:
(a) Approve regular licensure for a child-care center operating under a preliminary license; or
(b) If a condition specified in Section 11 of this administrative regulation exists, deny regular licensure.

(3) A preliminary or regular license shall not be issued unless each background check required by KRS 199.896(19) has been completed on behalf of an applicant for licensure.

(4)(4) A director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with, a child shall:
(a) Submit to background checks described in paragraph (b) of this subsection;
(b) May be employed or work with a child on a probationary basis for up to ninety (90) calendar days, pending completion of a:
1. Child abuse or neglect check using the central registry in accordance with 922 KAR 1:470;
2. Criminal records check required by KRS 199.896(19); and
3. Criminal records check for any previous state of residence if the person resided outside the state of Kentucky in the last five (5) years; and
4. An address check of the Sex Offender Registry; and
(c) Not be left alone in the presence of a child until copies of the background checks in accordance with paragraph (b) of this subsection have been received by the licensee.

(5)(5) Upon completion of background checks described in subsection (4)(4)(2)(b)(ii) of this section, a licensee shall discharge immediately a:
(a) Director, employee, volunteer, or any person:
1. (aa) Whose name is listed on the central registry established by 922 KAR 1:470;
2. (bb) Who has been convicted of, or has entered an Alford plea or a plea of guilty to, a crime in accordance with KRS 17.165;
3. (cc) Who is confirmed by an address check of the Sex Of-
fender Registry and supporting document as a registered sex of-
fender; or
4. (dd) Who has been convicted of, or has entered an Alford plea or a plea of guilty to, a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from impris-
sonment, probation, or parole; and
(b) Director who has been convicted of, or entered an Alford plea or a plea of guilty to, a felony offense involving fraud, embe-
zzlement, theft, or forgery; and
(c) Director, employee, volunteer, or any person who has been convicted of, or has entered an Alford plea or a plea of guilty to, an offense under a criminal statute of the United States or of another state similar to an offense specified in this subsection.

(6) A director, employee, volunteer, or any person who has been convicted of, or entered an Alford plea or a plea of guilty to, a nonviolent felony or misdemeanor not specified in this section shall be handled on a case-by-case basis by the licensee with consideration given to the:
(a) Nature of the offense;
(b) Length of time that has elapsed since the event; and
(c) Individual’s Applicant’s life experiences after conviction.

(7)(6) If an applicant for licensure has had a previous ownership interest in a child-care provider which has had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action, the cabinet shall grant the applicant a license if:
(a) A seven (7)[three (3)] year period has expired from the:
1. Date of the prior denial, suspension, or revocation;
2. Date the certification, license, registration, or permit was voluntarily relinquished as a result of an investigation or pending adverse action;
3. Last day of legal remedies being exhausted; or
4. Administrative hearing decision; and
(b) The applicant has:
1. Demonstrated compliance with the provisions of this adminis-
trative regulation, 922 KAR 2:110, 922 KAR 2:120, and KRS 199.896;
2. Completed, since the time of the prior denial, suspension, or revocation, or relinquishment, sixty (60) hours of training in child development and child care practice, approved by the cabinet or its designee; and
3. Not had an application, certification, license, registration, or permit denied, revoked, suspended, or voluntarily relinquished as a result of an investigation or pending adverse action:
   a. For one (1) of the reasons set forth in:
      (i) KRS 199.896(19);
      (ii) Subsection (5) of this section; or
      (iii) Section 11(7)(j) of this administrative regulation; or
   b. Due to a disqualification from:
      (i) The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accor-
dance with 922 KAR 2:020; or
   (ii) Any other governmental assistance program for fraud or abuse of that program.

(8)(7) If a license is granted after the seven (7)[three (3)] year period specified in subsection (7)(6)(a)(ii) of this section, the licensee shall serve a two (2) year probationary period during which the child-care center shall be inspected on at least a quarterly basis.

(9)(8) A preliminary or regular license shall specify:
(a) A particular premises;
(b) A designated licensee;
(c) Age category of the children in care;
(d) The maximum number of children allowed in the child-care center’s;
(e) Available space as determined by the State Fire Marshal’s Office in conjunction with the cabinet;
2. Adequacy of program;
3. Equipment; and
4. Staff; and
(e) If provided, nontraditional hours;
(f) If provided, transportation; and
(g) A list of services to be provided by the child-care center.
(10)(ii)(e) To qualify for a preliminary license, or (and) maintain a regular license, a child-care center shall:
(a) Provide written documentation from the local authority showing compliance with local zoning requirements;
(b) Be approved by the Office of the State Fire Marshal or designee;
(c) Have an approved water and sewage system in accordance with local, county, and state laws;
(d) Provide written proof of liability insurance coverage of at least $100,000 per occurrence;
(e) Comply with provisions of this administrative regulation, 922 KAR 2:110, and 922 KAR 2:120;
(f) Cooperate with the cabinet, the cabinet’s designee, or another state agency with regulatory authority during:
1. An investigation of an alleged complaint, including an allegation of child abuse or neglect pursuant to KRS 620.030(4); and
2. Unannounced inspections; and
(g) Have a director who meets the requirements listed in 922 KAR 2:110.

(11) A child-care center shall allow the cabinet or its designee, another agency with regulatory authority, and a parent of an enrolled child unannounced access to the child-care center during the hours of operation.

(12) Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the cabinet or another agency with regulatory authority, to enter the child-care center or deny access to records relevant to the inspection shall result in the cabinet pursuing adverse action in accordance with Section 10, 11, or 12 of this administrative regulation.

(13)(ii)(d) A preliminary license shall be issued and reapproved if the center has met the requirements contained in this administrative regulation, 922 KAR 2:110, 922 KAR 2:120, and KRS 199.896(3), (13), (15), (16), (18), and (19).

(14)(ii) A preliminary or regular license shall not be sold or transferred.

(15)(ii) Changes to a child-care center as listed in 922 KAR 2:110, Section 6(4), (5), and (6) shall be:
(a) In writing to the cabinet or its designee; and
(b) Signed by each owner listed on the preliminary or regular license.

(16)(ii) The cabinet or its designee shall not charge a fee for acting upon reported changes.

(17)(ii) The preliminary or regular license shall be posted in a conspicuous place in the child-care center.

(18)(ii) A child-care center shall not begin operation without a preliminary license to operate from the cabinet.

(19)(ii) A child-care center operating without a preliminary or regular license shall be subject to legal action.

(20) The voluntary relinquishment of a preliminary or regular license shall not preclude the cabinet’s pursuit of adverse action.

Section 7. Fees. (1) A nonrefundable licensing fee of fifty (50) dollars shall be charged according to KRS 199.896(3).

(2) Licensing fees shall be:
(a) Payable to the Kentucky State Treasurer;
(b) Attached to the licensure application; and
(c) Paid by:
1. Cashier’s check;
2. Certified check; or
3. Money order.

Section 8. Annual Reapproval. (1) A licensee seeking reapproval of a regular license shall:
(a) Submit, one (1) month prior to license expiration, an OIG-DRCC-01; and
(b) Meet the requirements specified in Sections 4 through 7 of this administrative regulation.

(2) An application for renewal shall be denied in accordance with Section 11 of this administrative regulation.

Section 9. Statement of Deficiency and Corrective Action Plans. (1) If a center is found not to be in regulatory compliance, the cabinet or its designee shall complete a written statement of deficiency in accordance with KRS 199.896(5).

(2) Except for a violation posing an immediate threat as handled in accordance with KRS 199.896(5)(c), a child-care center shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days of receipt of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:
(a) Specific action undertaken to correct a violation;
(b) The date action was or shall be completed; and
(c) Action utilized to assure ongoing compliance.

(4) The cabinet or its designee shall review the plan and notify the child-care center within thirty (30) calendar days of receipt of the plan, in writing, of the decision to:
(a) Accept the plan;
(b) Not accept the plan; or
(c) Deny, suspend, or revoke the child-care center’s license, in accordance with Section 11 of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons the plan is unacceptable.

(6) A child-care center notified of the unacceptability of its plan shall:
(a) Within ten (10) calendar days of notification, submit an amended plan; or
(b) Have its license revoked or denied for failure to submit an acceptable amended plan in accordance with KRS 199.896(5)(c).

(7) Following two (2) unacceptable plans of correction, in a forty-five (45) calendar day period, the cabinet may deny or revoke an application for licensure or license.

(8) The administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected within five (5) working days from the date of the statement of deficiency notification in accordance with KRS 199.896(5)(c).

Section 10. Intermediate Sanctions. (1) If the cabinet determines that a child-care center is in violation of this administrative regulation, 922 KAR 2:110, or 922 KAR 2:120, the cabinet may, based on the severity of the violation:
(a) Require the provider to participate in additional training;
(b) Increase the frequency of monitoring by cabinet staff;
(c) Enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance; or
(d) Notify or require the provider to notify a parent of a child who may be affected by the situation for which an intermediate sanction has been imposed.

(2) An intermediate sanction shall result in a suspension or revocation of the license to operate a child-care center:
(a) Fails to meet a condition of the intermediate sanction; or
(b) Violates a requirement of an intermediate sanction.

Section 11. Basis for Denial, Suspension or Revocation. (1) The cabinet shall deny, suspend, or revoke a preliminary or regular license in accordance with KRS 199.896(4) and (19) if the applicant for licensure, director, employee, or a person who has supervisory authority over, or unsupervised contact with, a child fails to meet the requirements of this administrative regulation or those of 922 KAR 2:110 or 922 KAR 2:120.

(2) For the purposes of KRS 199.896(19), an applicant who has been found by the cabinet to have abused or neglected a child shall mean an individual who is listed on the central registry described in 922 KAR 1:470.

(3) A director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with, a child shall report to the licensee if:
(a) Convicted of, or entered an Alford or guilty plea to:
1. A violent crime or sex crime in accordance with KRS 17.165; or
2. A crime specified in Section 6(5) of this administrative regulation;
(b) The subject of a child abuse or neglect investigation;
(c) Found by the cabinet or a court to have abused or neglected a child;
(d) Convicted of, or entered an Alford or guilty plea to, a drug-related felony, and five (5) years have not elapsed since the person was fully discharged from imprisonment, probation, or parole;
(e) Placed on the Sex Offender Registry; or
(f) Determined by a physician to have a health condition that renders the person unable to care for children.

(4) Each licensee shall report to the cabinet or its designee if the:
   (a) Licensee, director, employee, volunteer, or another person who submitted to a background check meets a criterion of subsection (3) of this section; or
   (b) Licensee meets a criterion of subsection (7)(i) of this section.

(5) Emergency Action. (a) The cabinet shall take emergency action in accordance with KRS 199.896(4) by issuing an emergency order that suspends a child-care center’s license.
   (b) An emergency order shall:
      1. Be served to a licensed child-care center in accordance with KRS 136.050(2); and
      2. Specify the regulatory violation that caused the emergency condition to exist.
   (c) Upon receipt of an emergency order, a child-care center shall surrender its license to the cabinet.
   (d) The cabinet or its designee and the child-care center shall make reasonable efforts to:
      1. Notify a parent of each child in care of the center’s suspension; and
      2. Refer a parent for assistance in locating alternate child care arrangements.
   (e) A child-care center required to comply with an emergency order issued in accordance with this subsection may submit a written request for an emergency hearing within five (5) calendar days of receipt of the order to determine the propriety of the licensure’s suspension.
   (f) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing.
   (g)1. 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 order to suspend licensure.
      2. The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.
   (h) A provider’s license shall be revoked if:
      1. Provider does not request a hearing within the timeframes established in paragraph (e) of this subsection; or
      2. The emergency order is upheld by the administrative hearing conducted in accordance with KRS Chapter 13B.
   (i) Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).

(7) Unless an applicant for a license meets requirements of Section 6(7)(65) of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if:
   (a) The applicant has had previous ownership interest in a child-care provider which had its certification, license, or registration, or permit to operate, been previously denied, suspended, or revoked;
   (b) Denial, investigation, or revocation proceedings were initiated, and the licensee voluntarily relinquished the license;
   (c) An appeal of a denial, suspension, or revocation is pending;
   (d) The applicant previously failed to comply with the requirements of KRS 199.896, 922 KAR 2:110, 922 KAR 2:120, or this administrative regulation;
   (e) An individual with ownership interest in the child-care center has been discontinued or disqualified from participation in:
      1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020;
      2. Another governmental assistance program due to fraud or abuse of that program;
   (f) The applicant is the parent, spouse, sibling, or child of a previous licensee whose license was denied, suspended, revoked, or voluntarily relinquished as described in paragraphs (a) through (d) of this subsection, and the previous licensee will be involved in the child-care center in any capacity.

(a)(4) The applicant listed as an officer, director, incorporator, or organizer of a cooperation or limited liability company whose child-care center license was denied, suspended, revoked, or voluntarily relinquished as described in paragraph (a) through (d) of this subsection within the past seven (7) [three (3)] years;
(b) The applicant knowingly misrepresents or submits false information on a form required by the cabinet;
   (i) The applicant interferes with a cabinet or other agency representative’s ability to perform an official duty pursuant to Section 6(10)(i) or 6(11) of this administrative regulation;
   (i) The applicant’s background check reveals that the applicant:
      1. Is listed on the:
         a. Central registry in accordance with 922 KAR 1:470; or
         b. Sex Offender Registry; or
      2. Has been convicted of, or entered an Alford or guilty plea to, a crime specified in Section 6(5) of this administrative regulation, including a felony offense involving fraud, embezzlement, theft, or forgery; or
   (k) The licensee is the subject of more than two (2) interim sanctions during a three (3) year period.

(8) A child-care center’s license shall be revoked if:
   (a) A representative of the cabinet interferes with a cabinet or other agency representative’s ability to perform an official duty pursuant to Section 6(10)(i) or 6(11) of this administrative regulation;
   (b) A cabinet representative, a representative from another agency with regulatory authority, or parent is denied access during operating hours to:
      1. A child; or
      2. The child-care center;
   (c) The licensee is discontinued or disqualified from participation in:
      1. The Child Care Assistance Program as a result of an intentional program violation in accordance with 922 KAR 2:020; or
      2. A governmental assistance program as a result of fraud or abuse of that program;
   (d) The license fails to meet a condition of, or violates a requirement of an intermediate sanction pursuant to Section 10(2) of this administrative regulation;
   (e) The applicant or licensee knowingly misrepresents or submits false information on a form required by the cabinet; or
   (f) The licensee is the subject of more than two (2) interim sanctions during a three (3) year period.

(9) The cabinet or its designee shall suspend the license if:
   (a) Regulatory violations are found that pose an immediate threat to the health, safety, and welfare of the children in care as described in KRS 199.896(4); or
   (b) The child care-center fails to comply with the approved corrective active plan.

Section 12. Civil Penalty. The cabinet shall assess and enforce a civil penalty in accordance with 922 KAR 2:190.

Section 13. Right of Appeal. (1) If an application has been denied or a licensee receives notice of suspension or revocation, the cabinet shall inform the applicant for licensure or licensee by written notification of the right to appeal the notice of adverse action in accordance with KRS Chapter 13B and 199.896(7).
(2) An adverse action may be appealed by filing form OIG-DRCC-02, Licensed Request for Appeal or Informal Dispute Resolution. The request shall:
   (a) Be submitted to the Secretary of the cabinet or designee within twenty (20) calendar days of receipt of the notice of adverse action; and
   (b) Specify if an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.
(3) If an applicant for licensure or a licensee files an OIG-DRCC-02 for a hearing, the cabinet shall:
   (a) Appoint a hearing officer; and
   (b) Proceed pursuant to KRS 138.050.
(4) If an applicant for licensure or a licensee files a request for a hearing and a request for an informal dispute resolution, the cabinet shall:
   (A) Abate the formal hearing pending completion of the infor-
mal dispute resolution process; and
(b) Proceed to informal dispute resolution.

Section 14. Informal Dispute Resolution. (1) A request for informal dispute resolution shall:
(a) Accompany the request for a hearing;
(b) Identify the licensure deficiency in dispute;
(c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency; and
(d) Include documentation that disputes the deficiency.
(2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:
(a) Review documentation submitted by the applicant for licensure or licensee; and
(b) If requested, schedule a first-level informal dispute resolution meeting with the applicant for licensure or licensee.
(3) The first-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.
(4) The first-level informal dispute resolution meeting shall be conducted by:
(a) The regional program manager or designee; and
(b) A child care surveyor who did not participate in the survey conducted by:
(5) Within ten (10) calendar days of completion of the first-level informal dispute resolution meeting or request, the regional program manager or designee shall:
(a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution;
(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and
(c) Specify whether the adverse action has been rescinded.
(6) An applicant or a licensee may appeal a decision issued by the regional program manager or designee by:
(a) Proceeding with a hearing according to KRS 13B.050; or
(b) Filing a written request for a second-level informal dispute resolution to the Director of the Division of Regulated Child Care or designee within ten (10) calendar days of receipt of the first level decision. The request shall specify whether the applicant for licensure or licensee requests a meeting with cabinet staff.
(7) Upon receipt of the written request for second-level informal dispute resolution, the Director of the Division of Regulated Child Care or designee shall:
(a) Review the decision issued from the first-level informal dispute resolution;
(b) Review the documentation described in subsection (1)(d) of this section; and
(c) If requested, schedule a second-level informal dispute resolution meeting with the applicant for licensure or licensee.
(8) The second-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.
(9) Within ten (10) calendar days of completion of the second-level informal dispute resolution meeting or request, the Director of the Division of Regulated Child Care or designee shall:
(a) Issue a decision by written notification to the return address specified in the request for second-level informal dispute resolution;
(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and
(c) Specify whether the adverse action has been rescinded.
(10) If a second-level informal review is requested in lieu of a first-level informal dispute resolution meeting, the Director of the Division of Regulated Child Care or designee shall comply with the provisions of subsection (9)(a) through (c) of this section within ten (10) calendar days of receipt of the request for second-level informal dispute resolution.
(11) If an applicant for licensure or licensee is satisfied with the decision issued during informal dispute resolution, the request for a hearing shall be withdrawn.
(12) If an applicant for licensure or licensee is not satisfied with the decision issued from the second-level informal dispute resolution, the hearing previously held in abeyance shall be conducted in accordance with KRS Chapter 13B concerning the deficiencies that were reviewed in the informal review process.
(13) A request for informal dispute resolution shall not:
(a) Limit, modify, or suspend enforcement action against the applicant for licensure or licensee; or
(b) Delay submission of a written plan of correction.
(14) Emergency action taken in accordance with Section 11(5) of this administrative regulation shall conform to the requirements of KRS 199.896(4). The informal dispute resolution process shall not restrict the cabinet's ability to issue an emergency order to stop, prevent, or avoid an immediate threat to public health, safety, or welfare under KRS 193B.125(2) and 199.896(4).

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "OIG-DRCC-01, Child-Care Center License Application", edition 4/2013[B3/12]; and
(b) "OIG-DRCC-02, Request for Appeal or Informed Dispute Resolution", edition 8/3/12.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Inspector General's Office, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: March 19, 2013
FILED WITH LRC: March 27, 2013 at 9 a.m.
CONTACT PERSON: Tricia Orme, 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: Justin Dearinger
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes licensure standards for a child care center, and describes an applicant’s and a child care center’s appeal rights and informal dispute resolution processes.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a child care center’s licensure standards, appeal rights, and informal dispute resolution process.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of licensure standards for a child care center and related due process.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a child-care center’s licensure and related due process.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation: (1) clarifies background check requirements for applicants who may not serve in the role of the child care center’s director, employee, volunteer, or other person having contact with children in care; (2) prohibits a license applicant and a licensed child care center’s director from having been convicted of, or entered an Alford or guilty plea to, a felony offense involving theft, fraud, embezzlement, or forgery; (3) extends the disqualification period from license from three to seven years; (4) specifies the cabinet can continue to pursue adverse action even if the child care center’s license is voluntarily resigned; (5) adds conditions that can result in revocation or denial of a license to include refusal of access by a parent, the cabinet, or another agency with regulatory authority; having more than two intermediate sanctions in a three year period; submitting false information to the cabinet; and being discontinued or disqualified from the Child Care Assistance Pro-
program (CCAP) or another governmental assistance program due to fraud or abuse; (6) clarifies due process for emergency actions; (7) prohibits a licensee subject to a finding of fraud from changing ownership of the license or requesting a license for a new facility pending the outcome of the fraud investigation; and (8) clarifies the process for preliminary licensure of a new child care center prior to regular license issuance. The amendment also makes technical corrections in accordance with KRS Chapter 13A, including corresponding updates to material incorporated.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to better support the health, safety, and welfare of children in care; respond appropriately and timely to waste, fraud, abuse, and repeat deficient practice by licensed providers; and foster provider integrity and quality assurance thereby protecting the state and federal funding available to child care in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by its update and clarification of child care center licensure standards.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by preserving and enhancing the quality of child care center licensure standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for child care center licensure or an existing licensed child-care center will be impacted by this administrative regulation. As of December 31, 2012, there were 2,297 Kentucky licensed child-care centers, both Type I and Type II.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will require new licensees to seek preliminary licensure prior to regular licensure, thereby allowing the cabinet to monitor the licensee after initial inspection of the facility, once children are being served. An individual with a felony conviction, Alford plea, or guilty plea involving fraud, theft, embezzlement, or forgery will be prohibited from being a new applicant or a director of licensed child-care centers. The amendment clarifies that applicants are required to submit to background checks, and that licensees are to provide access to the cabinet, a parent of a child in care, and another agency with regulatory authority during hours of operation. Other provisions incorporated within this administrative regulation should not impact the vast majority of providers, but rather those providers who have engaged in repeatedly deficient, wasteful, abusive, and/or fraudulent practices.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation should entail no new costs to existing licensed child care centers. New applicants who are not already subject to background check requirements will be required to undergo initial background checks to ensure no threat, harm, or danger to children in care and to better assure integrity in providers' billing, operations, and programmatic oversight.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicant and licensed child care centers and the children in their care will benefit from measures to prevent and adequately respond to waste, fraud, and abuse; and greater program integrity and quality assurance in the child care community.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds supplemented by the direct implementation of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

Agency Contact: Justin Dearinger


3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

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 Community Based Services is 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. 45 C.F.R. 98.2, 42 U.S.C. 601-619, KRS 194A.050(1), 199.896(2).

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

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

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to administer this program 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:  

STATEMENT OF EMERGENCY  
922 KAR 2:160E  

This emergency administrative regulation is necessary to meet an imminent threat to public health, safety, and welfare by ensuring the Child Care Assistance Program (CCAP) continues and operates with integrity and within existing resources. The emergency administrative regulation provides additional means for the agency to support CCAP benefit accuracy through the deterrence of and appropriate response to fraud, abuse, and deficient provider operations. Without the amendment, the state would risk noncompliance with federal funding mandates potentially leading to corrective action or a loss of funding, and children’s health, safety, and welfare would be negatively impacted due to the program’s vulnerability to improper payment, fraud, and abuse, and abrupt complete shutdown due to a lack of resources. An ordinary administrative regulation would not allow the agency sufficient time to implement measures to respond appropriately to child care provider fraud, abuse, and repeated or significantly deficient practices and to permit continuation of the program within existing resources. This ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor  
AUDREY TAYSE HAYNES, Secretary  

CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Community Based Services  
Division of Child Care  
(Effective Amendment)  

922 KAR 2:160E. Child Care Assistance Program.  


STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994  

EFFECTIVE: March 27, 2013  

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 601-619, and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means a child’s natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.  
(2) "Cabinet" is defined by KRS 199.894(1).  
(3) "Change in a circumstance" means a change that affects eligibility or benefit amounts and includes:  
(a) Beginning or ending employment;  
(b) Change in an employer or obtaining additional employment;  
(c) Increase or decrease in the number of work hours;  
(d) Increase or decrease in the rate of pay;  
(e) Increase or decrease in family members;  
(f) Change in self-employment activity;  
(g) Change in scheduled hours care is needed;  
(h) Beginning or ending an educational activity;  
(i) Change in child care provider;  
(j) Change in address or residence;  
(k) Change in marital status or  
(l) Beginning or ending receipt of unearned income.  
(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent’s responsibility for the child’s protection, development, and supervision.  
(5) "Child care and development fund" or "CCDF" is defined by 45 C.F.R. 98.2.  
(6) "Child Care Assistance Program" or "CCAP" means Kentucky’s child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.  
(7) "Child care certificate" is defined by 45 C.F.R. 98.2.  
(8) "Child protective services" is defined in 922 KAR 1:330, Section 1(3).  
(9) "Child with a special need" means a child who has multiple or severe functional needs requiring a severe problem or multiple problems that require ongoing specialized care.  
(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week.  
(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.  
(12) "Family child-care home":  
(a) is defined by KRS 199.894(5);  
(b) is described in KRS 199.8982; and  
(c) Means a home certified in accordance with 922 KAR 2:100.  
(13) "Finding of fraud" means a suspected intentional program violation referred in accordance with 922 KAR 2:020, Section 4(4)(a)1, that is accepted for investigation and substantiated by the cabinet’s Office of Inspector General.  
(14) "Full day" means child care that is provided for five (5) or more hours per day.  
(15) "Health professional" means a person actively licensed as a:  
(a) Physician;  
(b) Physician’s assistant;  
(c) Advanced registered nurse practitioner;  
(d) Qualified mental health professional as defined by KRS 600.020(49)(49); or  
(e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.  
(16) "In loco parentis" means a person acting in place of a parent, including:  
(a) A legal guardian;  
(b) An individual related by blood, marriage, or adoption to the child; or  
(c) A nonrelative pursuing legal custody of the child within one (1) year of application.  
(17) "Infant" means a child who is less than one (1) year old.  
(18) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky’s Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.  
(19) "Nonurban" means a county without a first, second, or third class city as specified in KRS 81.010(1) through (3).  
(20) "Parent" is defined by 45 C.F.R. 98.2.  
(21) "Part day" means child care that is provided for less than five (5) hours per day.  
(22) "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.  
(23) "Preventive services" is defined by KRS 620.020(10)(49).
"Provider" means the entity providing child care services.

"Qualified alien" means a child who meets the requirements of 921 KAR 2:006, Section 1(14)(4).

"Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

"Related" means having one (1) of the following relationships:[with the provider]:

(a) Child;
(b) Stepchild;
(c) Grandchild;
(d) Great-grandchild;
(e) Niece;
(f) Nephew;
(g) Sibling;
(h) Child in legal custody[of the provider]; or
(i) Child living[with the provider acting] in loco parentis.

"Responsible adult" means a person other than the applicant who is in the child's household and who is:
(a) The natural parent, adoptive parent, or stepparent; or
(b) The spouse of an individual caring for a child in loco parentis.

"School-age child" means a child who has reached the sixth birthday.

"Teenage parent" means a parent who is nineteen (19) years of age or younger.

"Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

"Urban" means a county listed in KRS 81.010(1) through (3) as having a first, second, or third class city.

Section 2. Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:
1. A signed DCC-90, Application for Subsidized Child Care Assistance, or DCC-90.1, Intent to Apply for Child Care Assistance, is received at the cabinet or its designee office; or
2. The agency is contacted, if the person:
   a. Has a physical or mental disability; and
   b. Needs special accommodation due to the impairment.

(b) If the applicant is physically unable to come to the office to apply, the applicant may designate an authorized representative to make application.

(c) The applicant may be:
   1. Assisted by another individual of choice in the application process; and
   2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for persons who are:
1. Deaf; or
2. Hard of hearing.

Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, and 7 of this administrative regulation.

(a) The applicant or recipient shall be the primary source of information and shall:
1. Furnish verification of:
   a. Income; and
   b. Technical eligibility; and
   c. Employment; and
2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, fail-
ure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(5) The cabinet or its designee shall:
(a) Render a decision on each application; and
(b) Send a DCC-105, Child Care Assistance Program Notice of Action, to the applicant in accordance with Section 11(5) of this administrative regulation to provide written notification of the decision within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section.

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:
(a) Assistance until approval of the application for benefits; or
(b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:
(a) Is a:
   1. Resident of Kentucky; and
   2. U.S. citizen or qualified alien;
(b) Is under age:
   1. Thirteen (13); or
   2. Nineteen (19) and is:
      a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a health professional;
      b. Under court supervision; or
      c. Identified as a priority by federal statute, regulation, or funding source; and
      (c) Has a current immunization certificate showing that the child is immunized, unless:
          1. There is an exception pursuant to KRS 214.036; or
          2. The child is attending a:
             a. Licensed child care center;
             b. Certified child care home;
             c. Public school;
             d. Head Start; or
     (d) Is a provider:
   (a) A provider;
   (b) Licensed provider;
   (c) A member of the K-Teaching Project.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:
(a) A parent or stepparent;
(b) A legal guardian;
(c) A member of the K-TAP or food stamp assistance case in which the child is in need of child care assistance is included;
(d) A person living in the same residence as the child in need of care;
(e) A provider not:
   1. Licensed according to 922 KAR 2:090, Child care center licensure;
   2. Certified according to 922 KAR 2:100, Certification of family child care homes; or
   3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;
   (f) An alternative program such as Head Start, state preschool, or state kindergarten; or
   (g) Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.

(5) A child in foster care shall not be eligible for CCAP.

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:
Section 7. Income Eligibility. (1) Prior to July 1, 2013, a child shall be eligible for the CCAP if the family’s income is less than or equal to:

1. [a] 150 percent of the federal poverty level at the initial application; or
2. [b] 165 percent of the federal poverty level at the redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.

(b) Effective July 1, 2013, a child shall be eligible for the CCAP if the family’s income is less than or equal to:

1. 100 percent of the federal poverty level at the initial application; or
2. 100 percent of the federal poverty level at the redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.

(2) A family that becomes ineligible for K-TAP shall remain eligible for CCAP for twelve (12) months from the date of the K-TAP discontinuance, if the family’s income remains less than or equal to:

(a) 165 percent of the federal poverty level prior to July 1, 2013; or
(b) 100 percent of the federal poverty level effective July 1, 2013.

(3) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family’s eligibility for the CCAP.

(4) A child that is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family’s income.

(5) Excluded income shall be:

(a) K-TAP child only payments, including back payment;
(b) A payment received from the Kinship Care Program, pursuant to KAR 1:130, including back payment;
(c) Educational grant, loan, scholarship, and work study income;
(d) The value of Kentucky Works supportive services payment pursuant to KAR 2:017;
(e) The value of United States Department of Agriculture program benefits including:
1. Donated food;
2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;
3. Special food service program for a child pursuant to 42 U.S.C. 1775;
4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and
5. The monthly allotment under the Supplemental Nutrition Assistance Program (formerly known as the Food Stamp Program):
   a. Defined by 7 U.S.C. 2012, as amended by P.L. 110-246; and
   b. Governed by Title 921 KAR Chapter 3[.]
   (f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;
   (g) In-kind income;
   (h) Reimbursement for transportation in performance of an employment duty, if identifiable;
   (i) Nonemergency medical transportation payment;
   (j) Highway relocation assistance;
   (k) Urban renewal assistance;
   (l) Federal disaster assistance and state disaster grant;
   (m) Home produce utilized for household consumption;
   (n) Housing subsidy received from federal, state, or local governments;
   (o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;
   (p) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;
   (q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:
1. Senior health aide; or

2. Member of the:
   a. Service Corps of Retired Executives; or
   b. Active Corps of Executives;
   (i) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5084 if less than the minimum wage under state or federal law, whichever is greater, including:
   1. Volunteers in Service to America (VISTA);
   2. Foster Grandparents;
   3. Retired and Senior Volunteer Program; or
   4. Senior Companion;
   (s) Payment from the cabinet for:
   1. Child foster care; or
   2. Adult foster care;
   (l) Energy assistance payment made under:
   1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 6821; or
   2. Other energy assistance payment made to an energy provider or provided in-kind;
   (u) The principal of a verified loan;
   (v) Up to $12,000 to Aleuts and $20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;
   (w) The advance payment or refund of earned income tax credit;
   (x) Payment made from the Agent Orange Settlement Fund;
   (y) Payment made from the Radiation Exposure Compensation Trust Fund;
   (z) Up to $2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;
   (aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;
   (bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;
   (cc) A payment received from the National Tobacco Growers Settlement Trust;
   (dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;
   (ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);
   (ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;
   (gg) A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-31(g)(6) of the Social Security Act, 42 U.S.C. 601-619;
   (hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);
   (ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5); or
   (jj) Income or earnings from a program funded under the Work Investment Act (WIA) pursuant to 20 C.F.R. 652 and 660 to 671.
   (6) Deductions from gross income shall be:
   (a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and
   (b) Operating costs to determine adjusted gross income from self-employment.

(7) Best estimate.
   (a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.
   (b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:
   1. Cents shall not be rounded at any step in the calculation;
   2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;
   3. A monthly amount shall be determined by:
      a. Adding gross income from each pay period;
      b. Dividing by the total number of pay periods considered; and
      c. Converting the pay period figure to a monthly figure by multiplying:
         (i) Weekly amount by (4.334);
         (ii) Biweekly amount by (2.167);
         (iii) Semimonthly amount by two (2); and
         (iv) Monthly amount by twelve (12).
   (d) For a case with self-employment income, a monthly amount shall be determined by:
         1. Not rounding cents at any step in the calculation;
         2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and
         3. Averaging the amount of nonstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.
   (d) For a case with self-employment income, a monthly amount shall be determined as follows:
         1. Cents shall not be rounded at any step in the calculation;
         2. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);
         3. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and
         4. Profit shall be determined by:
            a. Dividing the allowable expenses permitted by the Internal Revenue Service except for depreciation by:
               (i) Twelve (12) if the enterprise has been in operation for at least a year;
               (ii) The number of months the business has been operating if the business has been in existence for less than a year; and
               (b) Subtracting the monthly expense from the monthly income.

Section 8. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be determined at least every:
   (a) Twelve (12) months; or
   (b) Six (6) months for a child eligible pursuant to requirements in Section 5 of this administrative regulation.
   (2) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.
   (3) A nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

Section 9. Payment Rates and Policy. (1) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rates Chart.
   (a) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.
   (b) The maximum payment rates shall include the following categories:
      1. Full day;
      2. Part day;
      3. Urban;
      4. Nonurban;
      5. Licensed;
      6. Certified;
      7. Registered;
      8. Infant/Toddler;
      9. Preschool child; and
      10. School-age child.
   (2) To the extent funds are available, a licensed or certified provider shall receive:
      (a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:
1. National Association for the Education for Young Children;
2. National Early Childhood Program Accreditation;
3. National Association for Family Child Care;
4. Council on Accreditation;
5. Other accrediting body approved by the Early Childhood Advisory Council (Development Authority) or the cabinet;
(b) One (1) dollar per day beyond the maximum rate for non-traditional care for providing child care assistance based on the parent's schedule between:
1. 7 p.m. to 5 a.m. daily; or
2. Monday, 7 p.m. through Monday, 5 a.m.
3. To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:
(a) With a special need; or
(b) Who is age thirteen (13), but under age nineteen (19), and is:
1. Physically or mentally incapable of caring for himself as determined by a health professional; or
2. Under court supervision.
4. The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.
5. A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:
(a) Three (3) children receiving CCAP per day; or
(b) Six (6) children receiving CCAP per day, if those children are:
1. A part of a sibling group; and
2. Related to the provider.
6. A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.
7. To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 10. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(a) of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.
(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.
(3) A family of a child shall be responsible for a copayment when:
(a) A DCC recipient of:
1. Not pay a subsequent provider until the family demonstrates compliance with the payment plan; and
2. Terminate CCAP for the family.
(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.
4. If a provider notifies the cabinet or its designee that a family has failed to comply with a required copayment for two (2) weeks, the cabinet or its designee shall request that the provider develop a payment plan with the family.
(b) If a provider notifies the cabinet or its designee that a family fails to enter into a payment plan within ten (10) days from a provider's notification that a payment plan is necessary, or a family fails to make two (2) payments in accordance with the payment plan, the cabinet shall:
1. Not pay a subsequent provider until the family demonstrates compliance with the payment plan; and
2. Terminate CCAP for the family.
(c) The cabinet or its designee may grant an exception to paragraph (b) of this subsection due to:
1. A disaster verified by utility provider, local, state, or federal government;
2. The closure of a provider;
3. Family circumstances, such as relocation, illness, or death; or
4. A risk to the health, welfare, or safety of the child or parent.

Section 11. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).
(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:
(a) Be offered choice of child care assistance subject to the availability of state and federal funds; and
(b) Receive a child care certificate, the DCC-94.
(3) An applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the DCC-91 and the DCC-94.
(4) An applicant approved in accordance with Section 5 or 6 of this administrative regulation shall sign and return the DCC-91.
(5) Notification of action.
(a) A DCC-105 shall serve many purposes in the administration of CCAP, including notice to an applicant or recipient of:
1. Changes in:
a. Copayment;
b. Certification period; or
c. Household size;
2. Approval of:
a. Application; or
b. Continued eligibility; or
c. Adverse action, including:
a. Denial of application;
b. Reduction of CCAP benefits; or
c. Termination of CCAP benefits.
(b) The DCC-105 providing notice of an adverse action shall include:
1. Reason for the adverse action;
2. Citation from an applicable state administrative regulation; and
3. Information regarding the...
a. Informal dispute resolution process in accordance with Section 18(12) of this administrative regulation; and
b. Opportunity to request an administrative hearing in accordance with Section 19(18) of this administrative regulation.
(c) The language on the DCC-105 shall differ according to the purpose of the notice described in paragraphs (a) and (b) of this subsection.

(6) An applicant may change the applicant's provider a maximum of three (3) times in a twelve (12) month period, unless an exception is authorized by the cabinet or its designee due to:
(a) A disaster verified by utility provider, local, state, or federal government;
(b) Closure of a provider;
(c) Family circumstances, such as relocation, illness, or death;[ae]
(d) A risk to the health, welfare, or safety of the child or the applicant; or
(e) Failure of the provider to comply with Section 13(1) of this administrative regulation.

(7) A family that changes the child care provider more than three (3) times as described in subsection (6) of this section shall be discontinued from the CCAP and unable to participate until the end of the eligibility period in effect at the time of discontinuance.

(8) An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in a circumstance within ten (10) calendar days of the day the change is known.

(9) Failure to report a change in a circumstance may result in:
(a) Decrease or discontinuance of CCAP benefits based on the type of change; or
(b) Claim in accordance with 922 KAR 2:020.

(10) An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:
(a) Discontinued from CCAP benefits; and
(b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

(11) An applicant for a child served by CCAP shall report to the cabinet or its designee a provider whom the applicant suspects is not fulfilling requirements in accordance with Section 13(1)(c) of this administrative regulation.

Section 12. Cabinet Requirements. (1) The DCC-94 shall:
(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and
(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).
(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:
(a) 922 KAR 2:090, Child care center licensure;
(b) 922 KAR 2:100, Certification of family child care homes;
(c) 922 KAR 2:110, Child care facility provider requirements;
(d) 922 KAR 2:120, Child care facility health and safety standards;[and]
(e) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;
(f) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties; and
(g) 922 KAR 2:190, Civil penalties.

(4) If CCAP benefits are reduced or terminated due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(5) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(6) The cabinet shall send a DCC-105 providing notice of adverse action in accordance with Section 11(5) of this administrative regulation, ten (10) calendar days in advance of this adverse action.

(7) The cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:
(a) Child protective or preventive services authorization;
(b) A child with a special need;
(c) K-TAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;
(d) Teen parents attending high school or pursuing a general equivalency degree (GED);
(e) A K-TAP recipient attempting to transition off assistance through education;
(f) A parent whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;
(g) A low income working parent; or
(h) A parent in education or training programs leading to self-sufficiency.

Section 13. Provider Requirements. (1) A licensed, certified, or registered child care provider that serves a child who participates in the CCAP shall:
(a) Sign and submit the DCC-94 to the cabinet or its designee prior to receiving payment from the CCAP;
(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;
(c) Maintain the DCC-94E, Child Care Daily Attendance Record (sign-in sheet) in which the daily arrival and departure times of each child have been:
   a. Recorded legibly on a daily basis,[i] and
   b. Signed by the parent or applicant for the child served by CCAP; and
   2. Submit the DCC-94E[sign-in sheet] upon request of the cabinet or its designee; and
   (i) Comply with the applicable regulatory requirements pursuant to:
      1. 922 KAR 2:090, Child care center licensure;
      2. 922 KAR 2:100, Certification of family child care homes;
      3. 922 KAR 2:110, Child care facility provider requirements;
      4. 922 KAR 2:120, Child care facility health and safety standards;[and]
      5. 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;
      6. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties; and
      7. 922 KAR 2:190, Civil penalties.

(2) A licensed or certified child care provider shall complete the DCC-94B, Licensed or Certified Provider Information Form, prior to receiving payment from the CCAP.
(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

Section 14. Other Services. To the extent state funds are available, a child whose family's income is over the income limits for the CCAP described in Section 7 may be eligible for:
(1) Child care payments;
(2) Enrollment fees;
(3) Activity or day trip fees;
(4) Material fees;
(5) Transportation fees; or
(6) Other items relating to child care services with prior approval of the cabinet.

Section 15. An improper payment, claim, or penalty in CCAP shall be in accordance with 922 KAR 2:020.

Section 16. Criteria for Nonpayment. (1) Payment under the CCAP shall:
(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:
   1. A death in the family;
   2. An illness of the:
a. Child; or
b. Applicant; or
3. A Disaster verified by utility provider, local, state, or federal government;
4. Not be made to a certified provider for more than five (5) absences per child during a month;
(c) Not be made to a registered provider for any absences;
(d) Be denied in accordance with KRS 199.8994(6);
(e) Cease if a family or provider defaults on a payment in accordance with Section 10(4) of this administrative regulation or 922 KAR 2:020;
(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP;
(g) Not be made to a provider for payment requests ninety (90) days after the date of service; and
(h) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;
(i) Cease if a provider denies;
1. A parent of a child in care, the cabinet, the cabinet’s designee, or a representative of an agency with regulatory authority;
   a. Entry into the provider’s premises during operating hours; or
   b. Access to a child in care; or
2. The cabinet, the cabinet’s designee, or a representative of an agency with regulatory authority access to the provider’s records relevant to a:
   a. Cabinet review, including CCAP quality control or case review; or
   b. Review by another agency with regulatory authority;
      i. Not be made to a provider if the provider’s DCC-94E in accordance with Section 13(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97; or
   c. Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94.
(2) Subject to the availability of state or federal funds, the cabinet, net suspension of approval of initial application for benefits under the CCAP following the priorities established in Section 12(8) of this administrative regulation.

Section 17. Withholding of CCAP Payments. (1) The cabinet shall withhold CCAP payment from a provider:
(a) If the provider is the subject of a finding of fraud; or
(b) Pending resolution of the provider’s administrative appeals process or legal proceedings related to denial, suspension, or revocation of the provider’s:
1. Registration pursuant to 922 KAR 2:180;
2. Certification pursuant to 922 KAR 2:100; or
3. Licensure pursuant to 922 KAR 2:090, 922 KAR 2:110, or 922 KAR 2:120.
(2) The cabinet shall withhold payments after notifying a provider of its intention to withhold CCAP payments.
3(a) The cabinet shall send written notice to a provider at the provider’s last known mailing address by:
1. Certified mail, return receipt requested; or
2. Personal service delivery.
(b) The notice shall:
   1. Include the substantiated findings of fraud by the cabinet’s Office of Inspector General, if applicable; and
2. Advise the provider:
   a. That payments are being withheld in accordance with subsection (1) of this section;
   b. The date upon which the withholding will begin;
   c. That withholding shall be for a temporary period; and
   d. The circumstances under which withholding shall be discontinued;
4. The withholding of CCAP payments under subsection (1) of this section shall:
   a. Be temporary in nature; and
   b. Not continue after:
      1. Legal proceedings related to the provider’s finding of fraud or regulatory violation are:
         i. Final; and
         ii. Not subject to further appeal; and
2. Court-ordered, deferred prosecution, or plea-bargained resolu-
Contact Person: Justin Dearinger

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation enables the Cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishes procedures for the implementation of the CCAP.
(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 CCAP in a manner which is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the definition of "child with a special need" consistent with federal funder instruction; clarifies verification, reporting, and cooperation requirements for providers and applicants/recipients of CCAP; makes a child in foster care ineligible to receive CCAP due to the foster child's per diem, which includes care and support for the child; specifies work calculations for an applicant or a responsible adult for a child who is self-employed; adjusts the income eligibility criteria congruent with the announcement made by the cabinet in late January 2013; adds to criteria for non-payment, including noncooperation or mismatched attendance and billing forms; adds criteria for withholding payment to include a finding of fraud or the provider's pending denial, suspension, or revocation; includes applicable confidentiality provisions per state and federal laws; and makes technical corrections in accordance with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure CCAP continues and operates within existing resources; respond to and prevent fraud, abuse, and deficient provider operations within the program; support benefit accuracy; and make technical corrections and clarifications. Without the amendment, children's health, safety, and welfare would be negatively impacted; and CCAP would be vulnerable to overpayment, fraud, and abuse and would be subject to a shutdown due to lack of resources.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by administering child care funds as provided under federal law. This regulation, existing federal and state mandates, and in a manner that best considers the interest of clients to be served given contextual factors and programmatic budgetary constraints.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by ensuring CCAP programmatic costs are within the constraints of available state funding, additional fraud and abuse prevention and enforcement measures are in place in CCAP, benefit accuracy and program integrity are further supported in overarching policy and programmatic criteria; and CCAP clients' rights and responsibilities are further clarified.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: During fiscal year 2012, 14,300 children per month in 8,700 families will be impacted. Revenue to approximately 2,400 providers will also be reduced.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will require providers to use a specified form to record a child's sign-in (i.e., attendance), though the requirement for a sign-in sheet is not new and has been in existence for numerous years. The specified form will support consistency across providers and facilitate quality assurance. Providers and recipients participating in CCAP will also be required to cooperate with cabinet reviews and provide access to records for the cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.
(b) In complying with this administrative regulation or amendment, how much will it cost the agency to implement this administrative regulation: The amendment to this administrative regulation will allow CCAP to continue operating within existing resources and with greater program integrity. The amendment will assist efforts to avoid more dire impacts to the regulated entities, such as program shutdown.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There will be no new costs to the agency to implement this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in CCAP.
(b) On a continuing basis: There will be no new costs to the agency to implement this administrative regulation.

(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this administrative regulation will be federal Child Care and Development Fund Block Grant, state matching, and maintenance of effort 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: An increase in fees or funding is not necessary to change this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in CCAP.

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

(9) TIERING: Is tiering applied? The Child Care Assistance Program is implemented statewide; however, tiering is applied to distinguish urban from non-urban counties. Child care providers in urban counties receive a higher rate of child care assistance due to the fact that those providers experience higher overhead costs. Those rate differentiations are further supported by the analysis of the market rate survey results specified in KRS 199.899.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619, 45 C.F.R. 98
2. State compliance standards. KRS 194A.050, 199.892, 199.8994
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

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 Cabinet for Health and Family Services, Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.892, 199.8994 42 U.S.C. 601-619, 45 C.F.R. 98

(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 Child Care Assistance Program (CCAP) has been operational for a number of years. It does not produce any revenue for the state. This administrative regulation will not generate any new revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no new costs to the agency to implement this administrative regulation for the first year. Without the amendment, an increase in funding would be required to sustain current and new enrollment in CCAP.

(d) How much will it cost to administer this program for subsequent years? There will be no new costs to the agency to implement this administrative regulation for subsequent years. Without the amendment, an increase in funding would be required to sustain current and new enrollment in CCAP.

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:
FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(As Amended at ARRS, April 9, 2013)

102 KAR 1:070. Application for retirement.

RELATES TO: KRS 161.600, 161.605(11), 161.640
STATUTORY AUTHORITY: KRS 161.310(1), 161.600(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310
requires the Board of Trustees of the Kentucky Teachers' Retire-
ment System (KTRS) to promulgate all administrative reg-
ulations for the administration of the funds of the retirement
system and for the transaction of business. KRS 161.600(4)
requires the board to promulgate administrative regulations
concerning application for an annuity to receive benefit pay-
ments. KRS 161.605(11) requires members who are eligible for re-
tirement to apply for an annuity to receive benefit payments.
KRS 161.310(1) requires the board of trustees to promulgate
administrative regulations for the administration of funds of
the retirement system and for the transaction of business.

This administrative regulation establishes procedures for filing
of retirement applications and for determining effective dates of annu-
ity payments.

Section 1. Applications for retirement shall be filed on the Ap-
plication for Service Retirement (forms incorporated in this
administrative regulation) and shall include:

1. A photocopy of the applicant's signed Social Security card;
2. A certified birth certificate;
3. If applicable, a certified marriage license; and
4. A voided or cancelled check from the institution to which
monthly disbursements will be electronically transmitted.

Section 2. Applications for retirement for service shall not be
filed later than the first day of the month immediately preced-
ing the month that retirement is to be effective.

(1) Retirement for service shall be effective on the first day of
the month following the date that a properly completed and filed
application is received at the offices of Kentucky Teachers' Retire-
ment System.

(2) A member eligible to retire may exercise this right during a
school year in which the member has been in employment if there
is filed with the application a statement from the chief administra-
tive officer or other authorized representative of the employing
board or agency to the effect that the member is being released
from the employment contract for the purpose of retirement.

Section 3. An application received by mail and bearing the U.S.
Postal Service postmark dated on or before the filing date estab-
lished in Section 2 of this administrative regulation shall be ac-
cepted as having been filed in compliance with Section 2 of this
administrative regulation.

Section 4. An application for service retirement may be ap-
proved by the board of trustees with an effective date that is re-
troactive up to a maximum of three (3) months if the member was
not under contract for the period.

Section 5. The provisions of this administrative regulation shall
apply to any member who is returning to retirement after having
waived his or her retirement allowance under the provisions of
KRS 161.605(11).

Section 6. Incorporation by reference. (1) "Application for Ser-
vice Retirement", 2011 (600)[F] is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject
to applicable copyright law, at Kentucky Teachers’ Retirement
System, 479 Versailles Road, Frankfort, Kentucky 40601-3800,
Monday through Friday, 8 a.m. to 5 p.m.

DR. TOM SHELTON, Chairperson
APPROVED BY AGENCY: December 17, 2012
FILED WITH LRC: February 15, 2013 at 11 a.m.
CONTACT PERSON: Robert B. Barnes, Deputy Executive
Secretary of Operations and General Counsel, Kentucky Teachers’ Retire-
ment System, 479 Versailles Road, Frankfort, Kentucky
40601, phone (502) 848-8508, fax (502) 573-0199.

102 KAR 1:320. Qualified domestic relations orders.

RELATES TO: KRS 161.220, 161.716[, 161.480, 161.655,
161.630, 161.700], 403.190, 20 U.S.C.[Section] 414(p)[.]
STATUTORY AUTHORITY: KRS 161.310, KRS 161.700
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310
requires the Board of Trustees of the Kentucky Teachers’ Retire-
ment System (KTRS) to promulgate all administrative regulations
for the administration of the funds of the retirement system. KRS
161.700 requires the Board of Trustees of KTRS to promulgate
administrative regulations setting forth the requirements, proce-
dures, and forms for the approval and processing of qualified dom-
estic relations orders impacting the benefits of participants of the
retirement system. This administrative regulation establishes
these requirements.

Section 1. Definitions. (1) "Alternate Payee" is defined by KRS
161.220(26).
(2) "Benefits" means a monthly service or disability retirement
allowance or refund payable at the request of a participant covered
by KTRS who terminates employment in a KTRS covered position
prior to becoming eligible to receive a retirement allowance.
(3) "Member" is defined by KRS 161.220(4).
(4) "Participant" is defined by KRS 161.220(24).
(5) "Qualified domestic relations orders" or "QDRO" is defined by
KRS 161.220(25).

Section 2. (1) A QDRO shall state the following:
(a) The member’s name, KTRS member identification number,
and last-known mailing address;
(b) The alternate payee’s name and last known mailing ad-
dress;
(c) Whether the order applies to an active account from which
the member is not currently receiving a retirement allowance, or to
a retired account from which the member is currently receiving a
retirement allowance and the date on which the member retired the
account;
(d) The date of marriage;
(e) The date of divorce or dissolution of marriage;
(f) That the order is for the purpose of property division;
(g) The amount of the participant’s monthly retirement allow-
ance or termination refund to be paid by KTRS to the alternate
payee as either:
1. A fixed dollar amount; or
2. The percentage calculated under Section 7(1) of this admin-
istrative regulation;
(h) When payments shall begin;
(i) When payments shall cease;
(j) That the alternate payee shall be paid in the same form as
the participant;
(k) If the alternate payee spouse shall share in the participant’s
cost of living adjustments if the QDRO awards a fixed dollar amount to the alternate payee;

(I) Who shall be responsible for payment of the KTRS processing fee; and

(m) All information required on the Qualified Domestic Relations Order to Divide Kentucky Teachers’ Retirement System Benefits.

(2) A QDRO shall be:

(a) Approved by KTRS as to enforceability and compliance with the requirements of KRS 161.700 and this administrative regulation;

(b) Approved and submitted by the participant and alternate payee or their legal counsel;

(c) Signed by the judge of a court of competent jurisdiction;

(d) [ib] Filed with the clerk of the court; and

(e) Certified by the clerk of the court.

Section 3. Administrative Provisions. (1) Upon entry of a final divorce decree, the participant shall forward a copy of the decree to KTRS and:

(a) If the participant is a retired member, request:

1. A Change of Option Following Termination of Marriage form, if the participant wants to change his or her retirement option, which shall be done within sixty (60) days of the final divorce decree;

2. A Change of Beneficiary form, if the participant had chosen retirement Option I or Option II and does not want to change his or her retirement option, but wants to name a new beneficiary;

3. A Designation of Beneficiary for KTRS Life Insurance Beneficiary form, if the participant wants to designate a beneficiary other than his or her estate; or

4. A W-4P Withholding Certificate for Pension or Annuity Payments, if the participant wants to change the amount of federal tax withheld from his or her retirement benefit; or

(b) If the participant is an active member, he or she shall request:

1. A Designation of Beneficiary for KTRS Retirement Account Balance form, if the participant wants to designate a beneficiary other than his or her estate; or

2. A Designation of Beneficiary for KTRS Life Insurance Beneficiary form, if the participant wants to designate a beneficiary other than his or her estate.

(2) Thirty (30) days prior to filing the QDRO with KTRS, the participant or alternate payee shall present a written request for benefits information for divorce purposes. The participant, alternate payee or third party, including the party's legal counsel, shall provide a completed KTRS Authorization for Release of Information form with the request.

(3)(a)(2)(a) For a QDRO directed to an active account from which a participant is not currently receiving a retirement allowance, KTRS shall forward a KTRS Report for Current Year Earnings and Contributions form to the participant's employer upon receipt of the written request and release.

(b) The employer shall return the completed form to KTRS within ten (10) work days.

(4)(a) If the QDRO is directed to an account from which the participant is not currently receiving a retirement allowance, KTRS shall not project future earnings or future service. KTRS shall provide:

(a) The participant's total accrued service credit, including service credit purchased during the marriage, and the member account balance, including the total amount of accrued contributions and interest, as posted at the end of each fiscal year during the marriage and for which an employer annual report has been received by KTRS and for which the member has not received a refund; and

(b) An estimate of the monthly retirement allowance the participant would receive if the participant retired without a statutory reduction of the benefit or other retirement allowance based upon the participant's final compensation and total accrued service credit as of the date of dissolution of marriage.

(5)(a) If the participant has retired, KTRS shall provide the amount of the participant's monthly retirement allowance and the participant's total accrued service credit, including any service credit purchased during the marriage.

(6)(5) The participant or alternate payee or legal counsel shall submit a Qualified Domestic Relations Order to Divide Kentucky Teachers’ Retirement System Benefits form to KTRS for review within forty-five (45) days prior to filing the QDRO with the court. If more than one (1) of participant’s accounts is subject to classification and division as marital property, a separate QDRO shall be issued for each KTRS account.

(7)(6) KTRS shall not review the QDRO unless it is accompanied by the following:

(a) The KTRS Administrative Regulatory Compliance form, which has been approved by both the participant or alternate payee or their legal counsel;

(b) A fifty (50) dollar nonrefundable processing fee, by certified check or on the attorney's trust account, made payable to the Kentucky State Treasurer, except that a processing fee shall not be charged for a QDRO issued solely for child support;

(c) The KTRS Confidential Information form, which shall include the participant's and alternate payee's address, Social Security number, and date of birth;

(d) Copies of the participant's and alternate payee's signed Social Security cards;

(e) KTRS Authorization for Direct Deposit form; and

(f) Any other documents that are required to confirm additional service credit purchased, or sought to be purchased, for retirement calculation purposes under KRS 161.220 through 161.716, including KTRS Military Service Certification and Affidavit form, with a copy of discharge papers.

(8)(7) Within twenty (20) days of receipt of the QDRO, KTRS shall notify the participant and alternate payee in writing whether the QDRO meets KTRS requirements. If the QDRO meets KTRS requirements, KTRS shall approve the QDRO and circulate an original, signed QDRO for signature by the participant and alternate payee for submission to the court. If the participant or alternate payee is represented by legal counsel, the approved QDRO, with this notice, shall instead be provided to their legal counsel for signature by counsel and submission to the court. KTRS shall forward a W-4P Withholding Certificate for Pension or Annuity Payments form to the alternate payee.

(9)(8) If the QDRO does not meet KTRS requirements, KTRS shall notify the participant and alternate payee in writing, identifying those provisions which are not in compliance and the amendments needed to bring the QDRO into compliance. If the participant or alternate payee is represented by legal counsel, this notice shall instead be provided to their legal counsel. The amended QDRO shall be submitted to KTRS for review and approval prior to filing with the court.

(10) KTRS shall reject any QDRO entered by a court which has not been reviewed or approved by KTRS prior to its submission to the court. KTRS shall notify the participant, the alternate payee, or their legal counsel, and the court in writing, identifying those provisions which are not in compliance and the amendments needed to bring the QDRO into compliance before it shall be accepted by KTRS.

(11)(9) If the QDRO is subsequently amended before filing with the court, the amended QDRO shall be resubmitted to KTRS with a twenty-five (25) dollar nonrefundable processing fee for review and approval.

(12)(10) Following approval by the court, the participant, alternate payee or legal counsel shall file a certified copy of the QDRO with KTRS.

(a) The QDRO shall not become effective until the certified copy is received by KTRS.

(b) Upon receipt of the certified copy, KTRS shall designate the participant's account for implementation of the QDRO.

(c) While a separate account balance shall not be maintained for the alternate payee, a separate payroll account shall be established.

(d) Payments to the alternate payee shall commence in the calendar month following the date that a certified copy of the QDRO is received by KTRS.
the amended QDRO or order of termination to KTRS for processing.

(14) The participant, alternate payee, or legal counsel shall not submit a QDRO that is not final and under consideration by an appraisal court.

(15) The alternate payee shall be responsible for notifying KTRS of any change in name or mailing address.

(a) KTRS shall provide a Name or Change of Address form upon request.

(b) KTRS shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when an annuity benefit subject to the QDRO becomes payable.

(c) Other than sending a notice as established in paragraphs (a) and (b) of this subsection, KTRS shall have no duty or responsibility to search for, or locate, the alternate payee.

(d) If the notification sent to the alternate payee's last known address is returned due to the alternate payee's failure to notify KTRS of an address change, within sixty (60) days of the return of the notification to the alternate payee, the amounts otherwise payable to the alternate payee shall be paid to the participant until a new address is provided by the alternate payee.

(e) KTRS shall have no liability to the alternate payee with respect to amounts paid to the participant.

(16)(144) The participant shall be responsible for notifying KTRS in writing of an event which causes benefit payments to the alternate payee spouse, child, or other dependent, to cease.

(a) The participant shall provide KTRS with a certified copy of the alternate payee's death certificate or marriage certificate.

(b) The alternate payee shall also be responsible for notifying KTRS in writing of the alternate payee's remarriage if, under the terms of the QDRO, that is an event that terminates the alternate payee's right to receive any payments.

(c) KTRS shall not be responsible for payments made to the alternate payee until it is given timely written notice of any event terminating those payments.

Section 4. A QDRO may apply to a participant's:
(1) Retirement allowance;
(2) Disability retirement allowance; or
(3) Termination refund.

Section 5. A QDRO shall not apply to a participant's:
(1) Survivor annuity that becomes payable after the member's death;
(2) Survivor benefits that become payable after an active contributing member's death;
(3) Accounts that are not vested at the time of the dissolution of marriage;
(4) Life insurance benefit;
(5) Refund as a result of an error;
(6) Refund of an active or retired account in response to a member's death;
(7) Health insurance; and
(8) Any other payment or benefit not described in Section 4 of this administrative regulation.

Section 6. If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's annuity benefits and dies before the participant dies, retires, or withdraws his account, the entire remaining account value shall be restored to the participant.

Section 7. Calculation and payment. (1) The portion of the participant's benefits payable to the alternate payee shall be fifty (50) percent of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), multiplied by the following fraction:
(a) The numerator of which shall be the participant's total full and fractional years of creditable KTRS service earned during the marriage, including service credit purchased during the marriage; and
(b) The denominator of which shall be the participant's total full and fractional years of KTRS service credit through the date of dissolution of the marriage.

(2) If the participant is or will be receiving a disability retirement allowance, the participant's total annuity benefit for purposes of this administrative regulation shall be calculated under the service retirement formula established under KRS 161.661(5), even if the entitlement period described under KRS 161.661(3) and (4) has not expired.

(3) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, the participant's total annuity benefit shall be calculated without inclusion of the discounts required under KRS 161.620(1)(b) and (d).

(a) If at retirement the participant is subject to discounts required under KRS 161.620(1)(b) and (d), and if the QDRO establishes a set dollar amount to be withheld from the retirement benefits that are payable to the participant and to be paid to the alternate payee, KTRS shall reduce the amount to be paid to the alternate payee under the QDRO by the amount of the discounts.

(b) KTRS shall increase the amount paid to the alternate payee in amount equal to any discounts that are subsequently eliminated as the result of the participant's return to work after retirement under the provisions of KRS 161.605(11), upon the participant's resumption of receipt of retirement benefits.

(4) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, and the participant is issued benefit under KRS 161.620(1)(b) and (d), and if the QDRO establishes a set dollar amount to be withheld from the retirement benefits based on his three (3) highest salaries as provided under KRS 161.220(9), then his total annuity benefit shall be calculated on his five (5) highest salaries.

(5) The participant may select any retirement option, but payment to the alternate payee shall be measured as though the participant had chosen Option I, Straight Life Annuity with Refundable Balance, under KRS 161.620 and 102 KAR 1:150.

Section 8. Any person who attempts to make KTRS a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the annuity benefits payable to the participant shall be liable to KTRS for its costs and legal fees.

Section 9. KTRS and its staff shall have no liability for making or withholding payments in accordance with any of the provisions of this administrative regulation.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "KTRS Authorization for Release of Information", 15 January 2013[14 July 2010];
(b) "KTRS Report for Current Year Earnings and Contributions", 14 July 2010;
(c) "Qualified Domestic Relations Order to Divide Kentucky Teachers’ Retirement System Benefits", 15 January 2013[September 2013];
(d) "KTRS Administrative Regulatory Compliance", 14 July 2010;
(e) "KTRS Confidential Information", 14 January 2013[تعدادی];
(f) "KTRS Authorization for Direct Deposit", 14 July 2010;
(g) "KTRS Military Service Certification and Affidavit", 14 July 2010; and
(h) "KTRS Name or Change of Address", 14 July 2010;
(i) "Change of Option Following Termination of Marriage", 15 February 2002;
(j) "Change of Beneficiary", February 2002;
(k) "Designation of Beneficiary for KTRS Life Insurance Benefit", 15 January 2013;
(l) "Designation of Beneficiary for KTRS Retirement Account Balance", 15 January 2013; and
(m) "W-4P", 2013 which may be obtained at www.irs.gov/pub/irs-pdf/w4p.pdf or by contacting KTRS.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Teachers’ Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

(3) W-4P may also be obtained at www.irs.gov/pub/irs-
FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers’ Retirement System
(As Amended at ARRS, April 9, 2013)

102 KAR 1:350. Full actuarial cost purchase.


STATUTORY AUTHORITY: KRS 161.310(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Kentucky Teachers’ Retirement System (KTRS) to promulgate all administrative regulations for the administration of the funds of the retirement system. KRS 161.507, 161.515, 161.545, 161.5465, 161.547, 161.548, and 161.549 permit the Department of Revenue to prescribe purchase of service credit. These purchases of service credits are purchased at full actuarial cost as defined by KRS 161.220(22). This administrative regulation provides the interest rate to be credited to members who make an advance payment for service credit at full actuarial cost [at a time earlier than the calendar year immediately] prior to retirement.

Section 1. Members who make an advance payment for service credit at full actuarial cost at least one (1) month prior to their effective retirement date shall be accredited regular interest against their payment[s] at the rate provided for members under KRS 161.220(13). This interest shall be accredited at the time of retirement when the final actuarial cost purchase amount is reconciled and shall be subject to adjustment to reflect the actuarial experience of the retirement system.

DR. TOM SHELTON, Chairperson
APPROVED BY AGENCY: December 17, 2012
FILED WITH LRC: February 15, 2013 at 11 a.m.
CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers’ Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Property Valuation
(As Amended at ARRS, April 9, 2013)


Const. Sec. 170
STATUTORY AUTHORITY: KRS 131.130(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration of Property and Severance Taxes by the Department of Revenue.

Section 1. Property Tax - Required Forms. (1) Revenue Form 61A200(P), “Property Tax Forms and Instructions for Public Service Companies 2012[2014],” shall be the packet of files and instructions relating to Revenue Form 61A200 for use by public service companies reporting company name, location and other pertinent filing information with the Department of Revenue.

(2) Revenue Form 61A200, “Public Service Company Property Tax Return for Year Ending December 31, 2012[2014],” shall be filed by public service companies reporting company name, location, and other pertinent filing information with the Department of Revenue.

(3) Revenue Form 61A200(A), “Report of Total Unit System and Kentucky Operations”, shall be filed by public service companies with the Department of Revenue, reporting the System and Kentucky original cost, total depreciation and depreciated cost for all operating and non-operating property types as of the end of the taxable year.

(4) Revenue Form 61A200(B), “Report of Kentucky Vehicles, Car Lines and Watercraft”, shall be filed by public service companies with the Department of Revenue, reporting the assessed value of all Kentucky apportioned and regular licensed motor vehicles, railroad car lines and commercial watercraft as of the end of the taxable year.

(5) Revenue Form 61A200(C), “Report of Total Unit Operations Balance Sheet”, shall be filed by public service companies with the Department of Revenue, reporting a financial statement (balance sheet) as of December 31 for the system operating unit including Kentucky.

(6) Revenue Form 61A200(D), “Report of Total Unit Operations Income Statement”, shall be filed by public service companies with the Department of Revenue, reporting a financial statement (income statement) for twelve (12) months ending December 31 for the system operating unit including Kentucky.

(7) Revenue Form 61A200(E), “Filing Extension Application”, shall be used by public service companies to request an extension of time to file the public service company tax return.

(8) Revenue Form 61A200(G), “Report of Capital Stocks”, shall be filed by public service companies with the Department of Revenue, reporting an analysis of their capital stocks as of the end of the taxable year.

(9) Revenue Form 61A200(H), “Report of Funded Debt”, shall be filed by public service companies with the Department of Revenue reporting an analysis of their debt as of the end of the taxable year.

(10) Revenue Form 61A200(I), “Business Summary by Taxing Jurisdiction”, shall be filed by public service companies with the Department of Revenue reporting a summary of the business activity within each taxing district.

(11) Revenue Form 61A200(J), “Property Summary by Taxing Jurisdiction, Operating and Nonoperating Property”, shall be filed by public service companies with the Department of Revenue reporting a summary of the amount of operating and nonoperating property owned or leased in this state, by each county, city and special district.

(12) Revenue Form 61A200(K), “Operating Property Listing by Taxing Jurisdiction”, shall be filed by public service companies with the Department of Revenue reporting an inventory of the amount and kind of operating property, owned or leased, located in this state for each county, city, and special district.

(13) Revenue Form 61A200(K2), “Nonoperating/Nonutility Property Listing by Taxing Jurisdiction”, shall be filed by public service companies with the Department of Revenue reporting an inventory of the amount and kind of nonoperating property owned or leased, located in this state, for each county, city and special district.

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(14) Revenue Form 61A200(L), “Report of Allocation Factors, Operating and Noncarrier Property for All Interstate Companies”, shall be filed by interstate, noncarrier, public service companies with the Department of Revenue, reporting property and business factors in total and for the state of Kentucky.

(15) Revenue Form 61A200(M), “Report of Property and Business Factors for Interstate Railroad and Sleeping Car Companies”, shall be filed by interstate railroad and sleeping car companies with the Department of Revenue, reporting all leased real property and the terms of the lease by taxing district.

(17) Revenue Form 61A200(N2), “Report of Operating Leased Personal Property Located in Kentucky By Taxing District”, shall be filed by public service companies with the Department of Revenue, reporting all leased personal property and the terms of the lease by taxing district.

(18) Revenue Form 61A200(N3), “Summary Report of System and Kentucky Operating Lease Payments”, shall be filed by public service companies with the Department of Revenue reporting the annual operating lease payments paid during the calendar year.

(19) Revenue Form 61A200(P), “Report of Compressed Air in System Fleet”, shall be filed by public service companies with the Department of Revenue, reporting the number of compressed air units and the number of units in use.

(20) Revenue Form 61A200(Q), “Supplemental Report of Operations for Contained and Residential Landfills”, shall be filed by landfills with the Department of Revenue, reporting the number of contained and residential landfills in Kentucky.

(21) Revenue Form 61A200(R), “Report of Property Subject to the Pollution Control Tax Exemption”, shall be filed by public service companies with the Department of Revenue, reporting the original cost and the net book value.

(22) Revenue Form 61A200(U), “Industrial Revenue Bond Property”, shall be filed by a public service company to list real and tangible personal property purchased with an industrial revenue bond.

(23) Revenue Form 61A202, “2013[2012] Public Service Company Property Tax Return for Railroad Car Line”, shall be filed by railroad car line companies with the Department of Revenue, classifying the railcars by type and reporting cost, age, and mileage for each railcar.

(24) Revenue Form 61A206(P), “Public Service Company Property Tax Forms and Instructions for Commercial Air Passenger and Air Freight Carriers (2013[2014])”, shall be the packet of files and instructions relating to Revenue Form 61A206 for use by commercial air passenger and air freight carriers reporting company name, location and other pertinent information with the Department of Revenue.

(25) Revenue Form 61A206, “Public Service Company Property Tax Return For Commercial Air Passenger and Air Freight Carriers”, shall be filed by all commercial air passenger and air freight carriers reporting taxpayer name, location and other pertinent information with the Department of Revenue.

(26) Revenue Form 61A206(A), “Filing Extension Application for Public Service Company Property Tax Return”, shall be used by commercial air passenger and air freight carriers to request an extension of time to file the commercial air passenger and air freight carriers tax return.

(27) Revenue Form 61A206(B), “Report of Kentucky Registered and Licensed Motor Vehicles”, shall be filed by commercial air passenger and air freight carriers to report vehicles, both owned and leased, registered within the state of Kentucky as of December 31.

(28) Revenue Form 61A206(C), “Report of Financial Operations for Commercial Air Passenger and Air Freight Carriers”, shall be used by all commercial, passenger or cargo airlines conducting business in Kentucky to provide the Department of Revenue with year-end financial statements, a complete annual report, and a complete 10K report (FCC annual report) for the twelve (12) month period ending December 31.

(29) Revenue Form 61A206(D-1), “Report of System Aircraft Fleet”, shall be filed by commercial air passenger and air freight carriers providing a complete listing of all aircraft owned and capital-leased as of December 31.

(30) Revenue Form 61A206(D-2), “Report of System Aircraft Fleet”, shall be filed by commercial air passenger and air freight carriers providing a complete listing of all operating leased aircraft.

(31) Revenue Form 61A206(D-3), “Report of System Aircraft Fleet”, shall be filed by all commercial air passenger and air freight carriers providing a complete listing of all leased aircraft owned and all aircraft held for resale or nonoperating.

(32) Revenue Form 61A206(E), “Report of Kentucky Flight Statistics By Airport”, shall be filed by all commercial air passenger and air freight carriers providing a listing of all arrivals, departures, and ground time at all Kentucky airports and heliports.

(33) Revenue Form 61A206(F), “Report of System and Kentucky Allocation Factors”, shall be filed by all commercial air passenger and air freight carriers listing property factors and business factors.

(34) Revenue Form 61A206(G), “Report of Funded Debt”, shall be filed by all commercial air passenger and air freight carriers listing all debt obligations, both long term and short term, by class and obligation.

(35) Revenue Form 61A206(H), “Report of Operating Leased Real Property Located in Kentucky By Taxing District”, shall be filed by all commercial air passenger and air freight carriers listing all real property in Kentucky leased on an operating lease basis.

(36) Revenue Form 61A206(I), “Report of Operating Leased Personal Property Located in Kentucky By Taxing District”, shall be filed by all commercial air passenger and air freight carriers listing all personal property in Kentucky leased on an operating lease basis.

(37) Revenue Form 61A206(J), “Summary Report of System and Kentucky Operating Lease Payments”, shall be filed by all commercial air passenger and air freight carriers listing all personal property in Kentucky leased on an operating lease basis.

(38) Revenue Form 61A206(K), “Report of Owned Real Property Located in Kentucky By Taxing District”, shall be filed by all commercial air passenger and air freight carriers listing all real property owned in Kentucky.

(39) Revenue Form 61A206(L), “Report of Owned Personal Property Located in Kentucky By Taxing District”, shall be filed by all commercial air passenger and air freight carriers listing all personal property owned in Kentucky.

(40) Revenue Form 61A206(M), “Summary Report of Total System and Kentucky Operations”, shall be filed by all commercial air passenger and air freight carriers listing all real and personal property owned and leased, providing the original cost, depreciation and depreciated cost values.

(41) Revenue Form 61A206(N), “Industrial Revenue Bond Property”, shall be filed by all commercial air passenger and air freight carriers listing real and tangible property purchased with an industrial revenue bond.

(42) Revenue Form 61A206(O), "Public Service Company Sales", shall be filed by commercial air passenger and air freight carriers listing any assets bought or sold during the year.

(43) Revenue Form 61A207(P), “Commercial Watercraft Personal Property Tax Return 2013[2012]”, shall be the packet of files and instructions relating to Revenue Form 61A207 for use by commercial watercraft owners both resident and nonresident, reporting the watercraft’s book value, original cost and total and Kentucky route mileage with the Department of Revenue.

(44) Revenue Form 61A207, “2013[2012] Commercial Watercraft Personal Property Tax Return”, shall be filed by all commercial watercraft owners, both resident and nonresident, reporting the watercraft’s book value, original cost, and total and Kentucky route mileage with the Department of Revenue.

(45) Revenue Form 61A207(A), “Report of Owned Vessels in Your Possession”, shall be filed with the Department of Revenue, reporting all owned vessels (both available and operating) in their fleet as of January 1, 2013[2012]"
(46) Revenue Form 61A207(B), "Report of Owned Vessels - in Possession of Others", shall be filed with the Department of Revenue, reporting all owned vessels that are in possession of other persons, companies, corporations, operators, or charterers as of January 1, 2013.[2012].

(47) Revenue Form 61A207(C), "Report of Nonowned Vessels in Your Possession", shall be filed with the Department of Revenue, reporting all nonowned vessels (both available and operating) in their fleet as of January 1, 2013.[2012].

(48) Revenue Form 61A207(D), "Commercial Watercraft Valuation Worksheet", shall be filed with the Department of Revenue, reporting the original cost, cost of rebuilds and the cost of major improvements of all owned and nonowned vessels.

(49) Revenue Form 61A207(E), "Report of Kentucky Route Miles", shall be filed with the Department of Revenue reporting the system route miles traveled on Kentucky waterways.

(50) Revenue Form 61A207(F), "Report of System Route Miles", shall be filed with the Department of Revenue reporting the system route miles traveled on Kentucky waterways.

(51) Revenue Form 61A209, "Public Service Company Sales", shall be filed by public service companies with the Department of Revenue, reporting any full or partial sale or purchase of assets of the public service company.

(52) Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs", shall be filed by public service companies with the Department of Revenue reporting all motor vehicles owned or leased within Kentucky.

(53) Revenue Form 61A211(I), "Instructions Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs", shall provide instructions for completing Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs".

(54) Revenue Form 61A230, "Notice of Assessment", shall be sent by the Department of Revenue to the taxpayer notifying him or her of the final assessment of the public service company property.

(55) Revenue Form 61A240, "Notice of Assessment", shall be sent by the Department of Revenue to the taxpayer notifying him or her of a tentative assessment of the public service company property. This notice shall inform the taxpayer of the protest period.

(56) Revenue Form 61A240, "Notice of Assessment", shall be sent by the Department of Revenue to the taxpayer notifying him or her of a tentative assessment of the public service company property. This notice shall inform the taxpayer of the protest period.

(57) Revenue Form 61A255, "Public Service Company Property Tax Statement", shall be used by the counties, schools and special districts to bill public service companies for local property taxes.

(58) Revenue Form 61A255(I), "Instructions for 61A255, Public Service Company Property Tax Statement", shall provide instructions for completing Revenue Form 61A255, "Public Service Company Property Tax Statement".

(59) Revenue Form 61A500(P), 2013[2012] Personal Property Tax Forms and Instructions for Communications Service Providers and Multichannel Video Programming Service Providers", shall be the packet of files and instructions relating to Revenue Form 61A500 for use by telecommunication, satellite, and cable television companies, reporting all tangible personal property with the Department of Revenue.

(60) Revenue Form 61A500, 2013[2012] Tangible Personal Property Tax Return for Communications Service Providers and Multichannel Video Programming Service Providers", shall be filed by telecommunication, satellite, and cable television companies, reporting all tangible personal property with the Department of Revenue.

(61) Revenue Form 61A500(H), "Report of Total Personal Tangible Property in Kentucky", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky original cost, depreciation, and book value of each class of tangible personal property.

(62) Revenue Form 61A500(I), "Summary of Gross Personal Tangible Property Listing by Taxing District", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky Original Cost by taxing jurisdiction.

(63) Revenue Form 61A500(J), "Summary of Reported Personal Tangible Property Listing by Taxing District", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky reported value by taxing jurisdiction.

(64) Revenue Form 61A500(K), "Personal Tangible Property Listing by Taxing District", shall be filed by telecommunication, satellite and cable television companies with the Department of Revenue and shall contain an inventory of the amount and kind of personal property owned and located in Kentucky by taxing jurisdiction.

(65) Revenue Form 61A507, "Nonresident Watercraft Property Tax Statement", shall be used by county clerks and local tax jurisdictions to bill assessments of nonresident watercraft personal property.

(66) Revenue Form 61A508, "Annual Report of Distilled Spirits in Bonded Warehouse", shall be filed by distilleries with the Department of Revenue to report inventory as of January 1.

(67) Revenue Form 61A508-S1, "Schedule 1 Department of Property Valuation Cost of Production Schedule", shall be filed by distilleries with the Department of Revenue, reporting the average cost per gallon of production.

(68) Revenue Form 61A508-S2, "Schedule 2 Department of Property Valuation Storage Cost Schedule", shall be filed by distilleries with the Department of Revenue, reporting average per barrel of storage cost.

(69) Revenue Form 61A508-S3, "Schedule 3 Schedule of Bulk Sales", shall be filed by distilleries with the Department of Revenue, reporting the date of the sale or purchase, the number of barrels, age, and the price.

(70) Revenue Form 61A508-S4, "Schedule 4", shall be filed by distilleries with the Department of Revenue, reporting the fair cash value of bulk inventory summarized on Form 61A508.

(71) Revenue Form 61A509, "Distilled Spirits or Telecommunications Property Tax Statement", shall be used by county clerks and local tax jurisdictions to bill assessments of distilled spirits and telecommunication personal property.

(72) Revenue Form 61F007, "Notification Protesting Your Commercial Watercraft Assessment", shall inform taxpayers of the protest procedures on Commercial Watercraft assessments.

(73) Revenue Form 61F008, "Notification Protesting Your Assessment", shall inform taxpayers of the protest procedures on Commercial Watercraft assessments.

(74) Revenue Form 61F010, "Property Value Assessments for Public Service and Centrally Assessed Companies - Assessment of Distilled Spirits in Bonded Warehouses", shall inform taxpayers of the protest procedures on Distilled Spirits assessment.

(75) Revenue Form 62A007, "Motor Vehicle Tax and/or Registration Renewal Notice", shall be issued by the Department of Revenue to notify motor vehicle owners of their ad valorem property tax liabilities and registration renewal deadline.

(76) Revenue Form 62A007S, "Motor Vehicle/Boat Property Tax Notice - Second Notice", shall be issued by the Department of Revenue to notify motor vehicle and boat owners of their delinquent ad valorem property tax liabilities.

(77) Revenue Form 62A008, "Motor Vehicle Tax Notice", shall be issued by the Department of Revenue to notify motor vehicle owners of their ad valorem property tax liabilities.

(78) Revenue Form 62A009, "Map Sales Invoice", shall be provided to the customer by the Department of Revenue as a receipt for payment of motor vehicle purchased.

(79) Revenue Form 62A010, "Notice for Boat Transfer", shall be issued to January 1 owners of boats transferred during the calendar year informing them of the ad valorem tax due on the transferred boat.

(80) Revenue Form 62A013, "Application for Assessment
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Moratorium Certificate”, shall be filed by property owners seeking an assessment moratorium on qualifying existing property undergoing repair, rehabilitation or restoration. The form shall be filed with the proper administering agency of the county in which the property is located. Property owners shall be required to pay the delinquent property tax for the thirty (30) days prior to restoration or repair.

(82)(83) Revenue Form 62A015, “2013[2012] Motor Vehicle and Watercraft Property Tax Rate Certification”, shall be submitted annually to the Department of Revenue by motor vehicle and watercraft taxing jurisdictions to certify the rates established by the taxing jurisdiction for motor vehicles and watercraft.

(83)(84) Revenue Form 62A016, “Quietus”, shall be issued by the Department of Revenue to certify that a county clerk is in good standing with regard to the conduct of ad valorem property tax collection duties.

(84)(85) Revenue Form 62A017, “County Clerk’s Claim for Calculation of Motor Vehicle and Boat Bills”, shall be completed by the Department of Revenue and county clerk to certify the total number of motor vehicle and boat accounts for a given county and deductible property tax, if any, for the current year.

(85)(86) Revenue Form 62A020, “Intercounty Property Tax Collections”, shall be completed by the Department of Revenue to list distributions of ad valorem property tax made to individual taxing jurisdictions.

(86)(87) Revenue Form 62A023, “Application for Exemption from Property Taxation”, shall be filed by organizations seeking a property tax exemption under Ky. Const. Sec. 170. This form shall be filled out with the property valuation administrator of the county in which the property is located.

(87)(88) Revenue Form 62A030, “Request for Reproduction of PVA Public Records and Contract for Commercial Users”, shall be submitted to request copies of documents required to be retained by the PVA.

(89)(90) Revenue Form 62A044, “Affidavit for Correction/Exoneration of Motor Vehicle/Boat/Trailer Tax Property Tax”, shall be completed by the owner of a vehicle, boat, or trailer at the property valuation administrator’s office in order to correct owner or vehicle, boat, or trailer information in the ad valorem tax computer system. The PVA shall present the form to the county clerk when a tax refund is authorized.

(90)(91) Revenue Form 62A200(P), “2013[2012] Unmined Coal Property Tax Information Return”, shall be the packet of files and instructions relating to Revenue Form 62A200 for use by owners or lessees of unmined minerals, reporting information with the Department of Revenue.

(91)(92) Revenue Form 62A200, “2013[2012] Unmined Coal Property Tax Information Return”, shall be filed by owners or lessees of unmined minerals, reporting information with the Department of Revenue.

(92)(93) Revenue Form 62A200, “Schedule B Leased Property”, shall be filed by all lessors and sublessors with the Department of Revenue, reporting ownership information for each parcel or royalty interest for each leased parcel.

(93)(94) Revenue Form 62A200, “Schedule C Property or Stock Transfers”, shall be filed by both purchasers and sellers of unmined mineral property, with the Department of Revenue, reporting details of the transaction.

(94)(95) Revenue Form 62A200, “Schedule D Lease Terminations, Transfers or Assignments”, shall be filed by lessors or lessees of unmined minerals, with the Department of Revenue, reporting the parcel number, the date the lease was terminated and the seams assigned.

(95)(96) Revenue Form 62A200, “Schedule E Farm Exception to Unmined Minerals Tax”, shall be filed by surface owners, who own the mineral rights in their entirety and are engaged in primary farming, to be exempted from the unmined minerals tax.

(96)(97) Revenue Form 62A200, “Schedule F Geological Information by County”, shall be filed by owners or lessees of unmined minerals, with the Department of Revenue, reporting exploration and analytical information.

(97) Revenue Form 62A301-S, “Omitted Real Estate Property Tax Bill”, shall be used by the sheriff to inform taxpayers of an omitted real estate property tax liability.

(98) Revenue Form 62A302, “Request for Information for Local Board of Tax Appeals”, shall be filed by taxpayers with the property valuation administrator, if appealing their assessment on real property.

(99) Revenue Form 62A304, “Property Valuation Administrator’s Recapitulation of Real Property Tax Roll”, shall be filed by the property valuation administrator by the first Monday in April, showing a recapitulation of property assessments by type of property and by taxing district. This form shall also be known as “first recap”.

(100) Revenue Form 62A305, “Property Valuation Administrator’s Summary of Real Property Tax Roll Changes (Since Recapitulation)”, shall be filed by the property valuation administrator within six (6) days of the conclusion of the real property tax roll inspection period, showing all changes made since the submission of Revenue Form 62A304. This form shall also be known as “final recap”.

(101) Revenue Form 62A307, “Property Owner Conference Record”, shall be used by the property valuation administrator to document a property owner’s appeal conference. The property owner or his or her representative shall be asked to sign the record and shall be given a copy of the record.

(102) Revenue Form 62A323, “Record of Additions and Deletions to the PVA to report all real property additions and deletions for a particular assessment year.”

(103) Revenue Form 62A329, “Annual Report of Domestic Life Insurance Companies”, shall be filed by life insurance companies doing business in Kentucky, with the Department of Revenue, reporting the fair cash value of the company’s intangible property, both taxable and exempt, and the aggregate amount.

(104) Revenue Form 62A350, “Application for Exemption Under the Homestead/Disability Amendment”, shall be filed by property owners seeking an exemption from property taxes under Ky. Const. Sec. 170. This application shall be filed with the property valuation administrator of the county in which the residential unit is located.

(105) Revenue Form 62A352, “Notice to Real Property Owner of Assessment by Property Valuation Administrator”, shall be mailed to the property owner by the property valuation administrator notifying him or her of the assessment amount and of his or her appeal rights.

(106) Revenue Form 62A353, “Notice of Listing of Omitted Real Property”, shall be mailed by the property valuation administrator to the property owner. This document shall notify the property owner that his or her omitted property has been listed and assessed and of his or her appeal rights.

(107) Revenue Form 62A354, “Notice to Property Owner of Final Decision of Board of Assessment Appeals”, shall be sent from the Board of Assessment Appeals to the property owner to inform him or her of its ruling.

(108) Revenue Form 62A358, “Receipt for Transferring Delinquent Property Tax Bills From the Sheriff to the County Clerk”, shall be signed by both the sheriff and county clerk to affirm the number and total amount of delinquent tax bills transferred from the sheriff to the county clerk.

(109) Revenue Form 62A358-S, “Supplemental Receipt to Document Timely Postmarked Payments Received After the Delinquent Tax Bill Transfer Date”, shall be signed by both the sheriff and the county clerk to affirm payments received by the sheriff via mail and postmarked timely after the transfer date.

(110) Revenue Form 62A359, “Sheriff’s Report of Real Property Tax Bills Transferred to the County Clerk”, shall be used by the sheriffs to report delinquent real estate tax bills that were transferred from the sheriff to the county clerk’s office.

(111) Revenue Form 62A360, “Order Correcting Erroneous Assessment”, shall be issued to the collection agency (county sheriff) and taxpayer correcting an erroneous mineral property tax assessment.

(112) Revenue Form 62A362, “Sheriff’s Report of Delinquent Personal Property Tax Bills Transferred to the County Clerk”, shall be used by the sheriff to report delinquent personal property tax bills transferred from the sheriff to the county clerk’s office.
(113) Revenue Form 62A363, “County Clerk’s Claim for Preparing Tax Bills”, shall be submitted by the county clerk in order to receive payment for each property tax bill prepared, with one-half (1/2) paid out of the county treasury and one-half (1/2) paid out of the State Treasury. 

(114) Revenue Form 62A363-B, “County Clerk’s Claim for Preparing Omitted Tax Bills”, shall be submitted by the county clerk in order to receive payment of one (1) dollar for each omitted property tax bill prepared, with one-half (1/2) paid out of the county treasury and one-half (1/2) paid out of the State Treasury. 

(115) Revenue Form 62A364, “County Clerk’s Monthly Report of Omitted Assessments”, shall be used by the county clerk to report omitted assessments made by the property valuation administrator. 

(116) Revenue Form 62A365, “Nonresidency Affidavit”, shall be filed as proof of nonresidency in Kentucky as of January 1, for ad valorem tax purposes. 

(117) Revenue Form 62A366, “Order Correcting Erroneous Assessment”, shall be filed by the property valuation administrator with the sheriff, to correct an error made in an assessment of property. 

(118) Revenue Form 62A366-D, “Order Correcting Erroneous Delinquent Assessment”, shall be filed by the property valuation administrator with the sheriff, to correct an error made in a delinquent assessment of property. 

(119) Revenue Form 62A366R, “Exoneration Form for Property Tax Refund”, shall be filed by a taxpayer for refunds of property tax. 

(120) Revenue Form 62A367, “Authorization for Preparing Additional/Supplemental Property Tax Bills”, shall be used by a property valuation administrator to prepare additional or supplemental tax bills. 

(121) Revenue Form 62A367-A, “Instructions for Preparation of Additional/Supplemental Tax Bills and Official Receipt”, shall be provided to assist the PVA with the preparation of additional or supplemental tax bills. 

(122) Revenue Form 62A368-A, “County Clerk’s Monthly Report of Delinquent Tax Collections”, shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for the 1997 tax year only. 

(123) Revenue Form 62A368-B, “County Clerk’s Monthly Report of Delinquent Tax Collections”, shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for years after 1997. 

(124) Revenue Form 62A369, “County Clerk’s Monthly Report of Delinquent Tax Collections”, shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for 1996 and earlier tax years. 

(125) Revenue Form 62A369-A, “County Clerk’s Monthly Report of Delinquent Tax Collections”, shall be used by county clerks to report monthly to the Department of Revenue state commission delinquent property tax collections. 

(126) Revenue Form 62A370, “Kentucky Department of Revenue Certificate of Registration”, shall be issued by the Department of Revenue to individuals, corporations or partnerships proving eligibility to purchase certificates of delinquency. This certificate shall be presented to the county clerk at the time certificates of delinquency are offered for sale. 

(127) Revenue Form 62A370A, “Kentucky Department of Revenue Application for Certificate of Registration to Purchase Certificates of Delinquency”, shall be submitted to the Department of Revenue by individuals, corporations or partnerships seeking to purchase certificates of delinquency offered for sale by the county clerk. 

(128) Revenue Form 62A371, “Attestation Form for Use When Taxpayer Cannot Make Contact With A Third Party Purchaser”, shall be used by the taxpayer to attest to the county clerk that the taxpayer attempted to contact the third party purchaser in the manner specified by KRS 134.127(3)(e) and was successful. 

(129) Revenue Form 62A372, “Sheriff’s List of Orders Correcting Erroneous Assessments”, shall be used by the sheriff to report all exonerations made to the tax bills by the property valuation administrator. 

(130)[(129)] Revenue Form 62A372-A, “Certification”, shall be used by the sheriff to affirm that the list of exonerations is accurate. 

(131)[(130)] Revenue Form 62A373, “Certificate of Transfer for Property Tax Payment”, shall be issued by the sheriff to a person who has paid property taxes on behalf of another and wishes to be treated as a transferee under KRS 134.121. 

(132)[(131)] Revenue Form 62A374, “County Clerk Certificate of Delinquency Sale Registration”, shall be used by the county clerk to register third parties interested in purchasing certificates of delinquency offered for sale by the county clerk. 

(133)[(132)] Revenue Form 62A375, “Release of Certificate of Delinquency Assigned to a Third Party”, shall be used by the county clerk to release the lien of a certificate of delinquency that has been refunded to a third party purchaser. 

(134) Revenue Form 62A377, “In House Release of Third Party Purchaser Lien When Lien is Paid to Clerk”, shall be used by the county clerk to release a certificate of delinquency when the certificate of delinquency has been paid by the taxpayer and the third party purchaser cannot be located. 

(135)[(133)] Revenue Form 62A378, “Report of Mobile Homes and Recreational Vehicles Not Registered in This State”, shall be filed by every person providing rental space for mobile homes and recreational vehicles not registered in Kentucky. This form shall be filed with the property valuation administrator of the county in which the park is located. 

(136)[(134)] Revenue Form 62A379, “Listing of Omitted Real Property”, shall be used by a taxpayer to voluntarily list any property previously omitted from the tax roll or shall be used by a property valuation administrator to list any involuntarily omitted property. 

(137)[(135)] Revenue Form 62A380, “Notification of Updated Mailing Address from Sheriff to Property Valuation Administrator”, shall be used by the sheriff to provide an updated address to the property valuation administrator in accordance with KRS 134.119(8). 

(138)[(136)] Revenue Form 62A384C, “Clay Property Tax Return”, shall be filed with the Department of Revenue by persons owning or leasing clay property, reporting the owner’s name and address, percent ownership, product tons, and royalty rate. 

(139)[(137)] Revenue Form 62A384C(l), “Instructions to Complete Clay Property Tax Return for 2013[2012] Tax Year”, shall be used by owners and lessees of land containing mineable clay minerals to file Revenue Form 62A384C. 

(140)[(138)] Revenue Form 62A384G, “Natural Gas Property Tax Return”, shall be filed with the Department of Revenue by persons owning or leasing developed natural gas properties, reporting the location of the property, total yearly gas production, number of producing wells, and the total dollar value of production. 

(141)[(139)] Revenue Form 62A384Q, “Gas Oil”, shall be used as a letter informing owners of natural gas and oil property of the responsibility to file, the filing deadline, and where to locate the forms. 

(142)[(140)] Revenue Form 62A384L, “Limestone, Sand and Gravel Property Tax Return”, shall be filed with the Department of Revenue by persons owning or leasing limestone, sand or gravel properties reporting mineral location, type of mining and production in the last three (3) years. 

(143)[(141)] Revenue Form 62A384-O, “Oil Property Tax Return Lease Report”, shall be filed with the Department of Revenue by all persons, corporations, businesses and partnerships owning, leasing or having knowledge of developed oil properties to report developed oil property in Kentucky. 

(144)[(142)] Revenue Form 62A385, “Sheriff’s Official Receipt for Property Tax Bills”, shall be used by sheriffs to acknowledge receipt of the county’s property tax bills and to document the total tax amount to be collected for each taxing district. 

(145)[(143)] Revenue Form 62A385-A, “Sheriff’s Receipt For Unpaid and Partially Paid Tax Bills”, shall be used by incoming sheriffs to give receipt to the outgoing sheriff for the unpaid and partially paid tax bills outstanding when he or she assumes office. 

(146)[(144)] Revenue Form 62A393, “Sheriff’s Property Tax Account Statement”, shall be used by the Department of Revenue to conduct the annual property tax settlement with the sheriff. 

(147)[(145)] Revenue Form 62A393-A, “Incoming Sheriff’s Property Tax Account Statement”, shall be used by the Department
of Revenue to conduct the property tax settlement with the incoming sheriff.

Revenue Form 62A393-B, "Outgoing Sheriff's Property Tax Account Statement", shall be used by the Department of Revenue to conduct the property tax settlement with the outgoing sheriff.

Revenue Form 62A394, "Sheriff's Monthly Report of Property Tax Collections", shall be used by sheriffs to report to the Department of Revenue property tax collections for the month.

Revenue Form 62A394-MV, "County Clerk's Monthly Report of Motor Vehicle Property Tax Collections", shall be submitted by the county clerk to the Department of Revenue and local taxing jurisdictions to report ad valorem property tax collections for the month.

Revenue Form 62A398, "Property Valuation Administrator's Bond", shall be completed by property valuation administrators evidencing surety with the Commonwealth and a local school board and affirming a commitment to fulfill the duties of the office.

Revenue Form 62A500(P), "2013[2012] Personal Property Tax Forms and Instructions", shall be the packet of files and instructions relating to Revenue Form 62A500 for use by owners or lessees of tangible personal property reporting taxpayer information, original cost of tangible property and reported value of tangible property with either the property valuation administrator of the county of taxable situs or with the Department of Revenue.

Revenue Form 62A500, "2013[2012] Tangible Personal Property Tax Return", shall be filed by owners or lessees of tangible personal property reporting taxpayer information, original cost of tangible property and reported value of tangible property with either the property valuation administrator of the county of taxable situs or with the Department of Revenue.

Revenue Form 62A500-A, "2013[2012] Tangible Personal Property Tax Return (Aircraft Assessments Only)", shall be filed by owners or lessees of aircraft not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or the Department of Revenue, reporting the federal registration number, make and model, and taxpayer’s value for each aircraft.

Revenue Form 62A500-C, "Consignee Tangible Personal Property Tax Return", shall be filed by persons in possession of consigned inventory, has not been reported on Revenue Form 62A500, with either the property valuation administrator of the county of taxable situs or the Department of Revenue, reporting consignor information and consigned inventory information.

Revenue Form 62A500-L, "Lessee Tangible Personal Property Tax Return", shall be filed by lessees of tangible personal property who did not list the property on Revenue Form 62A500, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, containing a detailed listing of used boats held for sale by a licensed boat dealer.

Revenue Form 62A500-S1, "Automobile Dealer’s Inventory Listing for Line 34 Tangible Personal Property Tax Return", shall be filed by automobile dealers, dealers with new boat and marine equipment held under a floor plan or dealers with new farm machinery held under a floor plan with the property valuation administrator of each county of taxable situs or with the Department of Revenue, containing a detailed listing of used boats for sale.

Revenue Form 62A500-W, "2013[2012] Tangible Personal Property Tax Return (Documented Watercraft)", shall be filed by owners or lessees of documented vessels not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting the coast guard number, make and model and taxpayer’s value for each watercraft.

Revenue Form 62A600, "Domestic Savings and Loan Tax Return", shall be filed with the Department of Revenue by savings and loans operating in Kentucky, reporting the balances in their capital accounts.

Revenue Form 62A601, "Foreign Savings and Loan Tax Return", shall be filed with the Department of Revenue by foreign savings and loans authorized to do business in this state, reporting the balances in their capital accounts.

Revenue Form 62A601-S2, "Schedule B, Computation of Exempt Securities", shall be filed with the Department of Revenue, by taxpayers filing Revenue Form 62A600 or 62A601, reporting the market value of U. S. government securities.

Revenue Form 62A850, "Bank Deposits Tax Return", shall be filed with the Department of Revenue by financial institutions, reporting the amount of its deposits as of the preceding January 1.

Revenue Form 62A862, "Certification of Tax Rate for Bank Deposits Franchise Tax", shall be filed by the local taxing district with the Department of Revenue to notify the Department of Revenue of the rate set on bank deposits.

Revenue Form 62A863, "Financial Institutions Local Deposits Summary Report", shall be filed with the Department of Revenue by financial institutions, reporting all deposits located within the state as of the preceding June 30, along with a copy of the most recent summary of deposits filed with the Federal Deposit Insurance Corporation.

Revenue Form 62A863-A, "Schedule A, Summary of Net Deposits", shall be filed with the Department of Revenue by financial institutions filing Revenue Form 62A863, to summarize deposits.

Revenue Form 62A880, "Personal Property Assesment", shall be sent by the Department of Revenue to the owner of omitted personal property notifying him or her of the value assessed by the department as well as all applicable penalties and interest.

Revenue Form 62B003, "Unmined Coal Notice of Tax Assessment", shall be sent by the Department of Revenue to the taxpayer notifying him or her of the value of his or her interest in unmined coal property.

Revenue Form 62B011, "Limestone, Sand, or Gravel Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him or her of the value of his or her interest in limestone, sand or gravel property.

Revenue Form 62B012, "Oil Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him or her of the value of his or her interest in oil property.

Revenue Form 62B013, "Clay Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him or her of the value of his or her interest in clay property.

Revenue Form 62B015, "Gas Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him or her of the value of his or her interest in gas property.

Revenue Form 62F003, "Appeals Process for Real Property Assessments", shall be an informational brochure on the procedure to follow to appeal an assessment on real property.

Revenue Form 62F015, "PVA Open Records Commercial Fee Guidelines", shall be used by the PVA to establish fees to be charged for the cost of reproduction, creation, or other acquisition of records.

Revenue Form 62F031, "Appeal to Local Board of Assessment Appeals", shall be filed with the county clerk by any taxpayer who wishes to appeal his or her assessment on real property.

Revenue Form 62F200, "Important Reminder" shall be a postcard mailed to previous filers of the Unmined Coal Property Tax Information Return as a reminder of the responsibility to file, the filing deadline, and where to locate the forms.

Revenue Form 62F384-C, "Important Reminder" shall be a postcard mailed to previous filers of the Natural Gas Property Tax Return as a reminder of the responsibility to file, the filing deadline, and where to locate the forms.

Revenue Form 62F500, "Important Reminder" shall be a postcard mailed to previous filers of the Tangible Per-
sonal Property Tax Return as a reminder of the responsibility to file, the filing deadline and where to locate the forms.

Revenue Form 62F1341, "Exemptions Allowed for Savings and Loans, Savings Banks and Similar Institutions for Intangible Property Tax Purposes", shall be used by the taxpayer to show gross value of minerals that are purchased from the persons dealing in minerals, natural gas or natural gas liquids who wish to register with the Department of Revenue. Such persons dealing in minerals, natural gas or natural gas liquids who wish to register with the Department of Revenue shall be used by the taxpayer to report processing by the taxpayer.

Section 2. Severance Taxes - Required Forms. (1) Revenue Form 10A100, "Kentucky Tax Registration Application", shall be filed by taxpayers with a coal severance and processing tax account listing taxpayer information including mine name and mining permit number.

(2) Revenue Form 10A104, "Update Or Cancellation Of Kentucky Tax Account(s)", shall be used by taxpayers with a coal severance and processing tax account to update business information or to cancel the account.

Revenue Form 55A004, "Coal Severance Tax Seller/Purchaser Certificate", shall be filed by the taxpayer to verify purchase coal deductions.

Revenue Form 55A100, "Coal Severance Tax Return", shall be filed monthly by the taxpayer to report production and tax due.

Revenue Form 55A100, "Part IV - Schedule of Purchased Coal", shall be used by the taxpayer to report purchased coal purchased for processing and resale. "Part V - Schedule for Thin Seam Coal Tax Credit", shall be used by the taxpayer to apply for tax credit for underground mining of thin coal seams.

Revenue Form 55A101, "Coal Severance Tax Return Instructions", shall be included with the coal tax return mailed to the taxpayer to assist in the completion of his or her return.

Revenue Form 55A101, "Credit Memorandum", shall be used by the department to issue a credit to the taxpayer for an overpayment rather than a refund.

Revenue Form 55A209, "Severance Tax Refund Application", shall be used by the taxpayer for the purpose of requesting a refund of tax overpaid.

Revenue Form 56A001, "Application for Certificate of Registration Minerals and Natural Gas Tax", shall be used by persons dealing in minerals, natural gas or natural gas liquids who wish to register with the Department of Revenue to acquire an account number.

Revenue Form 56A100, "Natural Gas and Natural Gas Liquids Tax Return", shall be used by registered natural gas and natural gas liquids taxpayers monthly to report production and tax due.

Revenue Form 56A101, "Minerals Tax Return", shall be used by registered mineral taxpayers monthly to report production and tax due.

Revenue Form 56A106, "Minerals Tax Certificate of Exemption", shall be used by mineral taxpayers to claim exemptions from minerals tax for minerals purchased for the maintenance of a privately maintained but publicly dedicated road.

Revenue Form 56A107, "Schedule A, Allocation of Gross Value of Minerals Severed in Kentucky and Schedule B, Minerals Purchased from Others for Processing by Taxpayer", shall be used by mineral taxpayers to compute gross value of minerals to be allocated and to show the allocation by county of the gross value of minerals severed in Kentucky and also shall be used by a taxpayer for showing minerals that are purchased from others for processing by the taxpayer.

Revenue Form 56A108, "Schedule A, Gross Value of Natural Gas Sold to Nonconsumers and Schedule B, Taxable Gross Value of Natural Gas and Natural Gas Liquids Extracted in Kentucky by Taxpayer - Allocation", shall be used by natural gas taxpayers to show details of all natural gas extracted in Kentucky and sold to nonconsumers and also shall be used by natural gas taxpayers to allocate the natural gas to the county or counties where the natural gas or natural gas liquids were located prior to extraction.

Revenue Form 56A109, "Schedule C, Natural Gas First Purchased by Taxpayer From Kentucky Producers", shall be used by natural gas taxpayers who are first purchasers of natural gas to show gross value by county or counties from which the natural gas was extracted.

Revenue Form 56A110, "Minerals Tax Return Attachment, Schedule C, Computation of Clay Severed and Processed in Kentucky and Allocation of Tax Attributable to Clay", shall be used by mineral taxpayers that sever clay to compute tax due.

Revenue Form 56A112, "Crude Petroleum Transporter's Monthly Report, Kentucky Oil Production Tax", shall be used by registered crude petroleum transporter's for reporting gross value and tax due.

Revenue Form 56A113, "Minerals Tax Credit for Limestone Sold in Interstate Commerce", shall be used by mineral taxpayers for the purpose of determining the eligibility for the minerals tax credit.

Revenue Form 56A114, "Crude Petroleum Transporter's Application for Registration", shall be used by crude petroleum transporters who wish to acquire an account number with the Kentucky Department of Revenue.

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

(a) Property tax - referenced material:

1. Revenue Form 61A200(P), "Property Tax Forms and Instructions for Public Service Companies 2013[2012]", October 2012[August 2011];


4. Revenue Form 61A200(B), "Report of Kentucky Vehicles, Car Lines and Watercraft", October 2012[August 2011];

5. Revenue Form 61A200(C), "Report of Total Unit Operations Balance Sheet", October 2012[August 2014];


7. Revenue Form 61A200(E), "Filing Extension Application", October 2012[August 2014];

8. Revenue Form 61A200(G), "Report of Capital Stocks", October 2012[August 2014];


10. Revenue Form 61A200(I), "Business Summary by Taxing Jurisdiction", October 2012[August 2014];

11. Revenue Form 61A200(J), "Property Summary by Taxing Jurisdiction, Operating and Nonoperating Property", August 2012[October 2012];

12. Revenue Form 61A200(K), "Operating Property Listing by Taxing Jurisdiction", October 2012[August 2014];

13. Revenue Form 61A200(K2), "Nonoperating/Nonutility Property Listing by Taxing Jurisdiction", October 2012[August 2014];

14. Revenue Form 61A200(L), "Report of Allocation Factors, Operating and Noncarrier Property for All Interstate Companies", October 2012[August 2011];

15. Revenue Form 61A200(M), "Report of Property and Business Factors for Interstate Railroad and Sleeping Car Companies", October 2012[August 2011];


21. Revenue Form 61A200(R), "Report of Property Subject to
the Pollution Control Tax Exemption”, October 2012[August 2011];
22. Revenue Form 61A200(U), “Industrial Revenue Bond Property”, October 2012[August 2011];
40. Revenue Form 61A206(O), “Public Service Company Sales”, October 2012[August 2011];
47. Revenue Form 61A207(E), “Report of Kentucky Route Miles”, October 2012[November 2011];
49. Revenue Form 61A209, “Public Service Company Sales”, October 2012[August 2011];
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151.[148] Revenue Form 62A398, "Property Valuation Adminis-
trator’s Bond", September 2010;

152.[155] Revenue Form 62A500(P), "2013[2012] Personal
Property Tax Forms and Instructions", November 2012[2014];

Personel Property Tax Return", November 2012[2014];

Personal Property Tax Return (Aircraft Assessments Only)", No-

155.[154] Revenue Form 62A500-C, "Consignee Tangible
Personal Property Tax Return", November 2012[2014];

156.[154] Revenue Form 62A500-L, "Lessee Tangible
Personal Property Tax Return", November 2012[2014];

157.[155] Revenue Form 62A500-M1, "Boat Dealer’s Used
Inventory Listing for Line 31 Tangible Personal Property Tax Re-

Personal Property Tax Return (Documented Watercraft)", No-

160.[158] Revenue Form 62A600, "Domestic Savings and
Loan Tax Return", August 2011;

164.[159] Revenue Form 62A601, "Foreign Savings and Loan
Tax Return", August 2011;

166.[160] Revenue Form 62A601-52, "Schedule B, Compu-
tation of Exempt Securities", August 2011;

163.[161] Revenue Form 62A850, "Bank Deposits Tax Re-

165.[162] Revenue Form 62A862, "Certification of Tax Rate
for Bank Deposits Franchise Tax", August 2011;

165.[163] Revenue Form 62A863, "Financial Institutions Local
Deposits Summary Report", August 2011;

166.[164] Revenue Form 62A863-A, "Schedule A, Summary
of Net Deposits", August 2011;

167.[165] Revenue Form 62A880, "Personal Property As-

169.[167] Revenue Form 62B011, "Limestone, Sand, or Grav-
el Assessment Notice", July 2006;

170.[168] Revenue Form 62B012, "Oil Assessment Notice",
July 2006;

171.[169] Revenue Form 62B013, "Clay Assessment Notice",
July 2006;

172.[170] Revenue Form 62B015, "Gas Assessment Notice",
July 2006;

173.[171] Revenue Form 62F003, "Appeals Process for Real
Property Assessments", May 2009;

174.[172] Revenue Form 62F015, "PVA Open Records Com-
mercial Fee Guidelines", August 2012[November 2008];

175.[173] Revenue Form 62F031, "Appeal to Local Board of
Assessment Appeals", January 2010;

176.[174] Revenue Form 62F200, "Important Reminder", January
2013[2012];

177.[175] Revenue Form 62F384-G, "Important Reminder", January
2013[2012];

178.[176] Revenue Form 62F500, "Important Reminder", De-
cember 2012[2011]; and

179.[177] Revenue Form 62F1341, "Exemptions Allowed for
Savings and Loans, Savings Banks and Similar Institutions for
Intangible Property Tax Purposes", August 2011; and

(b) Severance taxes - referenced material:
1. Revenue Form 10A100, "Kentucky Tax Registration Applica-
tion", August 2012[October 2014];

2. Revenue Form 10A104, "Update or Cancellation of Ken-
tucky Account[s]", June 2011;

3. Revenue Form 55A004, "Coal Severance Tax Sell-
er/Purchaser Certificate", October 2010;

4.[4] Revenue Form 55A100, "Coal Severance Tax Return", October 2010;

5.[4] Revenue Form 55A100, "Part IV - Schedule of PUR-
chased Coal" and "Part V - Schedule for Thin Seam Coal Tax Cre-
dit", October 2010;

6.[5] Revenue Form 55A101, "Coal Severance Tax Return In-
structions", October 2010;

7[6] Revenue Form 55A131, "Credit Memorandum", Decem-
ber 2006;


9.[8] Revenue Form 56A001, "Application for Certificate of Regis-
tration Minerals and Natural Gas Tax", October 1984;

10.[8] Revenue Form 56A100, "Natural Gas and Natural Gas Li-
quid Tax Return", July 2004;

2004;

12.[11] Revenue Form 56A106, "Minerals Tax Certificate of
Exemption", December 2006;

13.[12] Revenue Form 56A107, "Schedule A, Allocation of
Gross Value of Minerals Severed in Kentucky and Schedule B, Min-
erals Purchased from Others for Processing by Taxpayer", Janu-
ary 2005;

14.[13] Revenue Form 56A108, "Schedule A, Gross Value of
Natural Gas Sold to Nonconsumers and Schedule B, Taxable
Gross Value of Natural Gas and Natural Gas Liquids Extracted in
Kentucky by Taxpayer - Allocation", March 2005;

15.[14] Revenue Form 56A109, "Schedule C, Natural Gas
First Purchased by Taxpayer from Kentucky Producers", January
2005;

16.[15] Revenue Form 56A110, "Minerals Tax Return Attach-
ment, Schedule C, Computation of Clay Severed and Processed in
Kentucky and Allocation of Tax Attributable to Clay", March 2005;

17.[16] Revenue Form 56A112, "Crude Petroleum Transpor-

18.[17] Revenue Form 56A113, "Minerals Tax Credit for Li-
imestone Sold in Interstate Commerce", November 1997; and

19.[18] Revenue Form 56A114, "Crude Petroleum Transpor-
ter's Application for Registration", December 2006.

(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Kentucky Department of
Revenue, 501 High Street, Frankfort, Kentucky 40620, Monday
through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: February 15, 2013
FILED WITH LRC: February 15, 2013 at 10 a.m.

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of
General Counsel, Finance and Administration Cabinet, 392 Capitol
Annex, Frankfort, Kentucky 40601, phone (502) 564-6680, fax
(502) 564-9875.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended at ARRS, April 3, 2013)

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 164.772, 214.615(1), 327.050, 327.060, 327.070(2)(i), 327.080

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS
327.040(11) authorizes the Board of Physical Therapy to promul-
gate and enforce reasonable administrative regulations for the
effectuation of the purposes of KRS Chapter 327. KRS 327.040(1)
requires the board to determine if physical therapist applicants
meet the qualifications and standards required by KRS Chapter
327. KRS 327.040(13) authorizes the board to promulgate admin-
istrative regulations regarding the qualifications for physical therapist
applicants. This administrative regulation establishes the criteria for eligi-
bility, methods, and procedures of qualifying for a credential to
practice physical therapy in Kentucky.

Section 1. An application shall be accepted for credentialing as
a physical therapist or physical therapist assistant based on suc-
cessful completion by the applicant of one (1) of the following processes:

(1) Examination;
(2) Endorsement; or
(3) Reinstatement.

Section 2. Examination Candidate. (1) To be eligible for the examination, the applicant for licensure as a physical therapist shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy program accredited by CAPTE;
(b) Submit certification of completion by the educational administrator of that program;
(c) Have completed an educational course at least two (2) hours in length that has been approved by the Cabinet for Health and Family Services (CHFS) on the transmission, control, treatment, and prevention of human immunodeficiency virus infection and AIDS;
(d) Have successfully completed the Jurisprudence Exam;
(e) Submit a complete Application for Credentialing that includes a photo taken within one (1) year;
(f) Submit the correct, nonrefundable fee as required in 201 KAR 22:135;
(g) If applicable, submit on an Applicant Special Accommodations Request Form(a request for a reasonable accommodation in testing due to a documented disability; and
(h) Register for the NPTE examination.

(2) To be eligible for the examination, the applicant for certification as a physical therapist assistant shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE; and
(b) Complete the requirements of subsection (1)(b)[Section 2(1)(b)] through (h) of this section[administrative regulation].

(3) After three (3) failed attempts in taking the examination, an applicant shall complete a board-approved remediation plan based on identified deficits as provided on the Federation of State Boards of Physical Therapy (FSBPT) Examination Performance Feedback report prior to registering for each subsequent examination.

(4) Effective July 1, 2012, after six (6) failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant shall not be eligible to register for any additional examinations.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:

(1) Meet the eligibility requirements of Section 2 of this administrative regulation; and
(2) Register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

Section 4. To be eligible for a temporary permit, the candidate shall:

(1) Meet the qualifications of Section 2 or 3 of this administrative regulation; and
(2) Complete a Supervisory Agreement with one (1) or more physical therapists; and

(3) Have not failed either the physical therapist or physical therapist assistant examination in any jurisdiction.

Section 5. Upon issuance of a temporary permit:

(1) The physical therapist or physical therapist assistant applicant shall practice only under the supervision of a physical therapist who:
   (a) Has been engaged in the practice of physical therapy in Kentucky for more than one (1) year; and
   (b) Has an unrestricted license.
(2) The supervising physical therapist:
   (a) Shall be on-site at all times during the practice of the applicant with a temporary permit;
   (b) Shall be responsible for the practice of physical therapy by the applicant with a temporary permit;
   (c) Shall review, approve, date, and co-sign all physical therapy documentation by the applicant with a temporary permit within twenty-four (24) hours of when the service was provided;
   (d) May designate a temporary supervising physical therapist who meets the qualifications of subsection (1)(a)[Section 5(1)(a)] and (b) of this section[administrative regulation]. The temporary supervising physical therapist shall sign and date written documentation of the acceptance of the responsibility as identified in paragraph (a)[Section 5(2)(a)] through (c) of this subsection[administrative regulation]; and
   (e) Shall notify the Board immediately if the supervisory relationship is terminated.

(3) The applicant with a temporary permit shall:
   (a) Disclose the applicant’s temporary credential status to all patients prior to initiating treatment;
   (b) Sign documentation with temporary permit number and designation as defined in 201 KAR 22:053, Section 5(5)(a) or (b); and
   (c) Notify the Board immediately if the supervisory relationship is terminated.

(4) The temporary permit shall expire the earlier of:
   (a) Six (6) months from the date of issuance; or
   (b) Notice of exam results by the Board.

Section 6. A physical therapist applicant who meets the qualifications for physical therapy licensure by examination may become a special candidate for physical therapist assistant certification by examination.

Section 7. To be eligible for credentialing by endorsement, the applicant shall:

(1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;
(2) Meet the requirements established in Section 2(1)(b) through (f) of this administrative regulation;
(3) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky:
   (a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation from the mean of the national sample of test takers and its equivalent, predecessor examination; and
   (b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT/OREC set equal to a scaled score of 600;
   (c) Have an active credential in this profession in another jurisdiction; and
   (d) Have verification of credentials showing the credential has never been revoked, suspended, on probation, or is not under disciplinary review in another jurisdiction at the time of application.

Section 8. To be eligible for reinstatement, the applicant shall meet the requirements in 201 KAR 22:040.

Section 9. A credential issued by the board shall be in effect until March 31 of the next odd-numbered[uneven numbered] year.

Section 10. A foreign-educated physical therapist shall comply with the provisions of 201 KAR 22:070.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:
   (a) “Application for Credentialing”, December 2011;
   (b) “Supervisory Agreement”, December 2011; and
   (c) “Applicant Special Accommodations Request Form”, December 2012[February 2009].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director
APPROVED BY AGENCY: February 14, 2013
FILED WITH LRC: February 14, 2013 at 11 a.m.
Section 1. Fee Payments. (1) All fees established in Section 2 of this administrative regulation shall be:
(a) Made payable as required by KRS 309.356 to the State Treasury; and
(b) Paid by:
1. Cashier’s check;
2. Certified check;
3. Money order;
4. Personal check; or
5. Online payment by credit card, debit card, or electronic check.
(2) A payment for an application fee that is incorrect shall be returned to the applicant and the application shall not be posted until the correct fee is received.
(3) The application fee and the initial licensure fee established in Section 2(1) of this administrative regulation shall be nonrefundable.
(4) If it is determined that a refund of any fee is required, the refund shall be issued to the applicant or licensee.

Section 2. Fees. (1) The fee for an initial massage therapist license shall be $125.
(a) The biennial renewal fee for a massage therapist license renewed on or before the renewal date shall be $100.
(b) If the license is renewed after the renewal date and up to sixty (60) days after expiration of the license, the fee for late renewal shall be $150.
(c) If the license is renewed sixty-one (61) to ninety (90) days after the expiration of the license, the late renewal fee shall be $200.
(d) If a license is not renewed within ninety (90) days of expiration of the license, the applicant shall comply with KRS 309.367(6).
(3) If the inactive license is renewed after the renewal date and up to sixty (60) days after expiration of the license, the fee for late inactive renewal shall be $52.50.
(4) If it is determined that a refund of any fee is required, the refund shall be issued to the applicant or licensee.
(5) A licensee who elects inactive status or an inactive licensee electing to activate his or her license shall complete and submit an application for Inactive or Return to Active Status in addition to the fee referenced in subsection (7) of this section.
(6) If the inactive license is renewed sixty-one (61) to ninety (90) days after the expiration of the license, the late renewal fee shall be seventy (70) dollars.
(7) The application fee for moving a license from Inactive to Active status shall be fifty (50) dollars and shall not be prorated.
(8) A licensee who elects inactive status or an inactive licensee electing to activate his or her license shall complete and submit an application for Inactive or Return to Active Status in addition to the fee referenced in subsection (7) of this section.

Section 3(5). Incorporation by Reference. (1) “Application for Inactive or Return to Active Status”, April [February] 2013, 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 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

TOM HANSEN, Board Chair
APPROVED BY AGENCY: February 8, 2013
FILED WITH LRC: February 12, 2013 at 3 p.m.
CONTACT PERSON: Carolyn Benedict, Board Administrator.
VOLUME 39, NUMBER 11 – MAY 1, 2013

(1) File a completed, signed, and dated Application for Licensure as a Massage Therapist, and the [and] required documentation with the board, meeting the requirements set forth in KRS 309.358; and

(2) Pay the application fee as established in 201 KAR 42:020.

Section 2. To comply with KRS 309.358(4), an applicant shall submit to the board, at the time of application, an official transcript or certificate that shows the completion of at least 600 classroom hours, itemizing compliance with the clock hour requirements established in KRS 309.363(1).

Section 3. Examinations. (1) An applicant shall successfully pass an examination:

(a) Listed in KRS 309.358(5); or

(b) Approved by the board pursuant to KRS 309.358(5) and listed in subsection (4) of this section.

(2) An examination shall be approved by the board as meeting the standard established in KRS 309.358(5) if the board determines that the examination:

(a) Has been scientifically constructed to be valid and objective;

(b) Reflects the curriculum content established in KRS 309.363(1);

(c) Has security procedures to protect the exam content; and

(d) Has clear application, reporting, and appeal procedures. [3][4] Approval of exams shall be noted in the board minutes and on the board Web site[Web site].

(4)(3) The following examinations have been approved:

(a) The following examinations have been approved by KRS 309.358(5):

1. Exams administered by the National Certification Board of Therapeutic Massage and Bodywork:

   a. National Certification Exam for Therapeutic Massage (NCETM); and

   b. National Certification Exam for Therapeutic Massage and Bodywork (NCETM); and

2. Exams administered by an agency that has been approved by the National Certification Commission for Certifying Agencies; and

   (b) The following examinations have been approved by the Board pursuant to KRS 309.358(5):

   (a) The Massage and Bodywork Licensing Examination (MBLEX) or other exam administered by the Federation of State Massage Therapy Boards;

   (b) The State of Ohio Massage Therapy Licensing Exam;

   (c) The State of New York Massage Therapy Licensing Exam;

   (d) The National Certification Agency (NBCA) Massage Therapy Certification Exam, level one;

5. Other exams approved by the Board as posted on the board Web site[Web site]. (3) In accordance with KRS 309.358(5), the following examinations shall be considered approved by the board:

   (a) The MBLEx or other exam administered by the Federation of State Massage Therapy Boards;

   (b) The State of Ohio Massage Therapy Licensing Exam; or

   (c) The State of New York Massage Therapy Licensing Exam.

Section 4. Appeals. An applicant may appeal a decision denying his or her licensure application in accordance with KRS 309.362(4).


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM HANSEN, Board Chair
APPROVED BY AGENCY: February 8, 2012
FILED WITH LRC: February 12, 2013 at 3 p.m.

CONTACT PERSON: Carolyn Benedict, Board Administrator, Board of Licensure for Massage Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296 ext. 239, fax (502) 696-5230.

GENERAL GOVERNMENT CABINET
Board of Licensure for Massage Therapy
(As Amended at ARRS, April 9, 2013)

201 KAR 42:070. Endorsement.

RELATES TO: KRS 309.358, 309.359
STATUTORY AUTHORITY: KRS 309.355(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.359 authorizes the board to issue a license to a person holding a credential in another state of the United States. KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.359 through 309.364. This administrative regulation establishes the application process for issuance of a license to a person holding a credential in another state of the United States.

Section 1. An applicant Meeting Equal or Higher Standards. An applicant holding a license issued by another state with licensure standards equal to or higher than the requirements of KRS 309.358 shall submit:

(1) A completed Application for Licensure as a Massage Therapist, which is incorporated by reference in 201 KAR 42:035;

(2) To the current credentialing body, the Application for Licensure Via Endorsement.

(a) The applicant shall request that the current credentialing body complete the Application for Licensure Via Endorsement verifying the applicant's current licensure, registration, or certification.

(b) The Kentucky Board of Licensure for Massage Therapy shall accept as verification the Application for Licensure Via Endorsement if the form is complete and submitted directly from the current credentialing body;

(3) A verifiable statement that the individual is in good standing as a massage therapist from the credentialing authority of the jurisdiction in which the applicant holds a license or credential including duration of the license or credential; and

(3)(4) The appropriate fee for licensure as required by 201 KAR 42:020, Section 2(1).

Section 2. An Applicant Meeting Lesser Standards. An applicant who is credentialed as a massage therapist in another state with less stringent requirements than KRS 309.358 shall submit:

(1) A completed Application for Licensure as a Massage Therapist, which is incorporated by reference in 201 KAR 42:035;

(2) To the current credentialing body, the Application for Licensure Via Endorsement.

(a) The applicant shall request that the current credentialing body complete the Application for Licensure Via Endorsement verifying the applicant's current licensure, registration, or certification.

(b) The Kentucky Board of Licensure for Massage Therapy shall accept as verification the Application for Licensure Via Endorsement if the form is complete and submitted directly from the current credentialing body;

(3) A certified statement that the individual is in good standing as a massage therapist from the credentialing authority of the jurisdiction in which the applicant holds a license or credential including duration of the license or credential; and

(3)(4) The appropriate fee for licensure as required by 201 KAR 42:020, Section 2(1); and

(4)(5) Documents evidencing the applicant's combined initial training, professional experience, continuing education, or other credentials constituting equivalency to KRS 309.358. Acceptable documentation may include:

(a) Passage of the National Certification Board of Therapeutic Massage and Bodywork's National Certification Exam (NCE) or an examination that has been approved by the board pursuant to 201 KAR 42:020.
KAR 42:035:
(b) Certified school transcripts received directly from the massage school;
(c) Copies of continuing education certificates from studies completed after or not included as part of the initial training;
(d) Certified transcript of health care related academic course work;
(e) Proof of teaching massage therapy relevant curriculum as stated in KRS 309.363;
(f) Other credentials that may constitute equivalence to the standards in KRS 309.358, which may also include research, clinical internships, publications, and massage therapy leadership positions; or
(g) Current proof of hands-on therapeutic massage or bodywork sessions with supporting documentation for the hours or years of massage therapy work.

1. The supporting documentation shall include:
   a. (including) Appointment books, employer verification, and log books;
   b. If self-employed, appointment books (for self-employed individuals)

2. If this is the only documentation to establish equivalency, a minimum of four (4) years' experience shall be required.

Section 3. A Certificate of Good Standing may be renewed upon the following:

1. Submission of the Application for Renewal of a Certificate of Good Standing for a Massage Therapy Training Program form with the information required by this administrative regulation to the Board on or before the anniversary date of issue of certificate;
2. Current complete name, address, email address, Web site, and telephone number of each location in which the massage therapy training program is provided;
3. Current listing of instructional staff and their qualifications, with attached documentation of qualifications of new instructors;
4. A current curriculum statement as described in KRS 309.363(1)(b)1, 2, 3, 4, and 5 showing clock hours for each required subject;
5. Documentation of accreditations held by the program or school offering the program;
6. A copy of a student contract agreeing not to accept compensation for massage therapy services provided prior to licensure by the board.

Section 4. Incorporation by Reference:
(1) "Application for Licensure Via Endorsement", Kentucky 2011, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Occupations and Professional Licensure, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM HANSEN, Board Chair
APPROVED BY AGENCY: February 8, 2013
FILED WITH LRC: February 12, 2013 at 3 p.m.
CONTACT PERSON: Carolyn Benedict, Board Administrator, Board of Licensure for Massage Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296 ext. 239, fax (502) 696-5230.

GENERAL GOVERNMENT CABINET
Board of Licensure for Massage Therapy
(As Amended at ARRS, April 9, 2013)

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

RELATES TO: KRS 309.352(2), 309.355(3), 309.358(4), [and] 309.363(1), 309.3631

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.352(2) requires the board to define licensed health-care professionals for the supervision of massage therapy students in clinical settings. KRS 309.355(3) requires the board to promulgate administrative regulations on standards of massage therapy educational program curriculum and instructor qualifications. KRS 309.358(4) requires the board to approve massage therapy training programs. KRS 309.363 requires board approval of massage therapy programs of instruction and establishes instructor qualifications. This administrative regulation establishes the definitions of supervision and qualifying supervisors and establishes the process for issuing and renewing the Certificate of Good Standing to a program of massage therapy education.

Section 1. Definitions. (1) "Adjunctive course" means a course in a program of education that enhances the career of a massage therapist but is not massage therapy, technique, or practice.
(2) "Clinic" or "clinical" means a setting in which students are provided with on-site supervision and training in the practice of massage therapy.
(3) "Clinical coordinator" means the instructor of a massage therapy course in which students are assigned to perform massage therapy sessions on non-students, on or off-campus, and who is responsible for assigning the student to an appropriate clinical setting, supervision of student performance through regular consultation with the student, and evaluating student achievement of clinical course objectives.
(4) "Externship" means a course offered by an approved program that:
(a) Has a syllabus that describes objectives and evaluations;
(b) Is over and above the 600 supervised curriculum hours required for licensure.
(5) "Other licensed healthcare professional" means a practitioner as established in KRS 309.352(9)(a) through (c), (e), and (f) who may supervise a massage therapy student in a business.
(6) "Supervision" means the process of verifying attendance, assigning work, consulting with the student, evaluating student performance, and being available for emergency assistance.

Section 2. A program applying for a Certificate of Good Standing for a Massage Therapy Training Program shall file a completed, signed, and dated application and required documentation with the board, meeting requirements set forth in KRS 309.363(1), (a), (b), and (c). Documentation shall include:
(1) A copy of the current license to operate issued by the Kentucky State Board for Proprietary Education, the Council on Postsecondary Education, or their equivalent in the state in which the school is conducting classes;
(2) A curriculum statement as described in KRS 309.352(1)(b)1, 2, 3, 4, and 5 showing clock hours for each required subject;
(3) A listing of instructional staff and their qualifications, including:
(a) Documentation of current licensure of massage instructors; and
(b) Resume, CV or PE-11 form for all instructors showing the specific qualifications for teaching an adjunctive or science course;
(4) A description of the policies and procedures in place for collecting and analyzing data about the quality and effectiveness of educational programs including student progress, completion, and licensure;
(5) A copy of the program or school catalogue;
(6) Documentation of accreditations held by the program or school offering the program;
(7) A copy of a student contract agreeing not to accept compensation for massage therapy services provided prior to licensure by the board.

Section 3. A Certificate of Good Standing may be renewed upon the following:
(1) Submission of the Application for Renewal of a Certificate of Good Standing for a Massage Therapy Training Program form with the information required by this administrative regulation to the board on or before the anniversary date of issue of certificate;
(2) Current complete name, address, email address, Web site, and telephone number of each location in which the massage therapy training program is provided;
(3) Current listing of instructional staff and their qualifications, with attached documentation of qualifications of new instructors;
(4) A current curriculum statement as described in KRS 309.363(1)(b)1, 2, 3, 4, and 5;
(5) A curriculum statement for new programs of massage therapy added to the school's original offering, such as an Associates Degree Program, if the new program may be used to meet initial qualifications for licensure;
(6) A statement with supporting statistics to show student completion, examination pass rates, licensure rates, and placement rates; and
(7) Documentation of accreditation reviews and renewals, if held; and
(8) A statement with supporting documentation showing proof that at least seventy (70) percent of the graduates of the program who have taken the MBLEx and NCBTMB Exam over the twelve months prior to application have received a passing score.

Failure to supply proof of meeting this standard shall be grounds for denial of a program's request for certification of good standing.

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Section 4. Externships and Clinicals. (1) A student completing an externship or clinical experience shall not receive compensation.

(2) Massage schools or businesses that provide any type of student massage shall conspicuously include the respective words “student massage” in all promotional materials, and shall conspicuously display a written notice in the waiting room or treatment area that services are being provided by a student.

(3) Clinical courses awarding credit hours toward the 600 hours required for licensure shall be supervised by a licensed massage therapist with three (3) years of experience and available for on-site consultation.

(a) Massage sessions offered as part of a student clinic shall be evaluated by the instructor, and appropriate goals for improvement in areas such as customer service, technique, body mechanics, and draping shall be set according to the needs of the student.

(b) Student massage clinics shall be supervised by a massage therapy instructor in the clinic.

(c) Student clinic client records shall be maintained at the school and shall meet the Standards for Documentation established in 201 KAR 42:060, Sections 3 and 2(4), and record of payment shall be made available to the client upon request.

(4) The instructor of the externship course shall provide:

(a) Clear, written learning objectives to students and their site supervisors;

(b) Planned opportunities to discuss the externship experience at regular intervals with the student, and with the site supervisor; and

(c) A mechanism for evaluating student performance in the externship experience, presented to the student and the site supervisor at the beginning of the course.

(5) A program offering an externship course shall have a written agreement signed by the institution or program director and the externship site personnel that clearly defines the responsibilities of the onsite supervisor, the clinical coordinator, and the student. An externship course shall be limited to no more than twenty (20) percent of the total program hours. The externship course or offered, shall be completed after the primary 600 supervised curriculum hours required by KRS 309.363(1)(b).

(6) A program offering an externship course shall have liability insurance to cover student activities within the course.

(7) Externship sites shall have a licensed massage therapist or other licensed healthcare professional onsite to be available for emergencies or consultation.

(a) Externs may accrue hours for reception, documentation, or business-related activities other than hands-on massage services while the site supervisor is off-premises.

(b) A student session at an externship site may occur with the site supervisor available by phone if the client of the such session is on staff of the externship site or another extern, and a member of the professional staff is on premises for emergency assistance.

(8) Externship client records shall be maintained at the externship site and shall meet the Standards for Documentation established in 201 KAR 42:060, Sections 3 and 2(4), and record of payment shall be available to the client upon request.

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

(a) “Application for a Certificate of Good Standing for a Massage Therapy Training Program”, April[February] 2013[September 2010], and

(b) “Application for [ Renewal of] a Certificate of Good Standing offered a Massage Therapy Training Program Renewal Short Form”, February 2013[September 2010].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM HANSEN, Board Chair
APPROVED BY AGENCY: February 8, 2013
FILED WITH LRC: February 12, 2013 at 3 p.m.
CONTACT PERSON: Carolyn Benedict, Board Administrator, Board of Licensure for Massage Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296 ext. 239, fax (502) 696-5230.

GENERAL GOVERNMENT CABINET
Kentucky Applied Behavior Analysis Licensing Board
(As Amended at ARRS, April 9, 2013)

201 KAR 43:070. Supervises.

RELATES TO: KRS 319C.060(1)
STATUTORY AUTHORITY: KRS 319C.060(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060 authorizes the board to promulgate administrative regulations required to establish qualifications and requirements for supervisees of a behavior analyst. This administrative regulation establishes the requirements for supervisees.

Section 1. Supervisee Qualifications. (1) A supervisee shall:

(a) Be at least eighteen (18) years of age;

(b) Hold a high school diploma or GED;

(c) Complete thirty (30) hours of training related to applied behavior analysis; and

(d) Be a citizen of the United States or otherwise be entitled to lawfully remain and work in the United States.

(2) A supervisee shall not have been convicted of a felony.

Section 2. Supervisor Duties. (1) A behavior analyst or assistant behavior analyst shall ensure that a supervisee meets the requirements of Section 1 of this administrative regulation. Required diligence includes but is not limited to performing a criminal background check of supervisees prior to commencement of employment.

(2) A behavior analyst or assistant behavior analyst shall exercise direct and continuing oversight of a supervisee and shall take appropriate remedial action and discipline against a supervisee when necessary to ensure that the supervisee prospectively provides adequate and professional services.

SHELLI DESKINS, Chair
APPROVED BY AGENCY: January 29, 2013
FILED WITH LRC: February 12, 2013 at 3 p.m.
CONTACT PERSON: Lindsey Lane, Board Administrator, Kentucky Applied Behavior Analyst Licensing Board, PO Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296 ext 228.

GENERAL GOVERNMENT CABINET
Kentucky Applied Behavior Analysis Licensing Board
(As Amended at ARRS, April 9, 2013)

201 KAR 43:080. Renewals.

RELATES TO: KRS 319C.050, 319C.060
STATUTORY AUTHORITY: KRS 319C.050, 319C.060(2), 319C.120
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060 authorizes the board to promulgate administrative regulations required to establish conditions for the renewal and reinstatement of licenses. This administrative regulation establishes procedures for the renewal of licenses.

Section 1. Renewal. A behavior analyst or assistant behavior analyst shall biennially, on or before the last day of the calendar month during which the license was issued:

(1) File a completed Application for License Renewal; and

(2) Pay to the board the renewal fee established by 201 KAR 43:030.

Section 2. Late Renewal. A behavior analyst or assistant behavior analyst who fails to renew his or her license on or before the last day of the calendar month during which the license was issued may submit his or her application on or before the last day of the calendar month following the month in which the license was is-
sued if accompanied by the appropriate late fee as required by 201 KAR 43:030.

Section 3. Expiration of License. (1) A license that is not renewed before the last day of the calendar month during which the license was issued shall be expired and lapsed for failure to renew.

(2) Upon expiration of the license for failure to renew, a behavior analyst or assistant behavior analyst shall not practice in the Commonwealth of Kentucky.

Section 4. Reinstatement. After the last day of the calendar month following the month in which the license was issued, a person whose license has expired for failure to renew shall submit, in order to have his or her license reinstatement request considered by the Board:

(1) Payment of the fee established by 201 KAR 43:030;
(2) Completion of the Application for Licensure Renewal, [Reinstatement]; and
(3) Documentation of employment from the time of expiration of employment until the present.

Section 5. Incorporation by Reference. (1) "Application for Licensure Renewal", April 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Applied Behavior Analysis Licensing Board, 911 Leawood Drive, Frankfort, Kentucky 40601; (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

SHELLI DESKINS, Chair
APPROVED BY AGENCY: January 29, 2013
FILED WITH LRC: February 12, 2013 at 3 p.m.
CONTACT PERSON: Lindsey Lane, Board Administrator, Kentucky Applied Behavior Analyst Licensing Board, PO Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296 ext 228.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As amended at ARRS, April 9, 2013)

401 KAR 10:031. Surface water standards.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100, 224.71-114, 224.71-120, 224.72-007, 224.73-100-224.73-534, STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.16-100, 224.16-050, 224.16-070, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1341 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution.

[EQ 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.] This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These water quality standards are minimum requirements that apply to all surface waters in the Commonwealth of Kentucky in order to maintain and protect them for designated uses. These water quality standards are subject to periodic review and revision in accordance with the Clean Water Act, 33 U.S.C. 1251-1287, 40 C.F.R. 131, and KRS Chapter 224.

Section 1. Nutrients Criterion. Nutrients shall not be elevated in a surface water to a level that results in a eutrophica- tion problem. Limits in lakes and reservoirs and their tributaries, and other surface waters where eutrophication problems may exist, nitrogen, phosphorus, carbon, and contributing trace element discharges shall be limited in accordance with:

(1) The scope of the problem;
(2) The geography of the affected area; and
(3) Relative contributions from existing and proposed sources.

Section 2. Minimum Criteria Applicable to All Surface Waters. (1) The following minimum water quality criteria shall be applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of 401 KAR 10:029.

(2) Surface waters shall not be aesthetically or otherwise degraded by substances that:
(a) Settle to form objectionable deposits;
(b) Float as debris, scum, oil, or other matter to form a nuisance;
(c) Produce objectionable color, odor, taste, or turbidity;
(d) Cause harm, are chronically or acutely toxic to or produce adverse physiological or behavioral responses in humans, animals, fish, and other aquatic life;
(e) Produce undesirable aquatic life or result in the dominance of nuisance species;
(f) Cause fish flesh tainting.

2. The concentration of phenol shall not exceed 300 μg/L as an average value.

(2) The water quality criteria for the protection of human health related to fish consumption in Table 1 of Section 6 of this administrative regulation are applicable to all surface water at the edge of the assigned mixing zones except for those points where water is withdrawn for domestic water supply use.

(a) The criteria are established to protect human health from the consumption of fish tissue, and shall not be exceeded.
(b) For those substances associated with a cancer risk, an acceptable risk level of not more than one (1) additional cancer case in a population of 1,000,000 people, or 1 x 10⁴ shall be utilized to establish the allowable concentration.

Section 3. Use Designations and Associated Criteria. (1) Surface waters may be designated as having one (1) or more legitimate uses and associated criteria protective of those uses. These uses are listed in 401 KAR 10:026. Nothing in this administrative regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Sections 2, 4, 6, and 7 of this administrative regulation represent minimum conditions necessary to:

(a) Protect surface waters for the indicated use; and
(b) Protect human health from fish consumption.

(2) On occasion, surface water quality may be outside of the limits established to protect designated uses because of natural conditions. If this occurs during periods when stream flows are below the flow that is used by the cabinet to establish effluent limitations for wastewater treatment facilities, a discharge shall not be considered a contributor to instream violations of water quality standards, if treatment results in compliance with permit requirements.

(3) Stream flows for water quality-based permits. The following stream flows shall be utilized if deriving KPDES permit limitations to protect surface waters for the listed uses and purposes:
(a) Aquatic life protection shall be 7Q₁₀;
(b) Water-based recreation protection shall be 7Q₁₀;
(c) Domestic water supply protection shall be determined at points of withdrawal as:
1. The harmonic mean for cancer-linked substances; and
2. 7Q₁₀ for noncancer-linked substances;
(d) Human health protection from fish consumption and for changes in radionuclides shall be the harmonic mean; and
(e) Protection of aesthetics shall be 7Q₁₀.

Section 4. Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreal growth, agricultural, and industrial uses:
(a) Natural alkalinity as CaCO₃ shall not be reduced by more
than twenty-five (25) percent.

1. If natural alkalinity is below twenty (20) mg/L CaCO₃, there shall not be a reduction below the natural level.

2. Alkalinity shall not be reduced or increased to a degree that may adversely affect the aquatic community;

(b) pH shall not be less than six and zero-tenths (6.0) nor more than nine and zero-tenths (9.0) and shall not fluctuate more than one and zero-tenths (1.0) pH unit over a period of twenty-four (24) hours;

(c) Flow shall not be altered to a degree that will adversely affect the aquatic community;

(d) Temperature shall not exceed thirty-one and seven-tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit).

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet may determine allowable surface water temperatures on a site-specific basis utilizing available data that shall be based on the effects of temperature on the aquatic biota that utilize specific surface waters of the commonwealth and that may be affected by person-induced temperature changes.

a. Effects on downstream uses shall also be considered in determining site-specific temperatures.

b. Values in the following table are guidelines for surface water temperature.

<table>
<thead>
<tr>
<th>Month/Date</th>
<th>Period Average</th>
<th>Instantaneous Maximum</th>
</tr>
</thead>
<tbody>
<tr>
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<td>December 1-31</td>
<td>52 11</td>
<td>57 14</td>
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</table>

3. A successful demonstration concerning thermal discharge limits carried out pursuant to paragraph (a) of Section 316(a) of the Clean Water Act, 33 U.S.C. 1326, shall constitute compliance with the temperature requirements of this subsection. A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made.

(e) Dissolved oxygen.

1. Dissolved oxygen shall be maintained at a minimum concentration of five and zero-tenths (5.0) mg/L as a twenty-four (24) hour average in water with WAH use.

b. The instantaneous minimum shall not be less than four and zero-tenths (4.0) mg/L in water with WAH use.

2. The dissolved oxygen concentration shall be measured at mid-depth in waters having a total depth of ten (10) feet or less and at representative depths in other waters;

(f) Total dissolved solids or specific conductance. Total dissolved solids or specific conductance shall not be changed to the extent that the indigenous aquatic community is adversely affected;

(g) Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected;

(h) Settleable solids. The addition of settleable solids that may alter the stream bottom so as to adversely affect productive aquatic communities shall be prohibited;

(i) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/L at any time instream after mixing. Un-ionized ammonia shall be determined from values for total ammonia-N, in mg/L, pH and temperature, by means of the following equation:

\[ Y = 1.2 \left( \frac{\text{total ammonia-N}}{1 + 10^{0.41 \cdot \text{pH}}} \right) \]

\[ pK_a = 0.0902 + \left( \frac{2730}{273.2 + T_i} \right) \]

Where:

- \( T_i \) = temperature, degrees Celsius.
- \( Y \) = un-ionized ammonia (mg/L);

(j) Toxics.

1. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are noncumulative or nonpersistent with a half-life of less than ninety-six (96) hours, shall not exceed:

a. One-tenth (0.1) of the ninety-six (96) hour median lethal concentration (LC₅₀) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the twenty-five (25) percent inhibition concentration, or LC₅₀.

2. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are bioaccumulative or persistent, including pesticides, if not specified elsewhere in this section, shall not exceed:

a. 0.01 of the ninety-six (96) hour median lethal concentration (LC₅₀) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the LC₅₀.

3. In the absence of acute criteria for pollutants listed in Table 1 of Section 6 of this administrative regulation, for other substances known to be toxic but not listed in this administrative regulation, or for whole effluents that are acutely toxic, the allowable instream concentration shall not exceed the LC₅₀ or one-third (1/3) LC₅₀ concentration derived from toxicity tests on representative indigenous or indicator aquatic organisms or exceed three-tenths (0.3) acute toxicity units.

4. If specific application factors have been determined for a toxic substance or whole effluent such as an acute to chronic ratio or water effect ratio, they may be used instead of the one-tenth (0.1) and 0.01 factors listed in this subsection upon demonstration by the applicant that the application factors are scientifically defendable.

5. Allowable instream concentrations for specific pollutants for the protection of warm water aquatic habitat are listed in Table 1 of Section 6 of this administrative regulation. These concentrations are based on protecting aquatic life from acute and chronic toxicity and shall not be exceeded; and

(k) Total residual chlorine. Instream concentrations for total residual chlorine shall not exceed an acute criteria value of nineteen (19) mg/L or a chronic criteria value of eleven (11) mg/L.

(2) Cold water aquatic habitat. The following parameters and criteria are for the protection of productive cold water aquatic communities and streams that support trout populations, whether self-sustaining or reproducing, on a year-round basis. The criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(a) Dissolved oxygen.

1. A minimum concentration of six and zero-tenths (6.0) mg/L as a twenty-four (24) hour average and five and zero-tenths (5.0) mg/L as an instantaneous minimum shall be maintained.

2. In lakes and reservoirs that support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be measured at a depth of one and seven-tenths (25) percent.

(b) Temperature. Water temperature shall not be increased through human activities above the natural seasonal temperatures.

Section 5. Domestic Water Supply Use. Maximum allowable instream concentrations for specific substances, to be applicable at the point of withdrawal, as established in 401 KAR 10:026, Section 5(5)(b), Table B, for use for domestic water supply from surface water sources are specified in Table 1 of Section 6 of this administrative regulation and shall not be exceeded.

Section 6. Pollutants. (1) Allowable instream concentrations of pollutants are listed in Table 1 of this section.
<table>
<thead>
<tr>
<th>Pollutant</th>
<th>CAS Number</th>
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<th>Warm Water Aquatic Habitat:</th>
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<td>(e(1.005 \cdot 4.869))</td>
</tr>
<tr>
<td>Phenol</td>
<td>108952</td>
<td>21,000</td>
<td>860,000</td>
<td>-</td>
</tr>
<tr>
<td>Polychlorinated Biphenyls (PCBs)</td>
<td>N/A</td>
<td>0.000064</td>
<td>0.000064</td>
<td>(0.014) {0.0014}</td>
</tr>
<tr>
<td>Pyrene</td>
<td>129000</td>
<td>830</td>
<td>4,000</td>
<td>-</td>
</tr>
<tr>
<td>Selenium</td>
<td>7782492</td>
<td>170</td>
<td>4,200</td>
<td>(258^{[20]} \cdot 19.3^{[5.0]})</td>
</tr>
<tr>
<td>Silver</td>
<td>7440224</td>
<td>-</td>
<td>-</td>
<td>(e(1.72 \cdot 0.59))</td>
</tr>
<tr>
<td>Sulfate</td>
<td>N/A</td>
<td>250,000</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Hydrogen Sulfide, Undissociated</td>
<td>7783064</td>
<td>-</td>
<td>-</td>
<td>2.0</td>
</tr>
<tr>
<td>Tetrachloroethylene</td>
<td>127184</td>
<td>0.69</td>
<td>3.3</td>
<td>-</td>
</tr>
<tr>
<td>Thallium</td>
<td>7440280</td>
<td>0.24</td>
<td>0.47</td>
<td>-</td>
</tr>
<tr>
<td>Toluene</td>
<td>108883</td>
<td>1300</td>
<td>15,000</td>
<td>-</td>
</tr>
<tr>
<td>Total Dissolved Solids</td>
<td>N/A</td>
<td>250,000</td>
<td>-</td>
<td>-</td>
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<tr>
<td>Toxaphene</td>
<td>8001352</td>
<td>0.00028</td>
<td>0.00028</td>
<td>0.73</td>
</tr>
<tr>
<td>Tributyltin (TBT)</td>
<td>57014</td>
<td>0.025</td>
<td>2.4</td>
<td>0.46</td>
</tr>
<tr>
<td>Vinyl Chloride</td>
<td>79016</td>
<td>2.5</td>
<td>30</td>
<td>-</td>
</tr>
<tr>
<td>Zinc</td>
<td>7440666</td>
<td>7,400</td>
<td>26,000</td>
<td>(e(0.8473 \cdot 0.884))</td>
</tr>
<tr>
<td>1,1-dichloroethylene</td>
<td>75354</td>
<td>330</td>
<td>7100</td>
<td>-</td>
</tr>
<tr>
<td>1,1,1-trichloroethane</td>
<td>71556</td>
<td>200</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1,1,2-trichloroethane</td>
<td>79005</td>
<td>0.59</td>
<td>16</td>
<td>-</td>
</tr>
<tr>
<td>1,1,2,2-tetrachloroethane</td>
<td>79345</td>
<td>0.17</td>
<td>4.0</td>
<td>-</td>
</tr>
<tr>
<td>Pollutant</td>
<td>CAS Number</td>
<td>Water Quality Criteria g/L</td>
<td>Human Health:</td>
<td>Warm Water Aquatic Habitat:</td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>------------</td>
<td>----------------------------</td>
<td>---------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>DWS&lt;sup&gt;5&lt;/sup&gt;</td>
<td>Fish&lt;sup&gt;5&lt;/sup&gt;</td>
</tr>
<tr>
<td>1,2-dichlorobenzene</td>
<td>95501</td>
<td>420</td>
<td>1,300</td>
<td>-</td>
</tr>
<tr>
<td>1,2-dichloroethane</td>
<td>107082</td>
<td>0.38</td>
<td>37</td>
<td>-</td>
</tr>
<tr>
<td>1,2-dichloropropane</td>
<td>78875</td>
<td>0.50</td>
<td>15</td>
<td>-</td>
</tr>
<tr>
<td>1,2-diphenylhydrazine</td>
<td>122687</td>
<td>0.006</td>
<td>0.20</td>
<td>-</td>
</tr>
<tr>
<td>1,2-trans-dichloroethylene</td>
<td>156605</td>
<td>140</td>
<td>10,000</td>
<td>-</td>
</tr>
<tr>
<td>1,2,4-trichlorobenzene</td>
<td>120821</td>
<td>35</td>
<td>70</td>
<td>-</td>
</tr>
<tr>
<td>1,2,4,5-tetrachlorobenzene</td>
<td>95943</td>
<td>0.97</td>
<td>1.1</td>
<td>-</td>
</tr>
<tr>
<td>1,3-dichlorobenzene</td>
<td>541731</td>
<td>320</td>
<td>960</td>
<td>-</td>
</tr>
<tr>
<td>1,3-dichloropropane</td>
<td>542756</td>
<td>0.34</td>
<td>21</td>
<td>-</td>
</tr>
<tr>
<td>1,4-dichlorobenzene</td>
<td>106467</td>
<td>63</td>
<td>190</td>
<td>-</td>
</tr>
<tr>
<td>2-chloronaphthalene</td>
<td>91587</td>
<td>1,000</td>
<td>1,600</td>
<td>-</td>
</tr>
<tr>
<td>2-chlorophenol</td>
<td>95578</td>
<td>81</td>
<td>150</td>
<td>-</td>
</tr>
<tr>
<td>2-methyl-4,6-dinitrophenol</td>
<td>534521</td>
<td>13</td>
<td>280</td>
<td>-</td>
</tr>
<tr>
<td>2,3,7,8-TCDD (Dioxin)</td>
<td>1746016</td>
<td>5.0 E-9</td>
<td>5.1 E-9</td>
<td>-</td>
</tr>
<tr>
<td>2,4-D</td>
<td>94757</td>
<td>100</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2,4-dichlorophenol</td>
<td>120832</td>
<td>77</td>
<td>290</td>
<td>-</td>
</tr>
<tr>
<td>2,4-dimethylphenol</td>
<td>105679</td>
<td>380</td>
<td>850</td>
<td>-</td>
</tr>
<tr>
<td>2,4-dinitrophenol</td>
<td>51285</td>
<td>69</td>
<td>5,300</td>
<td>-</td>
</tr>
<tr>
<td>2,4-dinitrotoluene</td>
<td>121142</td>
<td>0.11</td>
<td>3.4</td>
<td>-</td>
</tr>
<tr>
<td>2,4,5-TP (Silvex)</td>
<td>93721</td>
<td>10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2,4,5-trichlorophenol</td>
<td>95954</td>
<td>1,800</td>
<td>3,600</td>
<td>-</td>
</tr>
<tr>
<td>2,4,6-trichlorophenol</td>
<td>88062</td>
<td>1.4</td>
<td>2.4</td>
<td>-</td>
</tr>
<tr>
<td>3,3'-dichlorobenzidine</td>
<td>91941</td>
<td>0.021</td>
<td>0.228</td>
<td>-</td>
</tr>
<tr>
<td>4,4'-DDE</td>
<td>72548</td>
<td>0.00031</td>
<td>0.00031</td>
<td>-</td>
</tr>
<tr>
<td>4,4'-DDD</td>
<td>72559</td>
<td>0.00022</td>
<td>0.00022</td>
<td>-</td>
</tr>
<tr>
<td>4,4'-DDT</td>
<td>50293</td>
<td>0.00022</td>
<td>1.1</td>
<td>0.001</td>
</tr>
</tbody>
</table>

<sup>5</sup>CAS = Chemical Abstracts Service.

<sup>6</sup>Water quality criteria in g/L unless reported in different units.

<sup>7</sup>Metal concentrations shall be total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated that a more appropriate analytical technique is available that provides a measurement of that portion of the metal present which causes toxicity to aquatic life.

<sup>8</sup>DWS = Domestic Water Supply Source.

<sup>9</sup>Fish = Fish Consumption.

<sup>10</sup>Acute criteria is protective of aquatic life based on one (1) hour exposure that does not exceed the criteria for a given pollutant.

<sup>11</sup>Chronic = protective of aquatic life based on ninety-six (96) hour exposure that does not exceed the criterion of a given pollutant more than once every three (3) years on the average.

<sup>12</sup>The chronic criterion for iron shall not exceed three and five tenths (3.5) mg/L (thirty-five hundred µg/L) if aquatic life has not been shown to be adversely affected.

<sup>13</sup>If the concentration of sulfate is less than forty-four (44) mg/L, the alternate acute water quality standard for selenium may be obtained by calculating theCriterion Maximum Concentration (CMC) using the concentrations of selenite and selenate as follows:

\[
CMC = \min \left( \frac{f1}{[CMC1]} + \frac{f2}{[CMC2]} \right), \quad \text{where } CMC1 = 258 \mu g/L \text{ for selenite and } CMC2 = 0.001 \mu g/L \text{ for selenate, and } f1 \text{ is the fraction of total selenium that is selenite and } f2 \text{ is the fraction of total selenium that is selenate.}
\]

<sup>14</sup>This value is the concentration in µg/L (dry weight) of whole fish tissue.

<sup>15</sup>A concentration of five and zero tenths (5.0) µg/L or greater selenium in the water column shall trigger further sampling and analysis of whole-body fish tissue or alternatively of fish egg/ovary tissue.

<sup>16</sup>This value is the concentration in µg/L (dry weight) of fish egg/ovary tissue.

<sup>17</sup>Hardness as mg/L CaCO₃.

1. The following additional criteria for radionuclides shall apply for Domestic Water Supply use:
   (a) The gross total alpha particle activity, including radium-226 but excluding radon and uranium, shall not exceed fifteen (15) pCi/L;
   (b) Combined radium-226 and radium-228 shall not exceed five (5) pCi/L. Specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/L;
   (c) The concentration of total gross beta particle activity shall not exceed sixty (60) pCi/L;
   (d) The concentration of tritium shall not exceed 20,000 pCi/L;
   (e) The concentration of total Strontium-90 shall not exceed eighty (80) pCi/L; or
   (f) The concentration of uranium shall not exceed thirty (30) pCi/L.

Section 7. Recreational Waters. (1) Primary contact recreation water. The following criteria shall apply to waters designated as primary contact recreation use during the primary contact recreation season of May 1 through October 31:
   (a) Fecal coliform content or Escherichia coli content shall not exceed 200 colonies per 100 ml or 130 colonies per 100 ml respectively as a geometric mean based on not less than five (5) samples taken during a thirty (30) day period. Content also shall not exceed 400 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period for fecal coliform or 240 colonies per 100 ml for Escherichia coli. Fecal coliform criteria listed in subsection (2)(a) of this section shall apply during the remainder of the year; and
   (b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

(2) Secondary contact recreation water. The following criteria shall apply to waters designated for secondary contact recreation use during the entire year:
   (a) Fecal coliform content shall not exceed 1,000 colonies per 100 ml as a thirty (30) day geometric mean based on not less than five (5) samples; or exceed 2,000 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period; and
   (b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.
1. Water for inclusion.
   (a) Automatic inclusion. The following surface waters shall automatically be included in this category:
   1. Waters designated pursuant to §146.410 the Kentucky Wild Rivers Act, KRS 146.400-146.360.
   2. Waters designated pursuant to §146.419 the Federal Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287.
   3. Waters identified under the Kentucky Nature Preserves Act, KRS 146.410-146.530, which are contained within a formally dedicated nature preserve or are published in the registry of natural areas in accordance with 400 KAR 2:080 and concurred upon by the cabinet.
   (b) Permissible consideration. Other surface waters shall be considered for inclusion in this category if:
   1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological, natural, or historical area recognized by state or federal designation; or
   2. The surface water is a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics, or fulfill two (2) of the following criteria:
      a. Support a diverse or unique native aquatic flora or fauna;
      b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat; or
      c. Provide a unique aquatic environment within a physiographic region.
   (2) Outstanding state resource waters protection. The designation criteria regarding outstanding state resource waters shall be explicitly valid but the use designation is still appropriate.
   (3) Before granting an exception, the cabinet shall ensure that the water quality standards of downstream waters shall be attained and maintained.
   (4) All exceptions to water quality criteria shall be subject to review at least every three (3) years.
   (5) Exceptions to water quality criteria shall be adopted as an administrative regulation by listing them with the respective surface water in 401 KAR 10:026.

Section 9. Water Quality Criteria for the Main Stem of the Ohio River. (1) The following criteria apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 to its confluence with the Mississippi River, and shall not be exceeded.
   (2) These waters shall be subject to all applicable provisions of 401 KAR 10:001, 10:026, 10:029, 10:030, and this administrative regulation, except for those criteria in paragraphs (a) and (b) of this subsection.
      (a) Dissolved oxygen. Instream concentrations shall average at least five and zero-tenths (5.0) mg/L per calendar day and shall not be less than four and zero-tenths (4.0) mg/L except during the April 15 - June 15 spawning season when a minimum of five and one-tenth (5.1) mg/L shall be maintained.
      (b) Maximum allowable instream concentrations for nitrate-nitrogen for the protection of human health shall be one and zero-tenths (1.0) mg/L and shall be met at the edge of the assigned mixing zone.

Section 10. Exceptions to Criteria for Specific Surface Waters. (1) The cabinet may grant exceptions to the criteria contained in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation for specific surface water upon demonstration by an applicant that maintenance of applicable water quality criteria is not attainable or scientifically valid but the use designation is still appropriate.
   (2) The analysis shall show that the water quality criteria cannot be reasonably achieved, either on a seasonal or year-round basis due to natural conditions or site-specific factors differing from the conditions used to derive criteria in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation.
      (a) Site-specific criteria shall be developed by the applicant utilizing toxicity tests, indicator organisms, and application factors that shall be consistent with those outlined in Chapter 3 of Water Quality Standards Handbook, EPA, 1994.
      (b) In addition, an applicant shall supply the documentation listed in 401 KAR 10:026, Section 3.
   (3) An exception to criteria listed in Table 1 of Section 6 of this administrative regulation for the protection of human health from the consumpion of fish tissue may be granted if it is demonstrated that natural, ephemeral, intermittent, or low flow conditions or water levels preclude the year-round support of a fishery, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges.
   (4) Before granting an exception to water quality criteria, the cabinet shall ensure that the water quality standards of downstream waters shall be maintained.
   (5) All exceptions to water quality criteria shall be subject to review at least every three (3) years.
   (6) Exceptions to water quality criteria shall be adopted as an administrative regulation by listing them with the respective surface water in 401 KAR 10:026.

Section 11. Exceptions to Criteria for Individual Dischargers. (1) An exception to criteria may be granted to an individual discharger based on a demonstration by the discharger[,] that KPDES permit compliance with existing instream criteria cannot be attained because of factors specified in 401 KAR 10:026, Section 2(4)(a) through (f).
      (2) The demonstration shall include an assessment of alternative pollution control strategies and biological assessments that indicated designated uses are being met.
      (3) Before granting an exception, the cabinet shall ensure that the water quality standards of downstream waters shall be attained and maintained.
      (4)(a) All exceptions shall be submitted to the cabinet for review at least every three (3) years. Upon review, the discharger shall demonstrate to the cabinet the effort the discharger made to reduce the pollutants in the discharge to levels that would achieve existing applicable water quality criteria.
      (b) The highest level of effluent quality that can be economical-
ly and technologically achieved shall be ensured while the exception is in effect.

(6) The Kentucky Pollution Discharge Elimination System permitting program shall be the mechanism for the review and public notification of intentions to grant exceptions to criteria.

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


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 8, 2012
FILED WITH LRC: November 14, 2012 at 3 p.m.
CONTACT PERSON: Sandy Grzeszky, Director, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111; email Sandy.Grzeszky@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(As Amended at ARRS, April 9, 2013)


RELATES TO: KRS 15A.065, 15A.067, 200.080-120, Chapters 600-645
STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.500, 635.505(1), 635.515, 635.520, 640.120, 645.250
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.520, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

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

(a) "Department of Juvenile Justice Policy and Procedures Manual: Juvenile Sexual Offender Treatment Program", April 9/February 15, 2013/2010, which includes the following:
800 Treatment Program for Juvenile Sexual Offenders (Amended 2/15/13/2/15/10);
803 Polygraph Examinations (Amended 2/15/10/2/15/10);
806 Juvenile Sexual Offender Treatment and Assessment Professional Approval Process (Amended 4/9/13/2/15/13/2/15/10);
(b) [The "Standard Operating Procedures Manual for the Treatment of Juvenile Sexual Offenders", 4/9/13/2/15/13 (Amended 2/15/10);
(c) [The] "Estimate of Risk of Adolescent Sexual Offense Recidivism Version 2.0 (ERASOR)," 8/15/09/8/15/09;
(d) [The] "Juvenile Sex Offender Assessment Protocol-II Manual (JSOAP-II)," 8/15/09/8/15/09;
(e) [The] "Juvenile Sexual Offender Tracking system Initial Reporting Form Part I," 2/15/10; and
(f) [The] "Juvenile Sexual Offender Tracking System Reporting Form Part II," 2/15/10.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

A. HASAN DAVIS, Commissioner
APPROVED BY AGENCY: February 14, 2013
FILED WITH LRC: February 14, 2013 at 3 p.m.
CONTACT PERSON: LaDonna Koebel, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, April 9, 2013)


RELATES TO: KRS Chapter 45A, 61.410, 66.480, 156.029, 156.076, 156.160, 156.200, 158.290, Chapter 160, 161.540, 161.560, 342.640, 424.260
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) gives the Kentucky Board of Education the management and control of the common schools. KRS 156.200 requires the Kentucky Board of Education to regulate accounting procedures and reports of local school districts. This administrative regulation establishes uniform procedures for the accounting of school activity funds.

Section 1. Definition. "Activity funds" means:
(1) Means all school funds including funds derived from fund-raising activities sponsored under the auspices of the school[,] and does not mean funds raised or received by organizations which do not come under the direct supervision of school authorities.

Section 2. District Responsibilities. (1) A district board of education shall have:
(1) Have[,] the responsibility for administration and control of all activity fund[s] and comply [Comply] with "Accounting Procedures for Kentucky School Activity Funds", which is also known as the "Redbook":
(2) The August 2007 edition of the Redbook shall be used until June 30, 2013.
(3) The March 2013 edition of the Redbook shall be used beginning July 1, 2013.

Section 3. Audits. (1) Activity [fund][funds] internal accounts shall be audited annually by a certified public accountant, and a report shall be made to the district board of education.

(2) Audit reports shall be reviewed and accepted by the local board of education, and appropriate action taken.

(3) Recommendations and exceptions listed in the audit shall be reviewed by staff of the Department of Education[, and a report shall be made to the local board of education] (district Board of Education).

(4) A copy of the school audit report shall be on file in both the office of the principal and the office of the superintendent of the local school district,[ where] It shall be open for public inspection in both locations.

Section 4. Incorporation by Reference. (1) "Accounting Procedures for Kentucky School Activity Funds", March/February 2013/November 2013 [August 2007], is incorporated by reference.

(2) This material[document] may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division [Office] of District Support [Services], 15th 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.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(As Amended at ARRS, April 9, 2013)

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

RELATES TO: KRS 198B.400(1), (11), 198B.490
STATUTORY AUTHORITY: KRS 198B.490
NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.490(1) requires [198B.490 authorizes] the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish standards for the safety of elevators and fixed guideway systems. This administrative regulation establishes the reporting requirements for personal injury or death involving elevators or fixed guideway systems.

Section 1. Definitions. (1) "Elevator" is defined by KRS 198B.400(1).

(2) "Fixed guideway system" is defined by KRS 198B.400(11).

(3) "Personal injury" means hurt or damage to a person's body, such as a cut or broken bone, as distinguished from injury to property or reputation.

Section 2. Elevators and Fixed Guideway System Incidents Reporting Requirements. (1) [If] personal injury or death occurs from the use, attempted use, or maintenance of an elevator or fixed guideway system, the owner or owner's designee shall:

(a) Immediately notify the department of the incident;

(b) Allow the authorized elevator inspector to inspect any and all parts of the elevator or fixed guideway system; and

(c) Prevent removal of any of the parts of the elevator or fixed guideway system until the investigating elevator inspector grants permission for removal.

(2) Use of the elevator or fixed guideway system shall be immediately discontinued following the occurrence of a personal injury or death incurred from use, attempted use, or maintenance of an elevator or fixed guideway system.

(a) The elevator or fixed guideway system shall not be used until the investigating elevator inspector examines the elevator or fixed guideway system and grants approval for use.

(b) Within twenty-four (24) hours of the incident being reported, the investigating elevator inspector shall investigate and examine the elevator or fixed guideway system.

AMBROSE WILSON, IV, COMMISSIONER
ROBERT D VANCE, SECRETARY
APPROVED BY AGENCY: February 14, 2013
FILED WITH LRC: February 14, 2013
CONTACT PERSON: Ann Ramser, Staff Attorney, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0385 Ext. 107, fax (502) 573-1087.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(As Amended at ARRS, April 9, 2013)

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

RELATES TO: KRS 216B.010-216B.130
STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2a
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the Cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The "2013-2015[2012][2011][Update to the 2010-2012 State Health Plan shall be used to:"

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015[29][28][28][a] and 216B.061(1)(d).


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Health Policy, 275 East Main Street, 4WE[fourth floor], Frankfort, Kentucky 40621, phone (502) 564-4062, Monday through Friday, 8 a.m. to 4:30 p.m. 900 KAR 5:020.

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

ERIC FRIEDLANDER, Acting Executive Director
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: February 15, 2013
FILED WITH LRC: February 15, 2013 at 10 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street, 4WE[fourth floor], Frankfort, Kentucky 40621, phone (502) 564-7905, Ext. 27573.
GENERAL GOVERNMENT CABINET  
Kentucky Board of Pharmacy  
(Amended After Comments)

201 KAR 2:074. Pharmacy services in hospitals or other organized health care facilities.

RELATES TO: KRS 315.010, 315.020, 315.030, 315.121
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)

Section 1. Definitions. (1) "Automated Pharmacy System" means a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, and dispensing of medications, and which collects, controls, and maintains all transaction information and shall be either:
   (a) A decentralized automated pharmacy system that is located outside the pharmacy department, but within the same institution, and under the supervision of a pharmacist; or
   (b) A centralized automated pharmacy system from which medications are prepared for final distribution that require the approval of a pharmacist.

(2) "Institutional pharmacy" means that portion of an acute care hospital licensed under 902 KAR 20:016 or a pharmacy serving another organized health care facility which is engaged in the manufacture, production, sale, or distribution of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, or disease.

(3) "Investigational drug" means any drug which has not been approved for use in the United States, but for which an investigational drug application has been approved by the FDA.

(4) Other organized health care facility means a facility:
   (a) Whose primary purpose is to provide medical care and treatment to inpatients; and
   1. An intermediate care facility;
   2. A skilled nursing facility;
   3. A hospital other than an acute care hospital licensed under 902 KAR 20:016;[c] 4. A licensed personal care home;
   5. A licensed family care home; 6. A nursing home;
   7. A nursing facility;
   8. An intermediate care facility for mental retardation; or

(5) "Unit dose distribution" means a system in which drug therapy profiles are maintained in the pharmacy and doses are scheduled, prepared, and delivered in a ready-to-administer form to the patient care area as they are needed.

Section 2. Pharmacy Administration. (1) General. The pharmacy, organized as a separate department or service, shall be directed by a professionally competent, legally qualified pharmacist. The director of pharmacy services shall be responsible for department management and the development and implementation of goals and objectives to meet the needs of the institution.

(2) Director of pharmacy services.
   (a) The director of pharmacy services shall be thoroughly knowledgeable about institutional pharmacy practice and management.
   (b) If the director of pharmacy services is not employed full time, the institution shall establish an ongoing arrangement in writing with an appropriately qualified pharmacist to provide services required by this administrative regulation and KRS 315.020(1). The director of pharmacy services shall be responsible to the chief executive officer of the institution or his designee.

(c) If a hospital pharmacy is decentralized, each decentralized section or separate organizational element shall be under the immediate supervision of a pharmacist responsible to the director of pharmacy services.

(3) Pharmacy personnel.
   (a) The institutional pharmacy shall maintain additional pharmacists in cooperation with the institution's administration, either full time or part time, as they are required to operate safely and effectively to meet the needs of the patients.
   (b) If nonpharmacist personnel are employed, they shall perform all duties under the supervision of a pharmacist and they shall not be assigned, nor shall they perform, duties that are to be performed only by a pharmacist.

(4) Responsibilities.
   (a) Lines of authority and areas of responsibility within the pharmacy shall be clearly defined. Written job descriptions for all categories of pharmacy personnel shall be prepared and revised as necessary.
   (b) There shall be policies and procedures to provide for selection of drugs as well as a distribution system to serve the needs of the patient. Provision for procurement of drugs in an emergency situation shall be provided for.

(5) Supportive personnel.
   (a) Sufficient supportive personnel (technical, clerical, and other) shall be available in order to optimize the participation of pharmacists in activities requiring professional judgment.
   (b) The training and supervision of supportive personnel shall be the responsibility of the pharmacist.

(6) Availability.
   (a) The services of a pharmacist shall be available at all times. However, if around-the-clock operation of the pharmacy is not feasible, the pharmacist shall be available on an on-call basis and an adequate night drug cabinet shall be established. The pharmacy itself shall not be designated as the night drug cabinet.

(b) A hospital not having a full-time pharmacist, but in which drugs are prepackaged or relabeled or transferred from one container to another, shall obtain a pharmacy permit and have at least a part-time pharmacist designated to perform those functions or to provide personal supervision of those functions.

Section 3. Physical Facility. (1) The institutional pharmacy shall have adequate space, equipment, and supplies sufficient to provide for safe and efficient drug storage, preparation, and distribution, patient education and consultation, drug information services, and other management services.

(2) Legal requirements. The physical facility shall meet state and federal regulations and shall be accessible by key by authorized pharmacy personnel only.

(3)(a) A currently licensed hospital shall be exempt from the provisions of subsection (2) of this section if it:
   1. Is authorized by the Department for Health and Human Services to provide pharmacy services; and
   2. Does not currently possess a pharmacy permit.

(b) A currently licensed hospital exempt from the provisions of subsection (2) of this section shall permit access by authorized personnel only.

(4) Location. Locked storage or locked medication carts shall be provided for use in each nursing unit or service area.

(5) Reference materials. The pharmacy shall have current pharmaceutical reference materials in accordance with 201 KAR 2:090. References related to the following subjects shall also be available:
   (a) Drug identification;
   (b) Toxicology;
   (c) Drug interactions;
   (d) Parenteral drug compatibility; and
   (e) Microbiology.
Section 4. Drug Distribution and Control. (1) General. The institutional pharmacy shall be responsible for the procurement, distribution, and control of all drugs and parenteral solutions used within the institution. Policies and procedures governing these functions shall be developed by the pharmacist with input from other involved hospital or other organized health care facility staff (e.g., nurses) and committees (e.g., pharmacy and therapeutics committee and patient care committee). (2) Dispensing. The pharmacist shall dispense medications only on the order of a licensed practitioner. (3) Prescriber’s order. The pharmacist shall review the medication order within a reasonable amount of time. (4) Recordkeeping. The pharmacist shall maintain appropriate records of each medication order. The records shall be retained for the time and in the manner prescribed by state and federal law. (5) Patient medication profile. A medication profile shall be maintained for all inpatients and for those ambulatory patients routinely receiving care at the institution. The pharmacist shall utilize this profile to properly review, schedule, prepare, and distribute medications except in an emergency situation. (6) Labeling and packaging. (a) Each licensee (all licensees) shall comply with U.S.P. Standards established pursuant to federal law and all state and federal laws and regulations regarding labeling and packaging. (b) Labeling and packaging of medications used for outpatients shall meet the requirements of state and federal law. (7) Dispensing. The pharmacist shall dispense medications by the unit dose distribution system if feasible. If the unit dose distribution system is not utilized, adequate safeguards shall be in place to protect patients. (8) Stop orders. There shall be established written stop order policies or other methods of assuring that orders not continued inappropriately in accordance with the status of the patient. (9) Administration. Drugs shall be administered only upon order of a licensed practitioner. The institutional pharmacy shall participate in the establishment of policies and procedures regarding the administration of medications. Specific procedures shall be developed in cooperation with appropriate hospital or other health care facility personnel and shall include personnel authorized to schedule, prepare, and administer medications. (10) Unused medication. The institutional pharmacy shall establish policies and procedures for the disposition of patients’ unused medications. Medication in unit dose form may be reissued if age integrity has been maintained and the product is still in date. (11) Hospital floor stocks. (a) Floor stocks of drugs shall be kept as small as possible. The pharmacist in charge shall be responsible for authenticating the need for floor stock. (b) A pharmacist shall review all orders distributed through floor stock within a reasonable amount of time. (c) The pharmacist in charge shall be responsible for defining those areas of the hospital requiring floor stock (e.g., emergency room, surgery, critical care, or medical or surgical wards). (d) All drug storage areas within the hospital shall be routinely inspected by pharmacy personnel at least monthly and documentation maintained to insure that no unusable items are present and that all stock items are properly labeled and stored. (e) This subsection shall not apply to other organized health care facilities. (12) Drug recall. There shall be a system for removing from use any drugs subjected to a recall. (13) Sample medications. The institutional pharmacy shall establish policies and procedures regarding medical representatives and the obtaining, storage, and dispensing of complimentary packages of medications. (14) Emergency drugs. (a) The institutional pharmacy shall establish policies and procedures for supplying emergency drugs. (b) For expediency and efficiency, emergency drugs shall be limited in number to include only those whose prompt use and immediate availability are generally regarded by physicians as essential in the proper treatment of sudden and unforeseen patient emergencies. (c) Emergency stocks shall be routinely inspected by pharmacy personnel on a monthly basis and documentation maintained to determine if contents have become outdated and if the stocks are being maintained at adequate levels. (15) Investigational drugs. (a) Policies and procedures controlling the use of investigational drugs (if used in the institution) shall be developed and followed. (b) The pharmacy shall be responsible for storing, packaging, labeling, distributing, maintaining inventory records (including lot numbers and expiration date), and providing information about investigational drugs (including proper disposal). (16) Controlled substances. All permit holders shall comply with state and federal laws regarding controlled substances.

Section 5. Assuring Rational Drug Therapy. (1) Appropriate clinical information about patients shall be available and accessible to the pharmacist for use in daily practice activities. (2) The pharmacist shall be a member of the pharmacy and therapeutics committee and any other committees where input concerning the use of drugs is required. (3) The pharmacist shall provide a means to insure that patients receive adequate information about the drugs they receive. Patient education activities shall be in coordination with the nursing and medical staffs and patient education department, if any.

Section 6. Responsibility. The pharmacist-in-charge of a pharmacy utilizing an automated pharmacy system shall be responsible for: (1) An initial validation of system accuracy prior to use for distribution to patients; (2) Ensuring the system: (a) Is properly maintained; (b) Is in good working order; (c) Accurately dispenses the correct strength, dosage form, and quantity of drug prescribed; and (d) Complies with the recordkeeping, access, and security safeguards pursuant to all applicable state and federal laws; (3) Assuring medications are reviewed prior to loading into any automated pharmacy system; (4) Implementing an ongoing quality assurance program that monitors performance of the pharmacy compounding robotics, which is evidenced by written policies and procedures and requires a continued documented validation of doses distributed on a routine basis and annual review of the quality assurance program; (5) Establishing policies and procedures if there is a system failure of any automated pharmacy system; (6) Providing the board with prior written notice of installation or removal of any automated pharmacy system. This notification shall include the: (a) Name and address of the pharmacy; and (b) Initial location of the automated pharmacy system; (7) Oversight for assigning, discontinuing, or changing personnel access to the system, including establishment of written policies and procedures for security and control; (8) Reviewing personnel access on at least an annual basis; (9) Assuring that the decentralized automated pharmacy system stock is checked at least monthly in accordance with established policies and procedures, including checking for: (a) Accuracy; (b) Integrity of packaging; and (c) Expiration dates; and (10) Maintaining in the pharmacy the following documentation relating to an automated pharmacy system: (a) The name and address of the pharmacy or inpatient health care facility where the system is being used; (b) The automated pharmacy system manufacturer’s name, model, serial number, and software version; (c) A description of how the system is used; (d) Written quality assurance procedures and accompanying documentation of use to determine continued appropriate use of the system as established in subsections (7) and (8) of this section; and
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(e) Written policies and procedures for system operation, safety, security, accuracy, emergency medication access, access, and malfunction which includes clearly defined down time and procedures to:

(a) Prevent unauthorized access;
(b) Maintain patient confidentiality;
(c) Allow user access modification; and
(d) Comply with federal and state laws.

Section 7. Standards. (1) (a) All events involving the contents of the automated pharmacy system shall be recorded electronically.

(b) Records shall be maintained by the pharmacy and be available to the board and shall include the following:

1. The date, time, and location of the system accessed;
2. Identification of the individual accessing the system;
3. Type of transaction;
4. Name, strength, dosage form, and quantity of drug accessed; and
5. Name of the patient for whom the drug was ordered, if applicable.

(2) All medications to be stocked into the centralized automated pharmacy system (compounding robotics) shall have been previously validated for bar code accuracy by a pharmacist, pharmacist intern, or certified pharmacy technician. Integrity and accuracy shall be validated by a pharmacist.

(3) The stocking of medications in a decentralized automated pharmacy system utilizing bar code technology shall be done by a pharmacist, pharmacist intern, or a certified pharmacy technician.

(4) The stocking of medications in a decentralized automated pharmacy system utilizing bar code technology shall be done by a pharmacist, pharmacist intern, or a certified pharmacy technician. Integrity and accuracy shall be validated by a pharmacist.

(5) If the hospital licensed under 902 KAR 20:016 utilizes technology that validates appropriate drug, dose, dosage form, route of administration, time of administration, and patient at the exact time of medication administration, the stocking of the decentralized automated pharmacy system shall be done by a pharmacist, pharmacist intern, or certified pharmacy technician.

(6) A record of medications stocked in an automated pharmacy system shall be maintained for five (5) years and shall include:

(a) The name of the person repacking the medications; and
(b) Documentation of the pharmacist checking the medications.

(7) All containers of medications stocked in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws.

(8) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, in accordance with federal and state laws.

(9) All medications initially received in the pharmacy for use in an automated pharmacy system shall be quarantined until validation of bar code accuracy and existence of the item in the database powering automated pharmacy system by a certified pharmacy technician, pharmacist intern, or pharmacist.

(10) If a medication needs to be repackaged:

(a) A pharmacist, pharmacist intern, or certified pharmacy technician shall:

1. Perform the repackaging and validate the presence of an accurate bar code on the unit dose packaging; and
2. Document the repackaging process including:
   a. Manufacturer;
   b. Date and time of repackaging;
   c. The person repackaging;
   d. The lot number or batch number;
   e. The expiration date; and
   f. The quantity repackaged; and
(b) A pharmacist, pharmacist intern, or certified pharmacy technician shall:

1. Validate for accuracy and integrity prior to the addition to the automated pharmacy system; and
2. Document the validation including:
   a. The date and time of the validation;
PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amended After Comments)


RELATES TO: KRS 241.060[(2)], 241.065, 241.075, 241.125, 243.030((22))
STATUTORY AUTHORITY: KRS 241.060(2), EO 2008-507
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(2) authorizes the board to limit in its sound discretion the number of licenses of each kind or class to be issued[issue] in this state or any political subdivision, and restrict the locations of licensed premises.[EO 2008-507, effective June 16, 2008, abolished the Environmental and Public Protection Cabinet and established the new Public Protection Cabinet, and reorganized the Office of Alcohol Beverage Control as the Department of Alcohol Beverage Control.] This administrative regulation establishes retail liquor package license quotas in cities which have become wet pursuant to KRS 242.125 separately from their respective counties which remain dry.

Section 1. Pikeville, which repealed prohibition on April 12, 1983, shall have a quota of thirteen (13) retail liquor package licenses.

Section 2. Madisonville, which repealed prohibition on March 10, 1992, shall have a quota of seven (7) retail liquor package licenses.

Section 3. Central City, which repealed prohibition on July 10, 2002, shall have a quota of four (4) retail liquor package licenses.

Section 4. Dawson Springs, which repealed prohibition on February 5, 2008, shall have a quota of two (2) retail liquor package licenses.

Section 5. Lancaster, which repealed prohibition on August 19, 2008, shall have a quota of three (3) retail liquor package licenses.

Section 6. Paintsville, which repealed prohibition on June 9, 2009, shall have a quota of three (3) retail liquor package licenses.

Section 7. Danville, which repealed prohibition on March 2, 2010, shall have a quota of six (6) retail liquor package licenses.

Section 8. Earlington, which repealed prohibition on March 29, 2011, shall have a quota of two (2) retail liquor package licenses.

Section 9. Manchester, which repealed prohibition on June 21, 2011, shall have a quota of two (2) retail liquor package licenses.

Section 10. Elizabethtown, which repealed prohibition on October 4, 2011, shall have a quota of twelve (12) retail liquor package licenses.

Section 11. Radcliff, which repealed prohibition on October 4, 2011, shall have a quota of nine (9) retail liquor package licenses.

Section 12. Vine Grove, which repealed prohibition on October 4, 2011, shall have a quota of two (2) retail liquor package licenses.

Section 13. Guthrie, which repealed prohibition on October 4, 2011, shall have a quota of two (2) retail liquor package licenses.

Section 14. Junction City, which repealed prohibition on October 4, 2011, shall have a quota of two (2) retail liquor package licenses.

Section 15. Corbin, which repealed prohibition on February 14, 2012, shall have a quota of three (3) retail liquor package licenses.

Section 16. Somerset, which repealed prohibition on June 26, 2012, shall have a quota of ten (10)[five (5)] retail liquor package licenses.

Section 17. Whitesburg, which repealed prohibition on June 26, 2012, shall have a quota of two (2) retail liquor package licenses.

Section 18. Murray, which repealed prohibition on July 17, 2012, shall have a quota of seven (7) retail liquor package licenses.

Section 19. Franklin, which repealed prohibition on July 17, 2012, shall have a quota of three (3) retail liquor package licenses.

Section 20. LaGrange, which repealed prohibition on July 24, 2012, shall have a quota of three (3) retail liquor package licenses.

Section 21. Georgetown, which repealed prohibition on July 31, 2012, shall have a quota of twelve (12) retail liquor package licenses.

Section 22. Princeton, which repealed prohibition on August 7, 2012, shall have a quota of two (2) retail liquor package licenses.[individual quotas for smaller political subdivisions within a county if the general retail package liquor license quota established in 804 KAR 9:010, if applied, would result in the issuance of more.
licenses than the population of the political subdivision could reasonably support.

Section 1. For Pikeville, following its repeal of prohibition on April 12, 1983, the retail package liquor license quota shall be thirty (30).

Section 2. For Madisonville, following its repeal of prohibition on March 10, 1992, the retail package liquor license quota shall be seven (7).

Section 3. For Central City, following its repeal of prohibition on July 10, 2002, the retail package liquor license quota shall be four (4).

Section 4. For Dawson Springs, following its repeal of prohibition on February 5, 2008, the retail package liquor license quota shall be one (1).

Section 5. For Lancaster, following its repeal of prohibition on August 19, 2008, the retail package liquor license quota shall be three (3).]

FREDERICK HIGDON, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: April 12, 2013
FILED WITH LRC: April 12, 2013 at noon
CONTACT PERSONS: Stephen B. Humphress, General Counsel, Sam Crain, Paralegal Consultant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephen B. Humphress, Sam Crain

(1) Provide a brief summary of:
(a) What this administrative regulation does:

The amendment to this administrative regulation establishes the retail liquor package license quota for each of the following cities: Paintsville, Danville, Earlington, Manchester, Elizabethtown, Radcliff, Vine Grove, Guthrie, Junction City, Corbin, Somerset, Whitesburg, Murray, Franklin, LaGrange, Georgetown, and Princeton. The amendment also increases the liquor package license quota to two (2) in Dawson Springs, so as to avoid a monopoly.

(b) The necessity of this administrative regulation: The existing administrative regulation establishes the number of quota licenses for cities based on population and monopoly avoidance while a different regulation, 804 KAR 9:010, establishes county quotas. The amendment to this administrative regulation provides the necessary retail liquor package license quotas for the following cities which have recently voted wet: Paintsville, Danville, Earlington, Manchester, Elizabethtown, Radcliff, Vine Grove, Guthrie, Junction City, Corbin, Somerset, Whitesburg, Murray, Franklin, LaGrange, Georgetown, and Princeton. It also increases the quota for Dawson Springs so as to avoid a monopoly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 241.060(2) requires the board to limit in its sound discretion the number of licenses of each kind or class to be licensed in this state or any political subdivision, and restrict the locations of licensed premises. To this end, the Board may make reasonable division and subdivision of the state or any political subdivision into districts. Administrative regulations relating to the granting, refusal, and revocation of licenses may be different within the several divisions or subdivisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. The amendment to this administrative regulation enables the board to execute its KRS 241.060(2) duty by setting quotas for newly wet cities situated in dry counties.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The proposed amendment will establish quotas for retail liquor package licenses in the following cities which recently voted wet: Paintsville, Danville, Earlington, Manchester, Elizabethtown, Radcliff, Vine Grove, Guthrie, Junction City, Corbin, Somerset, Whitesburg, Murray, Franklin, LaGrange, Georgetown, and Princeton. It also increases the quota for Dawson Springs so as to avoid a monopoly.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is needed to establish the quota for retail liquor package licenses in cities which have recently voted wet although the county remained dry. For example, the Board has established the quota for retail liquor package licenses in the cities of Paintsville, Danville, Earlington, Manchester, Elizabethtown, Radcliff, Vine Grove, Guthrie, Junction City, Corbin, Somerset, Whitesburg, Murray, Franklin, LaGrange, Georgetown, and Princeton, based primarily on each city’s population and a 1/2300 ratio.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(2) allows the Board to limit the number of licenses of each kind or class to be issued in any political subdivision. The amendment will establish a quota for retail liquor package licenses in the cities of Paintsville, Danville, Earlington, Manchester, Elizabethtown, Radcliff, Vine Grove, Guthrie, Junction City, Corbin, Somerset, Whitesburg, Murray, Franklin, LaGrange, Georgetown, and Princeton, proportionate to territory population.

(d) How the amendment will assist in the effective administration of the statute: The amendment will establish the number of retail liquor package licenses that may be issued in the cities of Paintsville, Danville, Earlington, Manchester, Elizabethtown, Radcliff, Vine Grove, Guthrie, Junction City, Corbin, Somerset, Whitesburg, Murray, Franklin, LaGrange, Georgetown, and Princeton. A retail liquor package license permits a business to operate a liquor package store. No liquor package stores exist until a city votes to become to become wet. As this amendment to the regulation sets quotas for cities that are newly wet, no existing businesses will be affected. The Board initially proposed that the Somerset’s LP license quotas at five (5) licenses using Somerset’s population (11,300) and the 804 KAR 8:010 ratio of 1/2300 used for wet counties. However, the Board has previously set higher city quotas for economic, competitive and other reasons when requested by cities. For example, Pikeville has a quota of thirteen (13) LP licenses yet its population (6,300) would only authorize a quota of two (2) LP licenses under the 804 KAR 9:010 county ratio. As Somerset representatives pointed out at the public hearing, Pikeville has about half the population of Somerset yet has a quota of eight (8) more LP licenses than originally proposed for Somerset. Similarly, Central City’s quota of four (4) LP licenses is twice what its population would warrant based on the county ratio. Somerset representatives demonstrated at the public hearing that its total retail sales and retail sales per capita were comparable, and even higher, than cities with much greater populations such as Richmond (31,300), Hopkinsville (31,000), Georgetown (29,000), Nicholasville (28,000), Henderson (28,700), and Radcliff (21,600). This regulation sets Radcliffe’s quota at nine (9) LP licenses and Georgetown’s quota at twelve (12) LP licenses. However, Somerset’s retail sales are almost 200 percent greater than Radcliff’s sales and 150 percent greater than Georgetown’s sales. Some-
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. State what unit, part, or division of local government this administrative regulation will affect. The Commonwealth of Kentucky, Department of Alcoholic Beverage Control's licensing division will be required to process all applications and licenses issued by this administrative regulation. The cities of Paintsville, Danville, Earlington, Manchester, Elizabethtown, Radcliff, Vine Grove, Guthrie, Junction City, Corbin, Somerset, Whitesburg, Murray, Franklin, LaGrange, Georgetown, and Princeton, are already required to process all applications and issue alcoholic beverage licenses in their respective cities.

2. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates, asssists, regulates, or authorizes the action taken by the administrative regulation. The cities of Paintsville, Danville, Earlington, Manchester, Elizabethtown, Radcliff, Vine Grove, Guthrie, Junction City, Corbin, Somerset, Whitesburg, Murray, Franklin, LaGrange, Georgetown, and Princeton are already required to process all applications and issue alcoholic beverage licenses in their respective cities.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. Under KRS 243.070(1)(e)(4), the city of Paintsville could receive up to $1,500.00 annually ($500.00 per license) if (3) retail liquor package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,000.00 annually ($500.00 per license) if (2) retail liquor package licenses were issued in the city of Manchester. Under KRS 243.070(1)(e)(4), the city of Elizabethtown could receive up to $9,400.00 annually ($700.00 per license) if (12) retail liquor package licenses were issued. Under KRS 243.030(7)(b), the state would receive $8,400.00 annually ($700.00 per license) if (12) retail liquor package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Radcliff could receive up to $6,300.00 annually ($700.00 per license) if nine (9) retail liquor package licenses were issued in Elizabethtown. Under KRS 243.070(1)(e)(4), the city of Vine Grove could receive up to $1,400.00 annually ($700.00 per license) if (2) retail liquor package licenses were issued. Under KRS 243.030(7)(b), the state would receive $1,400.00 annually ($700.00 per license) if (2) retail liquor package licenses were issued. Under KRS 243.030(7)(b), the state would receive $1,200.00 annually ($600.00 per license) if (2) retail liquor package licenses were issued. Under KRS 243.030(7)(b), the state would receive $1,000.00 annually ($500.00 per license) if (2) retail liquor package licenses were issued. Under KRS 243.030(7)(b), the state would receive $800.00 annually ($400.00 per license) if (2) retail liquor package licenses were issued. Under KRS 243.030(7)(b), the state would receive $600.00 annually ($300.00 per license) if (2) retail liquor package licenses were issued.

4. Provide an assessment of how the above groups or organizations will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The impact of this amendment to the regulation will be minimal because the Department already issues state licenses and enforces alcohol laws and cities already issue city licenses.

5. Provide an estimate of how much it will cost to implement this administrative regulation amendment:
   (a) Initially: No extra costs are anticipated to implement this administrative regulation amendment.
   (b) On a continuing basis: None.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funding is used for the implementation and enforcement of 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: There is no anticipated increase in fees or funding necessary to implement this administrative regulation amendment.

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

9. TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering this administrative regulation.

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age licenses were issued to the city of Dawson Springs.

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: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Commissioner’s Office
(Amended After Comments)

907 KAR 17:010. Managed care organization requirements and policies relating to enrollees.

RELATES TO: 194A.025(3), 42 U.S.C. 1396n(c), 42 C.F.R. 438


NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the managed care organization requirements and policies relating to individuals enrolled with a Medicaid managed care organization.

Section 1. Enrollment of Medicaid or KCHIP Recipients into Managed Care.

(1) Except as provided in subsection (3) of this section, enrollment into a managed care organization shall be mandatory for a Medicaid or KCHIP recipient.

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

(a) Medicaid recipient; or
(b) KCHIP recipient.

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

(a) A recipient who resides in:
   1. A nursing facility for more than thirty (30) days; or
   2. An intermediate care facility for individuals with mental retardation or a developmental disability; or
(b) A recipient who is:
   1. Determined to be eligible for Medicaid benefits due to a nursing facility admission;
   2. Receiving:
      a. Services through the breast and cervical cancer program pursuant to 907 KAR 1:805;
      b. Medicaid benefits in accordance with the spend-down policies established in 907 KAR 1:640;
      c. Services through a 1915(c) home and community based services waiver program;
      d. Hospice services in a nursing facility or intermediate care facility for individuals with mental retardation or a developmental disability; or
   e. Medicaid benefits as a Medicaid Works individual;
   3. A Qualified Medicare beneficiary who is not otherwise eligible for Medicaid benefits;
   4. A specified low-income Medicare beneficiary who is not otherwise eligible for Medicaid benefits;
   5. A Medicare qualified individual group 1 (QI-1) individual;
   6. A qualified disabled and working individual;
   7. A qualified alien eligible for Medicaid benefits for a limited period of time; or
   8. A nonqualified alien eligible for Medicaid benefits for a limited period of time.

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

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

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

1. Continuity of care; and
2. Enrollee preference of an MCO provider.

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

(6)(a) A newly eligible recipient or a recipient who has had a break in eligibility of greater than two (2) months shall have an opportunity to choose an MCO during the eligibility application process.

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

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

(8) The effective date of enrollment for a recipient described in subsection (6) of this section shall be:

(a) The date of Medicaid eligibility; and
(b) No earlier than January 1, 2013 for region three.

(9) A recipient shall be given a choice of MCOs.

(10) A recipient enrolled with an MCO who loses Medicaid eligibility for less than two (2) months shall be automatically reenrolled with the same MCO upon redetermination of Medicaid eligibility unless the recipient moves outside of the MCO’s regional coverage.

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

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

1. Within ninety (90) days of the effective date of enrollment;
2. Annually during an open enrollment period;
3. Upon automatic enrollment under subsection (10) of this section, if a temporary loss of Medicaid eligibility caused the recipient to miss the annual opportunity in subparagraph 2. of this paragraph; or

(b) An MCO shall accept an enrollee who changes MCOs under this section.

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

(14) Upon enrollment with an MCO, an enrollee shall receive two (2) identification cards:

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

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

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

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

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

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

(17) An MCO shall:
(a) Have continuous open enrollment for new enrollees; and
(b) Accept enrollees regardless of overall enrollment.

18(b)(a) Except as provided in paragraph (b) through (e) of this subsection, a recipient eligible to enroll with an MCO shall be enrolled beginning with the first day of the month that the enrollee applied for Medicaid.
(b) A newborn shall be enrolled beginning with the newborn’s date of birth.
(c) An unemployed parent shall be enrolled beginning with the date the unemployed parent met the definition of unemployment in accordance with 45 C.F.R. 233.100.
(d) If an enrollee is retroactively determined eligible for Medicaid, the retroactive eligibility, except for an individual who has been determined to be eligible for SSI benefits, shall be for a period up to three (3) months prior to the month that the enrollee applied for Medicaid.
2. Except as established in paragraph (f) of this subsection, an MCO shall be responsible for reimbursing for covered services provided to a retroactively determined eligible individual referenced in subparagraph 1 of this paragraph during the individual’s retroactive eligibility period.
(e) If an enrollee is retroactively determined eligible for Medicaid as a result of being determined retroactively eligible for SSI benefits:
1. The individual’s enrollment date with an MCO shall be the first day of the month following the month in which the department is notified of the individual’s retroactive eligibility for SSI benefits; and
2. The department shall be responsible for reimbursing for any services provided during the retroactive eligibility period for an individual determined to be retroactively eligible for SSI benefits.
(f) In addition to the reimbursement obligation described in paragraph (e)2. of this subsection, the department shall be responsible for reimbursing for services provided to an individual:
1. Determined to be retroactively eligible for any portion of the retroactive eligibility period which occurred prior to November 1, 2011 for regions one (1), two (2), four (4), five (5), six (6), seven (7) and eight (8) if the individual has a retroactive eligibility period prior to November 1, 2011; or
2. Determined to be retroactively eligible for any portion of the retroactive eligibility period which occurred prior to January 1, 2013 for region three (3) if the individual has a retroactive eligibility period prior to January 1, 2013; or
2(f) The policy stated in paragraph (e)2. and (f)2. of this subsection shall be effective January 1, 2013.
(19) For an enrollee whose eligibility resulted from a successful appeal of a denial of eligibility, the enrollment period shall begin:
(a)1. On the first day of the month of the original application for eligibility; or
(b)2. On the first day of the month of retroactive eligibility as referenced in subsection (18)(d) or (e) of this section, if applicable; and
(b) No earlier than:
1. November 1, 2011 for regions one (1), two (2), four (4), five (5), six (6), seven (7), and eight (8); or
2. January 1, 2013 for region three (3).
20) A provider shall be responsible for verifying an individual’s eligibility for Medicaid and enrollment in a managed care organization when providing a service.

Section 2. Disenrollment. (1) The policies established in 42 C.F.R. 438.56 shall apply to an MCO.
(2) Only the department shall have the authority to disenroll a recipient beginning with:
(3) A disenrollment of a recipient from an MCO shall:
(a) Become effective on the first day of the month following disenrollment; and
(b) Occur:
1. If the enrollee:
   a. No longer resides in an area served by the MCO; or
   b. Becomes incarcerated or deceased; or
   c. Is exempt from managed care enrollment in accordance with Section 1(3) of this administrative regulation; or
2. In accordance with 42 C.F.R. 438.56.
(4) An MCO may recommend to the department that an enrollee be disenrolled if the enrollee:
(a) Is found guilty of fraud in a court of law or administratively determined to have committed fraud related to the Medicaid Program;
(b) Is abusive or threatening but not for uncooperative or disruptive behavior resulting from his or her special needs (except if his or her continued enrollment in the MCO seriously impairs the entity’s ability to furnish services to either this particular enrollee or other enrollees) pursuant to 42 C.F.R. 438.56(b)(2);
(c) Becomes deceased; or
(d) No longer resides in an area served by the MCO.
(5) An enrollee shall not be disenrolled by the department, nor shall the managed care organization recommend disenrollment of an enrollee, due to an adverse change in the enrollee’s health.
(6) An approved disenrollment shall be effective no later than the first day of the second month following the month the enrollee or the MCO files a request in accordance with 42 C.F.R. 438.56(e)(1).
(7) If an enrollee is disenrolled from an MCO, the:
(a) Enrollee shall be enrolled with a new MCO if the enrollee is:
   1. Eligible for Medicaid; and
   2. Not excluded from managed care participation; and
(b) MCO shall:
   1. Assist in the selection of a new primary care provider, if requested;
   2. Cooperate with the new primary care provider in transitioning the enrollee’s care; and
   3. Make the enrollee’s medical record available to the new primary care provider in accordance with state and federal law.
(8) An MCO shall notify the department or Social Security Administration in an enrollee’s county of residence within five (5) working days of receiving notice of the death of an enrollee.

Section 3. Enrollee Rights and Responsibilities. (1) An MCO shall have written policies and procedures:
(a) To protect the rights of an enrollee that includes the:
   1. Protection against liability for payment in accordance with 42 U.S.C. 1396u-2(b)(6);
   2. Rights specified in 42 C.F.R. 438.100;
   3. Right to prepare an advance medical directive pursuant to KRS 311.671 through KRS 311.643;
   4. Right to choose and change a primary care provider;
   5. Right to file a grievance or an appeal;
   6. Right to receive assistance in filing a grievance or an appeal; the
   7. Right to a state fair hearing;
   8. Right to a timely referral and access to medically indicated specialty care; and
   9. Right to access the enrollee’s medical records in accordance with federal and state law; and
(b) Regarding the responsibilities of enrollees that include the responsibility to:
   1. Become informed about:
      a. Enrollee rights specified in paragraph (a) of this subsection; and
      b. Service and treatment options;
   2. Abide by the MCO’s and department’s policies and procedures;
   3. Actively participate in personal health and care decisions;
   4. Report suspected fraud or abuse; and
   5. Keep appointments or call to cancel if unavailable to keep an appointment.
(2) The information specified in subsection (1) of this section shall meet the information requirements established in 42 C.F.R. 438.10.

Section 4. MCO Internal Appeal Process. (1) An MCO shall have written policies and procedures describing how an enrollee shall submit a request for:
(a) A grievance with the MCO;
(b) An appeal with the MCO; or
(c) A state fair hearing in accordance with KRS Chapter 13B. (2) An enrollee shall have thirty (30) calendar days from the date of an event causing dissatisfaction to file a grievance orally or in writing with the MCO.

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

(b) An investigation and final resolution of a grievance shall:
1. Be completed within thirty (30) calendar days of the date the grievance is received by the MCO; and
2. Include a resolution letter to the enrollee that shall include:
   a. All information considered in investigating the grievance;
   b. Findings and conclusions based on the investigation; and
   c. The disposition of the grievance.

(3) An MCO shall have an internal appeal process in place that allows an enrollee to challenge a denial of coverage of, or payment for, a service in accordance with 42 C.F.R. 438.400 through 438.424 and 42 U.S.C. 1396u-2(b)(4).

(4)(a) A provider shall not be an authorized representative of an enrollee without the enrollee’s written consent for the specific action that is being appealed or that is the subject of a state fair hearing.

(b) The written consent referenced in paragraph (a) of this subsection shall be signed and dated by the enrollee no earlier than the date of the MCO’s action.

(5) A legal guardian of an enrollee who is a minor or an incapacitated adult or an authorized representative of an enrollee in accordance with subsection (4) of this section shall have the right to file an appeal on behalf of the enrollee.

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

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

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

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

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

(b) An MCO shall confirm in writing receipt of an oral appeal unless an expedited resolution has been requested.

(11) An MCO shall extend the thirty (30) day timeframe for resolution of an appeal established in subsection (7) of this section by fourteen (14) calendar days if:
1. The enrollee requests the extension; or
2. The MCO demonstrates to the department that there is need for additional information; and
3. The extension is in the enrollee’s interest.

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

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

(b) The provider shall:
1. Give a copy of the notice to the enrollee; or
2. Inform the enrollee of the provisions of the notice.

(14) An MCO shall:
1. Provide benefits to an enrollee, if the enrollee requested a continuation of benefits, until one (1) of the following occurs:
   1. The enrollee withdraws the appeal;
   2. Fourteen (14) days have passed since the date of the resolution letter, if the resolution of the appeal was against the enrollee and the enrollee has not requested a state fair hearing or taken any further action; or
   3. A state fair hearing decision adverse to the enrollee has been issued;

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

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

(d) Extend the timeframe for an expedited appeal established in paragraph (c) of this subsection by up to fourteen (14) calendar days if:
1. The enrollee requests the extension; or
2. The MCO demonstrates to the department that there is need for additional information; and
3. The extension is in the enrollee’s interest.

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

(16) If an MCO denies a request for an expedited resolution of an appeal, it shall:
1. Transfer the appeal to the thirty (30) day timeframe for a standard resolution, in which the thirty (30) day period shall begin on the date the MCO received the original request for appeal;
2. Give prompt oral notice of the denial; and
3. Follow up with a written notice within two (2) calendar days of the denial.

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

(18) An MCO shall:
(a) Provide information specified in 42 C.F.R. 438.10(g)(1) about the grievance system to a service provider and a subcontractor at the time they enter into a contract;
(b) Maintain a grievance or an appeal file in a secure and designated area;
(c) Make a grievance or an appeal file accessible to the department or its designee upon request;
(d) Retain a grievance or an appeal file for ten (10) years following a final decision by the MCO, the department, an administrative law judge, judicial appeal, or closure of a file, whichever occurs later;
(e) Have procedures for assuring that a grievance or an appeal file contains:
   1. Information to identify the grievance or appeal;
   2. The date a grievance or appeal was received;
   3. The nature of the grievance or appeal;
   4. A notice to the enrollee of receipt of the grievance or appeal;
   5. Correspondence between the MCO and the enrollee;
   6. The date the grievance or appeal is resolved;
   7. The decision made by the MCO of the grievance or appeal;
   8. The notice of a final decision to the enrollee; and
   9. Information pertaining to the grievance or appeal; and
(f) Make available to an enrollee documentation regarding a grievance or an appeal.

(19) An MCO shall designate an individual to:
(a) Execute the policies and procedures for resolution of a grievance or appeal;
(b) Review patterns or trends in grievances or appeals; and
(c) Initiate a corrective action, if needed.

(20) If an MCO takes adverse action at the conclusion of an internal appeal process, the MCO shall issue an adverse action letter to the enrollee that complies with KRS 13B.050(3)(d) and (e).

(21)(a) The requirements and policies stated in this section of this administrative regulation regarding an MCO appeal shall apply to an MCO.

(b) If a requirement or policy regarding an appeal or an MCO appeal stated in another Kentucky administrative regulation within Title 907 of the Kentucky Administrative Regulations contradicts a requirement or policy regarding an MCO appeal that is stated in this section of this administrative regulation, the requirement or policy stated in the other administrative regulation shall not apply to an MCO.

Section 5. Department’s State Fair Hearing for an Enrollee. (1) An enrollee shall have a right to a state fair hearing administered by the department in accordance with KRS Chapter 13B only after exhausting an MCO’s internal appeal process.

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

(3)(a) An enrollee or authorized representative may request a state fair hearing by filing a written request with the department.

(b) If an enrollee or authorized representative requests a hearing, the request shall:
1. Be in writing and specify the reason for the request;
2. Indicate the date of service or the type of service denied; and
3. Be postmarked or filed within forty five (45) days from the date of the MCO adverse action letter issued at the conclusion of the MCO internal appeal process.

(4) A document supporting an MCO’s adverse action shall be:
(a) Received by the department no later than five (5) days from the date a notice is sent to the MCO from the department that a request for a state fair hearing has been filed by an enrollee; and
(b) Made available to an enrollee upon request by either the enrollee or the enrollee’s legal counsel.

(5) An automatic ruling shall be made by the department in favor of an enrollee if an MCO fails to:
(a) Comply with the requirements of:
1. Section 4 of this administrative regulation; and
2. Subsection (4) of this section; or
(b) Participate in and present evidence at the state fair hearing.

Section 6. Member Services. (1) An MCO shall have a member services function that includes a member call center and a behavioral health call center that shall:
(a) Be staffed Monday through Friday from 7:00 a.m. to 7:00 p.m. Eastern Time; and
(b) Meet the call center standards, which shall:
1. Be approved by the American Accreditation Health Care Commission or Utilization Review Accreditation Committee (URAC); and
2. Include provisions addressing the call center abandonment rate, blockage rate, and average speed of answer.

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

(b) The call-in system shall be staffed by medical professionals to include:
1. Physicians;
2. Physician assistants;
3. Licensed practical nurses; or
4. Registered nurses.

(3) An MCO shall:
(a) Provide foreign language interpreter services, free of charge, for an enrollee.
(b) Respond to the special communication needs of the disabled, blind, deaf, or aged;
(c) Facilitate direct access to a specialty physician for an enrollee;
1. With a chronic or complex health condition;
2. Who is aged, blind, deaf, or disabled; or
3. Identified as having a special healthcare need and requiring a course of treatment or regular healthcare monitoring;
(d) Arrange for and assist with scheduling an EPSDT service in conformance with federal law governing EPSDT;
(e) Provide an enrollee with information or refer the enrollee to a support service;
(f) Facilitate direct access to a covered service in accordance with 907 KAR 17:020;
(g) Facilitate access to:
1. Behavioral health service;
2. Pharmaceutical service; or
3. Service provided by a public health department, community mental health center, rural health clinic, federally qualified health center, the Commission for Children with Special Health Care Needs, or a charitable care provider;
(h) Assist an enrollee in:
1. Scheduling an appointment with a provider;
2. Obtaining transportation for an emergency or non-emergency service;
3. Completing a health risk assessment; or
4. Accessing an MCO health education program;
(i) Process, record, and track an enrollee grievance and appeal; or
(j) Refer an enrollee to case management or disease management.

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

(2) The following shall not be required to have, but may request, a primary care provider:
(a) A dual eligible;
(b) A child in foster care;
(c) A child under the age of eighteen (18) years who is disabled; or
(d) A pregnant woman who is presumptively eligible pursuant to 907 KAR 1:810.

(3)(a) For an enrollee who is not receiving supplemental security income benefits:
1. An MCO shall notify the enrollee within ten (10) days of notification of enrollment by the department of the procedure for choosing a primary care provider; and
2. If the enrollee does not choose a primary care provider, an MCO shall assign to the enrollee a primary care provider who:
   a. Has historically provided services to the enrollee;
   b. Meets the requirements of subsection (6) of this section.
(b) If no primary care provider meets the requirements of paragraph (a)2 of this subsection, an MCO shall assign the enrollee to a primary care provider who is within:
1. Thirty (30) miles or thirty (30) minutes from the enrollee’s residence if the enrollee is in an urban area; or
2. Forty-five (45) miles or forty-five (45) minutes from the enrollee’s residence if the enrollee is in a rural area.

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

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

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

(d) If an enrollee has not chosen a primary care provider after the third notice, the MCO shall assign a primary care provider.

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

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

(b) At least one (1) of the two (2) primary care providers referenced in paragraph (a) of this subsection shall be a physician.

(6) A primary care provider shall:
(a) Be a licensed or certified health care practitioner who functions within the provider’s scope of licensure or certification, including:
1. A physician;
2. An advanced practice registered nurse;
3. A physician assistant; or
4. A clinic, including a primary care center, federally qualified health center, or rural health clinic;
(b) Have admitting privileges at a hospital or a formal referral agreement with a provider possessing admitting privileges;
(c) Agree to provide twenty-four (24) hours a day, seven (7) days a week primary health care services to enrollees; and
(d) For an enrollee who has a gynecological or obstetrical health care need, a disability, or chronic illness, be a specialist who agrees to provide or arrange for primary and preventive care.

(7) Upon enrolment in an MCO, an enrollee shall have the right to change primary care providers:
(a) Within the first ninety (90) days of assignment;
(b) Once a year regardless of reason; or
(c) At any time for a reason approved by the MCO;
(d) If during a temporary loss of eligibility, an enrollee loses the opportunity provided by paragraph (b) of this subsection;
(e) If Medicare or Medicaid imposes a sanction on the PCP;
(f) If the PCP is no longer in the MCO provider network; or
(g) At any time with cause which shall include the enrollee:
   1. Receiving poor quality of care;
   2. Lacking access to providers qualified to treat the enrollee’s medical condition; or
   3. Being denied access to needed medical services.

(8) A PCP shall not be able to request the reassignment of an enrollee to a different PCP for the following reasons:
   (a) A change in the enrollee’s health status or treatment needs;
   (b) An enrollee’s utilization of health services;
   (c) An enrollee’s diminished mental capacity; or
   (d) Disruptive behavior of an enrollee due to the enrollee’s special health care needs unless the behavior impairs the PCP’s ability to provide services to the enrollee or others.

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

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

(11) An enrollee shall be able to obtain the following services outside of an MCO’s provider network:
   (a) A family planning service in accordance with 42 C.F.R. 431.51;
   (b) An emergency service in accordance with 42 C.F.R. 438.114;
   (c) A poststabilization service in accordance with 42 C.F.R. 438.114 and 42 C.F.R. 422.113(c); or
   (d) An out-of-network service that an MCO is unable to provide within its network to meet the medical need of the enrollee in accordance with 42 C.F.R. 438.206(b)(4) subject to any prior authorization requirements of the MCO.

(12) An MCO shall:
   (a) Notify an enrollee within:
      1. Thirty (30) days of the effective date of a voluntary termination of the enrollee’s primary care provider; or
      2. Fifteen (15) days of an involuntary termination of the enrollee’s primary care provider; and
   (b) Assist the enrollee in selecting a new primary care provider.

Section 8. Member Handbook. (1) An MCO shall:
   (a) Send a member handbook to an enrollee, by a method that shall not take more than three (3) days to reach the enrollee, within five (5) business days of enrollment;
   (b) Review the member handbook at least annually;
   (c) Communicate a change to the member handbook to an enrollee in writing; and
   (d) Add a revision date to the member handbook after revising the member handbook.

(2) A member handbook shall:
   (a) Be available:
      1. In hardcopy in English, Spanish, and any other language spoken by at least five (5) percent of the potential enrollee or enrollee population; and
      2. On the MCO’s Web site;
   (b) Be written at no higher than a sixth grade reading comprehension level; and
   (c) Include at a minimum the following information:
      1. The MCO’s network of primary care providers, including the names, telephone numbers, and service site addresses of available primary care providers, and, if desired by the MCO, the names and contact information for other providers included in the MCO’s network;
      2. The procedures for:
         a. Selecting a PCP and scheduling an initial health appointment;
         b. Obtaining:
            (i) Emergency or non-emergency care after hours;
            (ii) Transportation for emergency or non-emergency care;
            (iii) An EPSDT service;
            (iv) A covered service from an out-of-network provider; or
            (v) A long term care service;
         c. Notifying DCBS of a change in family size or address, a birth, or a death of an enrollee;
   (d)(i) Selecting or requesting to change a PCP;
   (ii) A reason a request for a change may be denied by the MCO;
   (iii) A reason a provider may request to transfer an enrollee to a different PCP; and
   e. Filing a grievance or appeal, including the title, address, and telephone number of the person responsible for processing and resolving a grievance or appeal;
   3. The name of the MCO, address, and telephone number from which it conducts its business;
   4. The MCO’s:
      a. Business hours; and
      b. Member service and toll-free medical call-in telephone numbers;
   5. Covered services, an explanation of any service limitation or exclusion from coverage, and a notice stating that the MCO shall be liable only for those services authorized by the MCO, except for the services excluded in Section 7(11) of this administrative regulation;
   6. Member rights and responsibilities;
   7. For a life-threatening situation, instructions to use the emergency medical services available or to activate emergency medical services by dialing 911;
   8. Information on:
      a. The availability of maternity and family planning services, and for the prevention and treatment of sexually transmitted diseases;
      b. Accessing the services referenced in clause a. of this subparagraph;
      c. Accessing care before a primary care provider is assigned or chosen;
      d. The Cabinet for Health and Family Services’ independent ombudsman program; and
      e. The availability of, and procedures for, obtaining:
         (i) A behavioral health or substance abuse service;
         (ii) A health education service; and
         (iii) Care coordination, case management, and disease management services;
   9. Direct access services that may be accessed without a referral; and
   10. An enrollee’s right to obtain a second opinion and information on obtaining a second opinion; and
   (d) Meet the information requirements established in Section 11 of this administrative regulation.

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

Section 9. Member Education and Outreach. (1) An MCO shall:
   (a) Have an enrollee and community education and outreach program throughout the MCO’s service area;
   (b) Submit an annual outreach plan to the department for approval;
   (c) Assess the homeless population within its service area by implementing and maintaining an outreach plan for homeless individuals, including victims of domestic violence; and
   (d) Not differentiate between a service provided to an enrollee who is homeless and an enrollee who is not homeless.

(2) An MCO’s outreach plan shall include:
   (a) Utilizing existing community resources including shelters and clinics; and
   (b) Face-to-face encounters.

Section 10. Enrollee Non-Liability and Liability for Payment. (1)(a) Except as specified in 907 KAR 17:030, an enrollee shall not be required to pay for a medically necessary covered service provided by the enrollee’s MCO.

(b) An enrollee may be liable for the costs of services received during an appeal process in accordance with:
   1. 907 KAR 17:025, Section 2(3)(b)(2a);
   2. 42 C.F.R. 431.210; or

(2)(a) An MCO shall not impose cost sharing on an enrollee greater than the limits established by the department in 907 KAR
(b) An MCO operating in Region 3 shall not impose cost sharing on an enrollee enrolled with the MCO in Region 3 prior to January 1, 2014.

Section 11. Provision of Information Requirements. (1) An MCO shall:

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

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

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

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

(b) Be published in at least a fourteen (14) point font;

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

(d) Be updated as necessary to maintain accuracy;

(e) Be available in print or an audio format for an individual who is partially blind or blind; and

(f) Be provided and printed in each language spoken by five (5) percent or more of the enrollees in each county.

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

(b) Written material submitted to the department for review by an MCO shall be considered approved by the department if the department does not object or notify an MCO within:

1. Thirty (30) days regarding a standard submission; or

2. Five (5) days regarding an expedited submission.

(c)(1) Written material submitted to the department for review and approval shall be considered received for review beginning with the date that the commissioner or a deputy commissioner of the department acknowledges, to the MCO, receipt of the submission.

2. The acknowledgement referenced in subparagraph 1 of this paragraph may be demonstrated by evidence of a return receipt if sent via U.S. Mail, a read receipt if sent via e-mail, or the signature of a Cabinet for Health and Family Services employee taking receipt of the submission in the case of hand-delivery, including overnight mail or courier delivery.

Section 12. Confidentiality of Medical Information. (1) An MCO shall:

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

(b) Prevent unauthorized disclosure of the information referenced in this subsection in accordance with KRS 194A.060, KRS 214.185, KRS 434.840 to 434.860, and 42 C.F.R. 431 Subpart F, 431.300 to 431.307;

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

(d) Comply with 42 U.S.C. 1320d-2, the Health Insurance Portability and Accountability Act, and 45 C.F.R. Parts 160 and 164;

(e) On behalf of its employees and agents:

1. Sign a confidentiality agreement attesting that it will comply with the confidentiality requirements established in this section; and

2. Submit the confidentiality agreement referenced in subparagraph 1 of this paragraph to the department;

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

(g) Submit a request for disclosure of information referenced in this subsection which has been received by the MCO to the department within twenty-four (24) hours.

(2) Information referenced in subsection (1)(g) of this section shall not be disclosed by an MCO pursuant to the request without prior written authorization from the department.

Section 13. Americans with Disabilities Act and Cabinet Ombudsman. (1) An MCO shall:

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

1. The requirements established in 42 U.S.C. Chapter 126, the Americans with Disabilities Act; and

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

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

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

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

Section 14. Marketing. (1) An MCO shall:

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

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

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

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

(e) Not conduct face-to-face marketing;

(f) Not use fraudulent, misleading, or misrepresentative information in its marketing materials;

(g) Not offer material or financial gain to a:

1. Potential enrollee as an inducement to select a particular provider or use a product; or

2. Person for the purpose of soliciting, referring, or otherwise facilitating the enrollment of an enrollee;

(h) Not conduct:

1. Direct telephone marketing to enrollees or potential enrollees who do not reside in the MCO service area; or

2. Direct or indirect door-to-door, telephone, or other cold-call marketing activity;

(i) Not include in its marketing materials an assertion or statement that the Centers for Medicare and Medicaid Services (CMS), the federal government, the Commonwealth, or another entity endorses the MCO.

(2) An MCO's marketing material shall meet the information requirements established in Section 11 of this administrative regulation.

Section 15. Legal Guardians. (1) A parent, custodial parent, person exercising custodial control or supervision, or an agency with a legal responsibility for a child by virtue of a voluntary commitment or of an emergency or temporary custody order shall be authorized to act on behalf of an enrollee who is under the age of eighteen (18) years, a potential enrollee, or a former enrollee for the purposes of:

(a) Selecting a primary care provider;

(b) Filing a grievance or appeal; or

(c) Taking an action on behalf of the child regarding an interaction with an MCO.

(2)(a) A legal guardian who has been appointed pursuant to KRS 387.500 to 387.800 shall be allowed to act on behalf of an enrollee who is a ward of the Commonwealth.

(b) A person authorized to make a health care decision pursuant to KRS 311.621 to 311.643 shall be allowed to act on behalf of an enrollee, potential enrollee, or former enrollee.

(c) An enrollee shall have the right to:

1. Represent the enrollee; or

2. Use legal counsel, a relative, a friend, or other spokesperson.

Section 16. Enrollee Surveys. (1) An MCO shall:

(a) Conduct an annual survey of enrollee satisfaction of the
quality and accessibility to a service provided by an MCO;
(b) Satisfy a member satisfaction survey requirement by participating in the Agency for Health Research and Quality’s current Consumer Assessment of Healthcare Providers and Systems Survey (CAHPS) for Medicaid Adults and Children, which shall be administered by an NCQA-certified survey vendor;
(c) Provide a copy of the current CAHPS survey referenced in paragraph (b) of this subsection to the department;
(d) Annually assess the need for conducting other surveys to support quality and performance improvement initiatives;
(e) Submit to the department for approval the survey tool used to conduct the survey referenced in paragraph (a) of this subsection; and
(f) Provide to the department:
1. A copy of the results of the enrollee surveys referenced in paragraph (a) of this subsection;
2. A description of a methodology to be used to conduct surveys;
3. The number and percentage of enrollees surveyed;
4. Enrollee survey response rates;
5. Enrollee survey findings; and
6. Interventions conducted or planned by the MCO related to activities in this section.

Section 17. Enrollees with Special Health Care Needs. (1) [a] In accordance with 42 C.F.R. 438.208:

1. [a][1] The following shall be considered an individual with a special health care need:
   a. [1] A child in or receiving foster care or adoption assistance;
   b. [2] A homeless individual;
   c. [a] An individual with a chronic physical or behavioral illness;
   d. [4] A blind or disabled child;
   e. [5] An individual who is eligible for SSI benefits; or
   f. [6] An adult who is a ward of the Commonwealth in accordance with 910 KAR Chapter 2; and

(b) In accordance with 42 C.F.R. 438.208, an MCO shall:
1. Have a process to target enrollees for the purpose of screening and identifying those with special health care needs;
2. Assess each enrollee identified by the department as having a special health care need to determine if the enrollee needs case management or regular care monitoring;
3. Include the use of appropriate health care professionals to perform an assessment; and
4. Have a treatment plan for an enrollee with a special health care need who has been determined, through an assessment, to need a course of treatment or regular care monitoring.

(c) 1. An enrollee who is a child in foster care or receiving adoption assistance shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DCBS prior to being enrolled with the MCO.

2. a. The service plan referenced in paragraph (a) of this subsection shall be used by DCBS and the MCO to determine the enrollee’s medical needs and to identify if there is a need for case management.
   b. The MCO shall be available to meet with DCBS at least once a month to discuss the health care needs of the child as identified in the service plan.
   c. If a service plan identifies the need for case management or DCBS requests case management for an enrollee, the foster parent of the child or DCBS shall work with the MCO to develop a case management plan of care.
   d. The MCO shall consult with DCBS prior to developing or modifying a case management plan of care.
   e. If the service plan accomplishes a requirement stated in paragraph (b) of this subsection, the requirement stated in subsection (b) shall be considered to have been met.

2. A treatment plan referenced in subsection (1)(b)4 of this section shall be developed:
   a. With participation from the enrollee or the enrollee’s legal guardian as referenced in Section 15 of this administrative regulation; and
   b. By the enrollee’s primary care provider, if the enrollee has a primary care provider.

3. An MCO shall:
   a. Develop materials specific to the needs of an enrollee with a special health care need; and
   b. Provide the materials referenced in subparagraph 1. of this paragraph to the enrollee, caregiver, parent, or legal guardian;
   c. Provide a copy of the enrollee's medical needs and identify the need for case management;
   d. Be responsible for the ongoing care coordination for an enrollee with a special health care need;

4. The information referenced in subsection (3)(a) of this section shall include health educational material to assist the enrollee with a special health care need or the enrollee's caregiver, parent, or legal guardian in understanding the enrollee's special need.
5. (a) An enrollee who is a child in foster care or receiving adoption assistance shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DCBS prior to being enrolled with the MCO.
   b. The service plan referenced in paragraph (a) of this subsection shall be used by DCBS and the MCO to determine the enrollee’s special health care need; and
   c. Be responsible for the ongoing care coordination for an enrollee with a special health care need.
   d. The information referenced in subsection (3)(a) of this section shall be considered to have been met.

5. (a) An enrollee who is a child in foster care or receiving adoption assistance shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DCBS prior to being enrolled with the MCO.
   b. The service plan referenced in paragraph (a) of this subsection shall be used by DCBS and the MCO to determine the enrollee’s special health care need; and
   c. Be responsible for the ongoing care coordination for an enrollee with a special health care need.
   d. The information referenced in subsection (3)(a) of this section shall be considered to have been met.

6. Interventions conducted or planned by the MCO shall:
   a. Consult with DCBS prior to developing or modifying a case management plan of care.
   b. If a service plan identifies the need for case management or DCBS requests case management for an enrollee, the foster parent of the child or DCBS shall work with the MCO to develop a case management plan of care.
   c. The MCO shall consult with DCBS prior to developing or modifying a case management plan of care.

7. An enrollee who is a ward of the Commonwealth shall be coordinated with an MCO through a service plan that shall be completed for the enrollee by DCBS prior to being enrolled with the MCO.
8. (a) An enrollee who is a ward of the Commonwealth shall be coordinated with an MCO through a service plan that shall be completed for the enrollee by DCBS prior to being enrolled with the MCO.

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

Section 18. Second Opinion. An enrollee shall have the right to a second opinion within the MCO’s provider network for a surgical procedure or diagnosis and treatment of a complex or chronic condition.

Section 19. Centers for Medicare and Medicaid Services Approval and Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

1. Denies or does not provide federal financial participation for the policy; or
2. Disapproves the policy.

LAWRENCE KISSNER, Commissioner
Audrey Tayse Haynes, Secretary
APPROVED BY AGENCY: April 5, 2013
FILED WITH LRC: April 5, 2013 at 11 a.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, email 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 is a new
administrative regulation which establishes Kentucky Medicaid program managed care organization (MCO) requirements and policies relating to providers. Previously, those policies were contained in one (1) administrative regulation - (907 KAR 17:005) - which contained over 100 pages and 300 pages of policies related to the MCO operating in region three (3). Region three (3) is a sixteen (16) county region which includes Jefferson County and previously only contained one (1) MCO. A separate regulation, 907 KAR 1:705, established the requirements and policies for the lone MCO in region three (3). The contract between DMS and the lone MCO in region three (3) is expiring and earlier this year DMS published a request for proposal for bids to replace the lone MCO in region three (3). Through that process DMS awarded contracts with four (4) entities – including the incumbent entity that was the sole region three (3) entity. As a result DMS is repealing 907 KAR 1:705 and establishing uniform requirements and policies for MCOs for all regions – one set of requirements and policies. DMS is doing this by addressing MCO requirements and policies across regulations rather than the aforementioned 907 KAR 17:005. DMS is dividing the policies across multiple regulations in response to urging from the Administrative Regulation Review Subcommittee when it reviewed 907 KAR 17:005 earlier this year. Thus, this is a new administrative regulation but it contains policies that were previously stated in 907 KAR 17:005. Though this is a new administrative regulation, it does contain some amended policies or requirements and policies across six (6) administrative regulations: This administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by clarifying or enhancing Medicaid managed care organization policies and requirements based on a year of experience and analysis.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amendment after comments conforms to the content of the authorizing statutes by establishing Medicaid managed care organization requirements and policies relating to individuals enrolled with a managed care organization. The amended policies conform to the content of the authorizing statutes by clarifying or enhancing Medicaid managed care organization policies and requirements based on a year of experience and analysis.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by clarifying or enhancing Medicaid managed care organization policies and requirements based on a year of experience and analysis.

(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 after comments clarifies that a managed care enrollee may be liable for the costs of services received during an appeal process if the enrollee ultimately loses the appeal; clarifies that managed care organizations cannot impose cost sharing on enrollees in Region three (3) (Jefferson and surrounding counties) until January 1, 2014; and clarifies policy regarding enrollees with special health care needs.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to clarify policy. Additionally, Region 3 cost sharing is prohibited for the first year because previously there was only one (1) managed care organization operating in the region. DMS has contracted with the three (3) additional managed care organizations for the region and consequently DMS had to establish a uniform cost sharing policy for the region in order to prevent the incumbent managed care organization from having a competitive advantage against the three (3) managed care organizations that are new to the area. DMS had the option of imposing no cost sharing for year one (1) in the region or of requiring DMS’s cost sharing to be imposed for year one (1). As the incumbent managed care organization previously established minimal cost sharing for individuals in the region (compared to DMS’s cost sharing for Medicaid recipients in the fee-for-service realm), DMS opted to require no cost sharing in the region for year one (1) as this would ease the transition for enrollees in the region.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment after comments conforms to the content of the authorizing statutes by clarifying or enhancing Medicaid managed care organization policies and requirements relating to the incumbent managed care organization in Region 3 from gaining a competitive advantage against the three (3) managed care organizations that are new to the area. This administrative regulation currently assists or will assist in the effective administration of the statutes by clarifying policy, preventing the incumbent managed care organization in Region 3 from gaining a competitive advantage against newcomer managed care organizations, and by maintaining consistency between the regulation and contracts with the managed care organizations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment after comments will assist in the effective administration of the authorizing statutes by clarifying policy, preventing the incumbent managed care organization in Region 3 from gaining a competitive advantage against newcomer managed care organizations, and by maintaining consistency between the regulation and contracts with the managed care organizations.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid providers who participate with any or all managed care organizations, Medicaid recipients enrolled in managed care (currently there are over 700,000 such individuals) and the four (4) managed care organizations providing Medicaid covered services under contract with the Commonwealth will be affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As a result of the amendment after
comments, managed care organizations are prohibited from imposing cost sharing on enrollees enrolled in Region 3 (Jefferson and surrounding counties) until January 1, 2014.
(b) In complying with this administrative regulation or amendment, states must determine how much it will cost each of the entities identified in question (3). No cost is imposed as a result of the amendment after comments.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The managed care organizations will benefit by being able to participate in the Kentucky Medicaid program.

1. Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: No cost is necessary to implement the amendment to this administrative regulation. DMS’s projected managed care expenditures for state fiscal year (SFY 2013) are $3,198,870,633.
   (b) On a continuing basis: No cost is necessary to implement the amendment to this administrative regulation. DMS’s projected managed care expenditures for state fiscal year (SFY 2013) are $3,303,448,347.
2. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.
3. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.
4. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly or indirectly increases any fees.
5. Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering is neither applied nor necessary as the policies apply equally to the regulated entities.

**FEDERAL MANDATE ANALYSIS COMPARISON**

1. Federal statute or regulation constituting the federal mandate. A managed care program is not federally mandated for Medicaid programs; however, there are federal requirements for states which implement managed care and those requirements are contained in 42 C.F.R. Part 438. This administrative regulation established MCO requirements and policies regarding individuals enrolled in a managed care organization. Those requirements are established in 42 C.F.R. 438.10; 42 C.F.R. 438.56, 42 C.F.R. 438.62, 42 C.F.R. 438.66, 42 C.F.R. 438.100-108, 42 C.F.R. 438.224-228 and 42 C.F.R. 438.400 – 408.
2. State compliance standards. KRS 205.520(3) states, “Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary’s power in this respect.” Part I, Section G. Budget Unit 3. a.(b)(17) of House Bill 265 of the 2012 Session of the General Assembly states:
   (17) Appeals: An appeal from denial of a service or services provided by a Medicaid managed care organization for medical necessity, or denial, limitation, or termination of a health care service in a case involving a medical or surgical specialty or subspecialty, shall, upon request of the recipient, authorized person, or provider, include a review by a board-eligible or board-certified physician in the appropriate specialty or subspecialty area; except in the case of a health care service rendered by a chiropractor or optometrist, in which case, denial shall be made, respectively by a chiropractor or optometrist duly licensed in Kentucky as specified in KRS 304.17A-607(1)(b). The physician reviewer shall not have participated in the initial review and denial of service and shall not be the provider of service or services under consideration in the appeal.”
3. Minimum or uniform standards contained in the federal mandate. A managed care program is not federally mandated for Medicaid programs; however, Medicaid managed care organizations must meet certain federal requirements established in 42 C.F.R. Part 438. This administrative regulation establishes most of the requirements regarding individuals enrolled with a managed care organization. Those requirements include: DMS must approve all material to be distributed by anyone intended to affect a Medicaid recipient’s choice of managed care plan; all written material relating to any plan must be designed to be easily understood; alternative formats must be available to meet the needs of individuals with disabilities; if a reading proficiency; written material must be available in every prevalent non-English language in the service area, and oral translation must be available in any non-English language; information required to make a choice about enrollment must be provided in time to help the beneficiary choose; MCOs must make detailed disclosures to enrollees on the provider network and the terms of the plan; all enrollment notices and informational and instructional materials must be in an easily understood form; information concerning providers, enrollee rights and responsibilities, and appeal procedures, and information on covered items and services must be provided; each potential enrollee must be given detailed information about the basic features of managed care generally, the populations who are required, permitted or excluded from enrollment in a managed care plan; DMS must require the MCOs must give Medicaid enrollees the right to appeal adverse decisions which include: 1. The denial or limited authorization of a requested service or level of service; 2. The suspension, termination or reduction of a previously authorized service; 3. The failure to provide services in a timely manner, as defined by the State; 4. The denial, in whole or in part, of payment for a service; 5. The failure of an MCO or PIHP to act within the timeframes provided for grievances and appeals; and 6. For a resident of a rural area with only one MCO, the denial of a Medicaid enrollee’s request to exercise his or her right, under §438.52(b)(2)(ii), to obtain services outside the network. MCOs must have a system which includes an appeal process and access to a state fair hearing process; states, may require the exhaustion of the appeals process before requesting a state fair hearing; an oral request for an appeal must be followed by a signed, written request except when an expedited appeal is requested; MCOs and s must give written notice of an action within specified time limits; the written notice must meet the clarity requirements of 42 C.F.R. §438.10; the notice must state the action taken, give the reason(s) for the action and inform the enrollee of the right and the method to file an appeal, including the procedures for expedited resolution; Notification of decisions to terminate, suspend or reduce services must be given within the time limits required for Medicaid services under 42 C.F.R. Part 431; any appeal of a denial based on medical necessity or of any other action involving clinical issues must be decided by health care professionals who have appropriate clinical expertise in treating the enrollee’s condition; and all appeals must be decided by individuals who were not involved in the decision or in the previous decision of review. DMS must give individuals a choice of at least two managed care entities or managers. In rural areas, eligible individuals must be permitted a choice of at least two physicians or case managers, to the extent that at least two such individuals are available;
Enrollees may terminate or change plans at any time for cause, and may terminate or change plans without cause during the 90-day period beginning on the date on which the individual receives notice of enrollment and at least once annually thereafter; DMS must establish notice of termination requirements as well as a method for establishing enrollment priorities in the event a managed care entity does not have sufficient capacity to enroll all persons seeking enrollment; MCOs must provide that eligible enrollees may not be held liable for: (1) the debts of the organization in the event of its insolvency; (2) services provided to the enrollee if the organization or healthcare provider fails to receive payment from the state for such services; or (3) payments to a provider in excess of the amount that would be owed by the enrollee if the organization had directly provided the services; providers and subcontractors may charge enrollees only for any unpaid cost-sharing amounts that the state has lawfully imposed, not for the difference between the rate the provider agreed to accept from the MCO and the provider's usual fee; all marketing materials must be approved by the state and cannot contain false or materially misleading information; an MCO must distribute marketing materials to its entire service area, may not seek to influence an individual's enrollment with the entity in conjunction with the sale of any other insurance, and must comply with procedures and conditions prescribed by the Health and Human Services (HHS) Secretary to ensure that a potential enrollee is provided accurate oral and written information sufficient to make an informed enrollment decision; and an MCO may not, directly or indirectly, conduct door-to-door, telephone, or other "cold-call" marketing.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this change relates to provision of managed care but does not impose additional or stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A managed care method of administering the program is being implemented but stricter requirements are not imposed. A managed care program is not federally mandated for Medicaid programs.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation. Additionally, county-owned hospitals, university hospitals, local health departments, and primary care centers owned by government entities will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 438 and this administrative regulation authorizes the action taken by this administrative regulation.

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 cost is necessary to implement this amended administrative regulation. DMS's projected managed care expenditures for SFY 2013 are $3,198,870,633.

(d) How much will it cost to administer this program for subsequent years? No cost is necessary to implement this amended administrative regulation. DMS’s projected managed care expenditures for SFY 2014 are $3,303,448,347.

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

Revenues (+/-): Other Explanation:

RELATES TO: KRS 218A.205(3)(a), 314.011(7), 314.042, 314.193(2).

STATUTORY AUTHORITY: KRS 218A.205(3)(a), 314.131(1), 314.131(2).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.193(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)" means the written document pursuant to KRS 314.042(9), (3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS)" means the written document pursuant to KRS 314.042(8).

Section 2. The practice of the advanced practice registered nurse shall be in accordance with the standards and functions defined in the following scope and standards of practice statements for each specialty area:

(1) Scope and Standards of Psychiatric-Mental Health Nursing Practice;
(2) Nursing: Scope and Standards of Practice;
(3) Scope and Standards for Nurse Anesthesia Practice;
(4) Standards for Office-based Anesthesia Practice;
(5) Standards for the Practice of Midwifery;
(6) The Women's Health Nurse Practitioner: Guidelines for Practice and Education;
(7) Pediatric Nursing: Scope and Standards of Practice;
(8) Standards of Practice for Nurse Practitioners;
(9) Scope of Practice for Nurse Practitioners;
(10) Scope and Standards of Practice for the Acute Care Nurse Practitioner;
(11) Neonatal Nursing: Scope and Standards of Practice;
(12) Scope and Standards for Acute and Critical Care Clinical Nurse Specialist Practice; and
(13) Statement on the Scope and Standards of Advanced Practice Nursing in Oncology.

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, and diagnostic tests which are consistent with the scope and standard of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined in KRS 314.011(5).

Section 6. (1) A CAPA-NS shall include the name, address, phone number, and license number of both the advanced practice registered nurse and each physician who is a party to the agreement. It shall also include the specialty area of practice of the advanced practice registered nurse. An advanced practice registered nurse shall, upon request, furnish to the board or its staff, a copy of the CAPA-NS.

(2) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(9)(a), the APRN shall file with the board the "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)".

(3) For purposes of the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall be guided by the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with a CAPA-CS shall report all of his or her United States Drug Enforcement Agency (DEA) Controlled Substance Registration Certificate numbers to the board when issued to the APRN by mailing a copy of the registration certificate to the board within thirty (30) days of issuance.

(b) Any change in the status of the DEA Controlled Substance Registration Certificate number shall be reported in writing to the board within thirty (30) days.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1).

Section 8. The board may make an unannounced monitoring visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by 201 KAR Chapter 20, and patient and prescribing records shall be made available for immediate inspection.

Section 9. Prescribing Standards for Controlled Substances. (1)(a) This section shall apply to an APRN with a CAPA-CS when prescribing a controlled substance other than a Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus.

(2) This section shall not apply to:

(a) An APRN prescribing or administering a 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 the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee 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 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 under subsection (1) of this section if the prescribing:
   a. Is done as a substitute for the initial prescribing;
   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 under subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same medical condition.
7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of 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.
8. During the effective period of any disaster or situation with mass casualties which have a direct impact on the APRN’s practice.
9. Administering or prescribing controlled substances to prisoners in a state, county, or municipal correctional facility.
10. Prescribing a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event; or that has been classified as a Schedule V controlled substance (a) Administering or prescribing a controlled substance or anesthesia immediately prior to, during, or for up to seven (7) days following surgery or an invasive procedure;
   (b) Administering a controlled substance necessary to treat a patient in an emergency situation:
      1. At the scene of an emergency;
      2. In a licensed ground or air ambulance; or
      3. In an emergency department of a hospital, except as provided in subsection (11) of this section.
   (c) Prescribing a controlled substance for a hospice patient or any end of life care;
   (d) A patient admitted to a licensed hospital as an inpatient, outpatient, or observation patient, during and as part of the patient’s normal and expected course of care at that hospital;
   (e) A patient who is a registered resident of a long term care facility as defined in KRS 216.510;
   (f) Prescribing during the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN’s practice;
   (g) Prescribing a single dose of a controlled substance to relieve pain, nausea, or vomiting related to a diagnostic test procedure;
   (h) Prescribing a limited amount of a controlled substance for a short period of time for an established patient to assist the patient in responding to the anxiety of a nonrecurring event;
   (i) Treatment associated with cancer;
   (j) Administering or prescribing controlled substances to prisoners in a state or county correctional facility;
   (k) Prescribing of a Schedule V controlled substance; and
   (l) Schedule II controlled substances and Schedule III controlled substances with hydrocodone, as established in KRS 218A.172.
3. The APRN shall, prior to initially prescribing a controlled substance for a medical complaint for a patient:
   (a) Obtain the patient’s medical history, conduct an examination of the patient and document the information in the patient’s medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient’s medical record;
   (b) Query KASPER for all available data on the patient;
   (c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;
   (d) Discuss with the patient, the patient’s parent if the patient is an unemancipated minor child, or the patient’s legal guardian or health care surrogate:
      1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;
      2. That the controlled substance should be discontinued when the condition requiring its use has resolved;
      3. Document that the discussion occurred and that the patient consented to the treatment;
   (4) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.
5. For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:
   (a) Update the patient’s medical history and document the information in the patient’s medical record;
   (b) Modify the treatment plan as clinically appropriate; and
   (c) Discuss the risks and benefits of any new controlled substances prescribed with the patient, the patient’s parent if the patient is an unemancipated minor child, or the patient’s legal guardian or health care surrogate, including the risk of tolerance and drug dependence.
6. During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for all available data on the patient before issuing a new prescription or a refill for a controlled substance.
7. These requirements may be satisfied by other licensed practitioners in a single group practice if:
   (a) Each licensed practitioner involved has lawful access to the patient’s medical record;
   (b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and
   (c) There is adequate documentation in the patient’s medical record reflecting the actions of each practitioner.
8. If prescribing a controlled substance for the treatment of chronic, noncancer pain, the APRN, in addition to the requirements of this section, may obtain a baseline drug screen or further random drug screens if the APRN:
   (a) Deems a drug screen to be clinically appropriate; or
   (b) Believes that it is appropriate to determine whether or not the controlled substance is being taken by the patient.
9. If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section.
10. If prescribing a controlled substance for a patient younger than sixteen (16) years of age, the APRN shall obtain and review an initial KASPER report. If prescribing a controlled substance for an individual sixteen (16) years of age or older, the requirements of this section shall apply.
11. Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation as specified in subsection (2) of this section, the APRN shall:
   (a) Obtain the patient’s medical history, conduct an examination of the patient and document the information in the patient’s medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient’s medical record;
   (b) Query KASPER for all available data on the patient;
   (c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;
   (d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient’s parent if the patient is an unemancipated minor child, or the patient’s legal guardian or health care surrogate, including the risk of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to the treatment.

Section 10. Prescribing Standards for Controlled Substances from Schedule II and Schedule III containing hydrocodone. (1)(a) This section shall apply to an APRN with a CAPA-CS when prescribing a controlled substance from Schedule II or Schedule III containing hydrocodone.
   (b) The APRN shall practice according to the applicable scope and standards of practice for the APRN’s role and population fo-
(2) This section shall not apply to:
(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operation or invasive procedure or the delivery and the medication usage does not extend beyond the fourteen (14) days;
(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or
(c) An APRN prescribing a controlled substance:
1. For administration in a hospital or long-term care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term care facility, or licensee 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 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 under subsection (1) of this section if the prescribing or dispensing:
   a. Is done as a substitute for the initial prescribing;
   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 under subsection (1) of this section if the prescribing is done by another licensee 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 federal wide assurance number from the United States Department of 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.

(2) Prior to the initial prescribing of a Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone to a human patient, an APRN 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 the electronic monitoring system established in KRS 218A.202 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.
(3)(a) An APRN prescribing an additional amount of a Schedule II controlled substance or Schedule III controlled substance containing hydrocodone for the same medical complaint and related symptoms shall:
1. Review the plan of care at reasonable intervals based on the patient's individual circumstances and course of treatment;
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 licensee 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.

(4) For each patient for whom an APRN prescribes a Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone, the licensee 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;
(h) Instructions and agreements; and
(i) Periodic reviews of the patient's file.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
(e) “Standards for the Practice of Midwifery”, 2011 Edition, American College of Nurse-midwives;
(g) "Pediatric Nursing: Scope and Standards of Practice", 2008 Edition, National Association of Pediatric Nurse Practitioners;
(j) "Scope and Standards of Practice for the Acute Care Nurse Practitioner", 2006 Edition. American Association of Critical Care Nurses;
(m) "Statement on the Scope and Standards of Advanced Practice Nursing in Oncology", 2003 Edition, Oncology Nursing Society;
(n) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)", 6/2010, Kentucky Board of Nursing;
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SALLY BAXTER, President
APPROVED BY AGENCY: April 11, 2013
FILED WITH LRC: April 12, 2013 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 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 May 14, 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 May 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman
(1) Provide a brief summary of:
(a) What this administrative regulation does: It sets out the scope and standards of practice for Advanced Practice Registered Nurses (APRN).
(b) The necessity of this administrative regulation: It is required by statute.
(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting out standards.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting out standards.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: House Bill 217 (2013 Regular Session) requires the Board to promulgate administrative regulations on certain matters. The amendment to this administrative regulation involves the requirement of setting prescribing standards for controlled substances.
(b) The necessity of the amendment to this administrative regulation: It is required by House Bill 217.
(c) How the amendment conforms to the content of the authorizing statutes: By setting prescribing standards.
(d) How the amendment will assist in the effective administration of the statutes: It will be in conformity with the statute.
(3) Provide a brief narrative to explain the fiscal impact of the administrative regulation:
(a) What this administrative regulation involves: APRN controlled substance prescribers, presently there are approximately 1500.
(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 first full year the administrative regulation is to be in effect:
(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.
(d) How much will it cost to administer this program for subsequent years? This amendment will not require additional cost of administration.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Nursing.
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131
(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.
(c) How much will it cost to administer this program for the first year? This amendment will not require additional cost of administration.
(d) How much will it cost to administer this program for subsequent years? This amendment will not require additional costs to administer.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:070. Licensure by examination.
RELATES TO: KRS 194A.540, 214.615, 314.041, 314.051(3), (6), 314.470
STATUTORY AUTHORITY: KRS 314.041(2), 314.051(3), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Kentucky Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. This administrative regulation establishes the requirements for the licensure of nurses by examination.

Section 1. Eligibility for Licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program. (1) To be eligible for licensure by examination, an applicant shall:
(a) Submit:
1. A properly executed application for licensure, as required by 201 KAR 20:370, Section 1(1);
2. The licensure application fee as established in 201 KAR 20:240;
3. A completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six
Section 4. Provisional License. (1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.

(2) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are met, but not until the report is received from the FBI and any conviction is addressed by the board.

(b) In the case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480, Section 1(1) and (4) are met.

(3) To qualify as "direct supervision" under KRS 314.041(5) and KRS 314.051(6), the nurse responsible for the applicant shall at all times be physically present in the facility and immediately available to the applicant while the applicant holds a provisional license.

(4) The nurse responsible for the applicant shall be currently licensed or privileged to practice as a nurse in Kentucky.

(5) Upon notification to the board that the applicant has failed the NCLEX examination, the provisional license shall be voided.

Section 5. Practical Nurse Role Delineation Course. (1) A graduate of a board-approved registered nurse program who is unsuccessful on the National Council Licensure Examination for registered nurses may apply for licensure by examination as a licensed practical nurse pursuant to KRS 314.041(13).

(a) Prior to applying for licensure as a practical nurse, the applicant seeking practical nurse licensure pursuant to KRS 314.041(13) shall complete a board-approved practical nursing role delineation course.

(b) The applicant shall return the registered nurse provisional license, if applicable.

(3)(a) The course shall be taken only at an approved LPN program of nursing.

(b) The program of nursing shall seek approval of the course from the board.

(4) The course shall consist of at least eight (8) hours of didactic instruction and sixteen (16) hours of clinical instruction.

(5) At the conclusion of the course, the individual shall be able to make decisions and take actions that are consistent with the scope and standards of practical nursing practice, established policies, procedures, and licensing laws.

(6) The LPN program of nursing shall submit to the board a certified list of individuals who completed the course.

(7) After completion of the practical nurse role delineation course, the applicant shall comply with Section 1 of this administrative regulation.

Section 6. Nurse Licensure Compact Provisions. (1) An applicant who is issued a license and who does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certified List of Kentucky Program of Nursing Graduates", 6/10, Kentucky Board of Nursing; and

(b) "Certified List of Out of State Program of Nursing Graduates", 6/10, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, by the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.
ness May 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 requirements for licensure by examination.
   (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 requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: It will require receipt of the criminal background report from the FBI/KSP before issuing a provisional license to an applicant.
   (b) The necessity of the amendment to this administrative regulation: Absent this amendment it would be possible for an applicant with a serious criminal conviction to obtain a provisional license to practice if they are not truthful on their application.
   (c) How the amendment conforms to the content of the authorizing statutes. The Board is authorized to set requirements.
   (d) How the amendment will assist in the effective administration of the statutes: By setting requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure by examination, number unknown.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to wait to receive a provisional license until the FBI/KSP report is received.
   (b) The necessity of this administrative regulation: The necessity of this administrative regulation or amendment, how much it will 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): There is no benefit to the applicant. However, the public is protected.
   (d) How much will it cost to administer this program for the first year? None.

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

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:085. Licensure periods and miscellaneous requirements.

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073

STATUTORY AUTHORITY: KRS 314.071, 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.071 requires the board to establish licensure periods for licenses issued by the board. This administrative regulation establishes the licensure periods. It also establishes miscellaneous requirements.

Section 1. (1) A nursing license or credential issued during the first six (6) [seven (7)] months of a licensure period shall expire at the end (October 31) of the current licensure period.

(2) A nursing license or credential issued during the last six (6) [five (5)] months of a licensure period shall expire at the end (October 31) of the succeeding licensure period.

Section 2. Licensure Periods. (1) The licensure period for all licenses and credentials, except for provisional, inactive, and retired status licenses, shall be for one (1) year beginning on November 1.

Section 3. For the purposes of the practice of nursing, a nurse shall use the name under which he or she is licensed with the board of nursing.

SALLY BAXTER, President
APPROVED BY AGENCY: April 11, 2013

FILED WITH LRC: April 12, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 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 May 14, 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.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:
   (a) What this administrative regulation does: It sets licensure periods and miscellaneous requirements.
   (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 requirements.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: It will allow the Board to issue a new license for the succeeding licensure period for licenses issued prior to July 1.
   (b) The necessity of the amendment to this administrative regulation: The existing regulation allowed a license to be issued to expire on October 31 of the succeeding licensure period is issued prior to June 1. This adversely affected many May graduates.
   (c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set requirements.
   (d) How the amendment will assist in the effective administration of the statutes: By setting this requirement.

(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: They will not have to take any additional actions.
   (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 have been issued a license that does not expire until the succeeding licensure period, which will save them money.
   (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.
   (d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):
   (a) Has an increase or decrease in revenue been necessitated:
   (b) The necessity of the amendment to this administrative regulation:

Expenditures (+/-):
   (a) Has an increase or decrease in expenditure been necessitated:
   (b) The necessity of the amendment to this administrative regulation:

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:110. Licensure by endorsement.


STANATORY AUTHORITY: KRS 314.041(7), 314.051(8), 314.101(4), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.595. KRS 314.041(7) and 314.051(8) authorize the board to issue a license to practice nursing as a registered nurse or a licensed practical nurse to an applicant who has passed the required examination or its equivalent and who was licensed to practice nursing in another jurisdiction. KRS 314.101(4) authorizes the board to issue a temporary work permit to a person who has completed the requirements for, applied for, and paid the fee for licensure by endorsement. This administrative regulation establishes the requirements for licensure by endorsement and establishes the requirements for a temporary work permit for an applicant to practice nursing while the application for a license is being processed.

Section 1. Eligibility for Licensure by Endorsement. (1) To be eligible for licensure by endorsement, an applicant shall:

2. Have completed that portion of a state-approved program of nursing equivalent to the Kentucky program of nursing; or

(2) Have taken and passed the State Board Test Pool Examination or National Council Licensure Examination or an examination that is consistent with Section 4 of this administrative regulation;

(c) Complete the application form, as required by 201 KAR 20:370, Section 1(1);

(d) Submit the current fee for a licensure application, as established by 201 KAR 20:240;

(e) Report and submit a certified copy of each disciplinary action taken or pending on a nursing or other professional or business license by another jurisdiction and a letter of explanation;

(f) Submit a certified copy of the court record of each misdemeanor or felony conviction and a letter of explanation that addresses each conviction as required by 201 KAR 20:370, Section 1(3);
(g) Request the U.S. jurisdiction or territory or foreign country of initial licensure to submit to the board a verification of licensure by examination, which shall include the following information:
1. a. Name of the program of nursing completed and date of graduation, or
b. Name of the program of nursing attended and date of completion of the requirements for eligibility to take the licensure examination in that jurisdiction; and
2. A statement that the applicant's license has not been revoked, suspended, limited, probated, or otherwise disciplined by the licensing authority, and is not subject to disciplinary action.

(h) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615;

(i) Submit a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI;

(j) Submit evidence of completion of the jurisprudence examination conducted before the Kentucky Board of Nursing, shown in KRS 314.051(4) for LPN applications as approved by the board; and

(k) Submit a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application.

(2) An application shall be valid for a period of six (6) months, except as provided for in section 5 of this administrative regulation.

The applicant shall:

(a) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant’s name, if the applicant’s name is changed after the original application is filed; and

(b) Notify the board in writing as soon as a new address is established after submitting the application.

(3) After six (6) months, the applicant shall:

(a) Submit a new application;

(b) Submit the current licensure application fee; and

(c) Meet the requirements established in this section.

(4) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted under subsection (1)(i) of this section and any conviction is addressed by the board.

Section 2. Nursing Practice and Continuing Education Requirements. (1) Except as provided in subsection (2) of this section, an applicant shall complete fourteen (14) contact hours in continuing education for each year since the last year in which the applicant is able to demonstrate at least 120 hours of practice.

(2) The requirement established in subsection (1) of this section shall not apply to an applicant who:

(a) Has been licensed for less than five (5) years from the date of initial licensure;

(b) Has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years; or

(c) Has not been engaged in nursing practice during the five (5) years preceding the date of the application. This applicant shall:

1. Complete a refresher course approved by the board, pursuant to 201 KAR 20:380, which shall have been completed within two (2) years of the date of the application; or

2. Complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.

(3) At least fourteen (14) contact hours shall have been earned within the twelve (12) months preceding the date of application for active Kentucky licensure status.

(4) Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting the requirements established in subsections (1) and (3) of this section.

Section 3. Temporary Work Permit. (1) An applicant for licensure by endorsement who meets the requirements of Section 1(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k) and (l) of this administrative regulation shall be issued a temporary work permit, but not until the report is received from the FBI and any conviction is addressed by the board.

(2) A temporary work permit shall be valid for a period not to exceed six (6) months.

(3) An individual who practices as a nurse in Kentucky without a current temporary work permit prior to issuance of a current active license shall be considered to be practicing without a license in violation of KRS 314.031 and shall be subject to the penalties listed in KRS 314.091 and 314.991.

Section 4. Licensing Examination Standards. An applicant who has taken an examination other than the State Board Test Pool Examination or the National Council Licensure Examination shall provide evidence to the board that the examination met the following standards of equivalency:

(1) Accepted psychometric procedures shall be used in the development of the examination;

(2) The examination shall be available to the board in the English language;

(3) The examination test plan blueprint shall be available for board review and adequately identifies test content and content weighting;

(4) Test items shall be available for board review and demonstrate the testing of competency necessary for safe practice;

(5) At least one (1) of the reliability estimates for the examination shall be 0.80 or higher;

(6) The examination shall be revised after each administration to insure currency and security of content; and

(7) The examination shall be given under strict security measures.

Section 5. Applicants for LPN license pursuant to KRS 314.041(14). An applicant for an LPN license pursuant to KRS 314.041(14) shall meet the requirements of this administrative regulation.

Section 6. Nurse Licensure Compact Provisions. (1) An applicant who is issued a license and does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

SALLY BAXTER, President
APPROVED BY AGENCY: April 11, 2013
FILED WITH LRC: April 12, 2013 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 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 May 14, 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 May 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 requirements for licensure by endorsement.
(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 requirements.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: It adds a requirement of a criminal background check by the Administrative Office of the Courts. Also, it requires receipt of the criminal background report from the FBI/KSP before a temporary work permit can be issued to an applicant.
(b) The necessity of the amendment to this administrative regulation: Absent this amendment it would be possible for an applicant with a serious criminal conviction to obtain a provisional license to practice if they are not truthful on their application.
(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set requirements.
(d) How the amendment will assist in the effective administration of the statutes: By setting this requirement.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure by endorsement, number unknown.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will not have to take any additional actions.
(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): There is no benefit to the applicant. However, the public is protected.
(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.
(d) How much will it cost to administer this program for subsequent years? 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:

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

(AMENDMENT)

301 KAR 1:015. Boat and motor restrictions.

RELATES TO: KRS[150.010], 235.010(4), 150.090, 150.625, 150.990, 235.990
STATUTORY AUTHORITY: KRS 150.620, 235.280
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters it has acquired. KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of this state. This administrative regulation limits the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.

Section 1. (1) A person shall not operate on the lakes listed in subsection (2) of this section:
(a) A house boat;
(b) A monohull boat with a center line length exceeding twenty-two (22) feet; or
(c) A pontoon boat with a float or deck exceeding twenty-two (22) feet, except for:
1. Guist Creek Lake, where a pontoon boat with a float or deck up to twenty-four (24) feet may be operated; or
2. In the following lakes, where a pontoon boat with a float or deck up to thirty (30) feet may be operated:
   a. Cedar Creek Lake, Lincoln County;
   b. Lake Beshear; or
   c. Lake Malone, the following lakes where a pontoon boat with a float or deck up to thirty (30) feet may be operated:
      1. Cedar Creek Lake, Lincoln County;
      2. Lake Beshear, Caldwell County; and
      3. Lake Malone, Muhlenberg and Logan County.

(2) List of lakes:
(a) Arrowhead Slough, Ballard County;
(b) Beaver Creek Lake, Anderson County;
(c) Beaver Dam Slough, Ballard County;
(d) Bert Combs Lake, Logan County;
(e) Big Turner Lake, Ballard County;
(f) Boltz Lake, Grant County;
(g) Briggs Lake, Logan County;
(h) Bullock Pen Lake, Grant County;
(i) Burnt Pond, Ballard County;
(j) Burnt Slough, Ballard County;
(k) Butler Lake, Ballard County;
(l) Carnico Lake, Nicholas County;
(m) Carpenter Lake, Daviess County;
(n) Carter Caves Lake, Lincoln County;
(o) Cedar Creek Lake, Lincoln County;
(p) Corinth Lake, Grant County;
(q) Cross Slough, Ballard County;
(r) Cypress Slough, Ballard County;
(s) Deep Slough, Ballard County;

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(t) Dennie Gooch Lake, Pulaski County;
(u) Elmer Davis Lake, Owen County;
(v) Fishpond Lake, Letcher County;
(w) Goose Lake, Muhlenberg County;
(x) Greenbo Lake, Greenup County;
(y) Guist Creek Lake, Shelby County;
(z) Happy Hollow Lake, Ballard County;
(aa) Island Lake, Ohio County;
(bb) Kincaid Lake, Pendleton County;
(cc) Kingdom Come Lake, Harlan County;
(dd) Kingfisher Lakes, Daviess County;
(ee) Lake Besheer, Caldwell County;
(ff) Lake Chumley, Lincoln County;
(gg) Lake Malone, Muhlenberg County;
(hh) Lake Mauzy, Union County;
(ii) Lake Reba, Madison County;
(jj) Lake Washburn, Ohio County;
(kk) Lebanon City Lake, Marion County;
(ll) Lincoln Homestead Lake, Washington County;
(mm) Little Green Sea, Ballard County;
(nn) Little Turner Lake, Ballard County;
(oo) Long Pond, Ballard County;
(pp) Marion County Lake, Marion County;
(qq) Martin County Lake, Martin County;
(mm) McNeely Lake, Jefferson County;
(ss) Metcalfe County Lake, Metcalfe County;
(tt) Mill Creek Lake, Wolfe County;
(uu) Mitchell Lake, Ballard County;
(vv) Pan Bowl Lake, Breathitt County;
 ww) Pikeville City Lake, Pike County;
(xx) Sandy Slough, Ballard County;
(yy) Shanty Hollow Lake, Warren County;
(zz) Shelby Lake, Ballard County;
(aaa) South Lake, Ohio County;
(bbb) Spurlington Lake, Taylor County;
(ccc) Swan Lake, Ballard County;
(ddd) Twin Pockets Slough, Ballard County;
(eee) Wilgreen Lake, Madison County.

(3) Length restrictions in this section shall not apply to a canoe.

(4) A person shall not operate a personal watercraft as defined in KRS 225.010(4) on Cedar Creek Lake.

Section 2. (1) A person shall not operate:

(a) A boat motor without an underwater exhaust; or
(b) A boat faster than idle speed when passing a boat with an occupant actively engaged in fishing, except in a designated skiing zone.

(2) The requirements in subsection (1) of this section shall apply on:

(a) Beaver Lake, Anderson County;
(b) Boltz Lake, Grant County;
(c) Bullock Pen Lake, Grant County;
(d) Carnico Lake, Nicholas County;
(e) Cedar Creek Lake, Lincoln County;
(f) Corinth Lake, Grant County;
(g) Elmer Davis Lake, Owen County;
(h) Greenbo Lake, Owen County;
(i) Guist Creek Lake, Shelby County;
(j) Kincaid Lake, Pendleton County;
(k) Lake Besheer, Caldwell County;
(l) Lake Malone, Muhlenberg County;
(m) Pan Bowl Lake, Breathitt County;
(n) Shanty Hollow Lake, Warren County;
(o) Swan Lake, Ballard County; and
(p) Wilgreen Lake, Madison County.

Section 3. A person shall not operate an electric or an internal combustion boat motor on:

(1) Dennie Gooch Lake, Pulaski County;
(2) Kingdom Come Lake, Harlan County; and
(3) Lake Chumley, Lincoln County.

Section 4. A person shall not operate an internal combustion boat motor and shall only be allowed to use an electric trolling motor on:

(1) Arrowhead Slough, Ballard County;
(2) Beaver Dam Slough, Ballard County;
(3) Bert Combs Lake, Clay County;
(4) Big Turner Lake, Ballard County;
(5) Briggs Lake, Logan County;
(6) Burnt Pond, Ballard County;
(7) Burnt Slough, Ballard County;
(8) Butler, Ballard County;
(9) Carpenter Lake, Daviess County;
(10) Carter Caves Lake, Carter County;
(11) Cross Slough, Ballard County;
(12) Cypress Slough, Ballard County;
(13) Deep Slough, Ballard County;
(14) Fishpond Lake, Letcher County;
(15) Happy Hollow Lake, Ballard County;
(16) Kingfisher Lake, Daviess County;
(17) Lake Mauzy, Union County;
(18) Lake Reba, Madison County;
(19) Lake Washburn, Ohio County;
(20) Lebanon City Lake, Marion County;
(21) Lincoln Homestead Lake, Washington County;
(22) Little Green Sea, Ballard County;
(23) Little Turner Lake, Ballard County;
(24) Long Pond, Ballard County;
(25) Marion County Lake, Marion County;
(26) Martin County Lake, Martin County;
(27) McNeely Lake, Jefferson County;
(28) Metcalfe County Lake, Metcalfe County;
(29) Mill Creek Lake, Wolfe County;
(30) Mitchell Lake, Ballard County;
(31) Pikeville City Lake, Pike County;
(32) Sandy Slough, Ballard County;
(33) Shelby Lake, Ballard County;
(34) Spurlington Lake, Taylor County; and
(35) Twin Pockets Slough, Ballard County.

Section 5. On the following lakes, a person shall not operate a boat motor larger than ten (10) horsepower:
(1) Beaver Lake, Anderson County;
(2) Boltz Lake, Grant County;
(3) Bullock Pen Lake, Grant County;
(4) Corinth Lake, Grant County;
(5) Elmer Davis Lake, Owen County;
(6) Kincaid Lake, Pendleton County;
(7) Shanty Hollow Lake, Warren County; and
(8) Swan Lake, Ballard County.

Section 6. A person shall not operate a motorboat faster than idle speed on:

(1) Carnico Lake, Nicholas County;
(2) Goose Lake, Muhlenberg County;
(3) Greenbo Lake, Greenup County;
(4) Island Lake, Ohio County;
(5) South Lake, Ohio County;
(6) Pan Bowl Lake, Breathitt County; and
(7) Wilgreen Lake, Madison County.

Section 7. A person operating a boat motor larger than ten (10) horsepower shall not exceed idle speed at any time on the following lakes:

(1) Herb Smith/Cranks Creek Lake; and
(2) Martins Fork Lake.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: March 8, 2013
FILED WITH LRC: April 10, 2013 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
May 21, 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 May 31, 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.

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 limits the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the safety of individuals boating on these small lakes and to minimize interference with other users.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters it has acquired. KRS 235.280 authorizes the Department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation helps fulfill the purpose of KRS 150.620 and 235.280 by providing fair, reasonable, equitable, and safe use of small lakes in the state.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment allows pontoon boats with a float or decking up to twenty-four (24) feet to be operated at Guist Creek Lake. Previously, only pontoon boats with a float or decking up to twenty-two feet could be used.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to legally allow pontoon boats with a float or decking up to twenty-four (24) feet to be used at Guist Creek Lake. Guist Creek Lake is large enough to safely accommodate pontoon boats of this size.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(d) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who have pontoon boats with a float or decking of twenty-four (24) feet will be able to legally operate their pontoon boats on Guist Creek Lake.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions will be required of people in (3).
(b) On a continuing basis: There will be no additional cost on a continuing basis.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All individuals who own pontoon boats that have a float or decking of twenty-four (24) feet will be able to legally operate those pontoon boats on Guist Creek Lake.
(d) How much will it cost to administer this program for subsequent years? Revenue will not be generated by this administrative regulation for the first year.
(e) On a continuing basis: There will be no additional cost on a continuing basis.
(f) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: No fees will be directly or indirectly increased.
(9) TIERING: Is tiering applied? Tiering was not applied because all individuals will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters it has acquired. KRS 235.280 authorizes the Department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.
(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? Revenue will not be generated by this administrative regulation for the first year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue will not be generated by this administrative regulation during subsequent years.
(c) How much will it cost to administer this program for the first year? No cost will be incurred for the first year.
(d) How much will it cost to administer this program for subsequent years? No cost will be incurred 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 1:122. Importation, possession, and prohibited aquatic species; [live fish].

RELATES TO: KRS[150.025, 150.175, 150.190, 150.200]
STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of fish and wildlife. KRS 150.280(2) authorizes the department to promulgate administrative regulations prohibiting the holding or transport.
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ing of species potentially damaging to native ecosys-
tems[authorizes the department to promulgate administra-
tive regulations regarding the taking of wildlife to carry out the purposes of
KRS Chapter 150, including the protection and conservation of
wildlife]. This administrative regulation establishes the species of
aquatic life which are prohibited in the Commonwealth.

Section 1. A person shall not buy, sell, possess, import, or
release any aquatic species not native or established in Kentucky
waters, except as specified in Sections 2, 4, or 5 of this administra-
tive regulation[A live fish, live minnow or live bait organisms, in-
cluding a reproductive part thereof, not native or established in
Kentucky waters shall not be sold, bought, possessed, imported,
used or released into the waters of this Commonwealth, except as
specified in Sections 2 and 4 of this administrative regulation].

Section 2. Exceptions. (1) A person may buy, sell, import, or
possess aquarium species, except those specified in Section 3 of
this administrative regulation, but shall not release the species into
Kentucky waters[Aquarium species except those in Section 3 of
this administrative regulation may be imported, sold, or possessed
in aquaria, but shall not be released directly or indirectly into the
waters of the Commonwealth].

(2) A person may buy, sell, import, or possess sterile, triploid
grape carps (Chanoschanx plicatus), but must comply with the
requirements of 301 KAR 1:171[Triploid grape carp (Cha-
nonychogondon idella) may be imported, sold, or possessed if
the proper permit is obtained as provided in 301 KAR 1:171].

(3) A fertile, diploid grape carp may only be imported or pos-
sessed by a certified propagator for the exclusive purpose of pro-
ducing triploid grape carp[Diploid (fertile) grape carp may be im-
ported and possessed by certified propagators for the exclusive
purpose of producing triploid grape carp (Chanoschanx plicatus)].

(4) Other nonnative fishes may be imported, possessed, and
sold with the approval of the Division of Fisheries[An oper permit is obtained as provided in 301 KAR 1:171
for the species into Kentucky].

Section 3. The following live aquatic organisms shall not be
imported, bought[organism shall not be imported], sold, or pos-
sessed in aquaria:

(1) Subfamily Serrasalmineae - piranha, piraya, pirae, or tiger
characins.

(2) Astyanax mexicanus - Mexican banded tetra, Mexican min-
now or Mexican tetra.

(3) Petromyzon marinus - sea lamprey.

(4) Genus Clarias - walking catfish.

(5) Genus Channa - snakeheads of Asia and Africa.

(6) Dreissena polymorpha - zebra mussel.

Section 4. Asian carp. (1) A person shall not buy, sell, import,
transport, or release the following live Asian carp species:

(a) Hypophthalmichthys molitrix – silver carp;

(b) Hypophthalmichthys nobilis – bighead carp;

(c) Mylopharyngodon piceus – black carp; or

(d) Clariasporophagus idella – grass carp, except as estab-
lished in Section 2(2) and (3) of this administrative regulation[An oper permit is obtained as provided in 301 KAR 1:171
for the species into Kentucky].

(2) A licensed commercial fisherman shall be permitted to pos-
sess, sell, and transport the species of Asian carp listed in Section
4(1) of this administrative regulation if the Asian carp are:

(a) Not being transported in water;

(b) Moribund; and

(c) Being transported to a fish processing facility.

Section 5. Commissioner Approval. The commissioner may
permit the importation of a banned aquatic species if the applicant
demonstrates that the species shall be used for legitimate scientific
or educational purposes.

BENJY KINMAN, Deputy Commissioner
For Dr. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: March 8, 2013
FILED WITH LRC: April 10, 2013 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
May 21, 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 writ-
ing 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 May 31, 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 rwpubliccomments@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 administra-
tive regulation establishes the species of aquatic organisms that are
prohibited in the Commonwealth.

(b) The necessity of the administrative regulation: This admin-
istrative regulation is necessary to prevent the spread of exotic
invasive species that can damage aquatic ecosystems.

(c) How this administrative regulation conforms to the content
of the authorizing statutes: KRS 150.025(1)(c) authorizes the De-
partment to promulgate administrative regulations regarding the
buying, selling, or transporting of fish and wildlife. KRS 150.280(2)
authorizes the department to promulgate administrative regulations
prohibiting the holding or transporting of species potentially damag-
ing to native ecosystems.

(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This adminis-
trative regulation will assist the effective administration of the sta-
tutes by identifying aquatic species that are prohibited in the Com-
monwealth to protect Kentucky’s native fish populations.

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

(a) How the amendment will change this existing administrative
regulation: This amendment will specifically list the species of live
Asian Carps that cannot be bought, sold, imported or released into
the waters of the Commonwealth and how licensed commercial
fishermen will be permitted to possess and transport them.

(b) The necessity of the amendment to this administrative
regulation: This amendment is necessary to prevent the expansion
of grass, silver, bighead, and black Asian carp populations into
waters where they are not currently present in order to protect
Kentucky’s native fish populations.

(c) How the amendment conforms to the content of the autho-
izing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administra-
tion of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administra-
tive regulation: All individuals who possess, harvest, transport, buy,
sell, or intend to propagate grass, silver, bighead, and black Asian
carp in Kentucky will be affected.

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

(a) List the actions that each of the regulated entities identified
in question (3) will have to take to comply with this administrative
regulation or amendment: Individuals listed in question (3) who
possess, harvest, transport, or sell grass, silver, bighead, or black
Asian carp in Kentucky must ensure that the Asian carp in their
possession are dead. Fish propagators will not be able to raise
Asian carp in Kentucky. Licensed commercial fishermen will be
permitted to possess and transport harvested Asian carp if the fish are not being transported in water, are moribund, and are being transported to a fish processing facility.

(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 individuals as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The individuals listed will still be permitted to harvest, transport, and sell silver, bighed, and black carp in Kentucky.

(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 initially to implement this administrative regulation.

(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 fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: No fees will be directly or indirectly increased.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1)(c) authorizes the Department to promulgate administrative regulations regarding the buying, selling, or transporting of fish and wildlife. KRS 150.280(2) authorizes the department to promulgate administrative regulations prohibiting the holding or transporting of species potentially damaging to native ecosystems.

(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 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 directly generate revenue for state or local governments in the first year.

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

(c) How much will it cost to administer this program for the first year? No cost will be incurred for the first year as the Department’s Law Enforcement Division already enforces the regulation.

(d) How much will it cost to administer this program for subsequent years? No additional cost will be incurred 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:
Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been reviewed by the Kentucky Plumbing Code Committee and approved by the department and shall be allowed for installation in Kentucky:

1. Flexible three-fourths (3/4") hot and cold water connectors for hot water heaters, minimum wall thickness, 0.032;
2. (a) Flushmate water closet tank;
   (b) Microphor company. Two (2) quart flush toilets;
3. (c) Jomar 3 and 4 water conservers water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush;
4. (d) Superine toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems;
5. (e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock;
6. (f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products;
7. (g) Drain flush water closets by Caroma, USA. The water closets shall use eight-tenths (.8) gallons for the short flush cycle and one and six-tenths (1 6/10) gallons for the full flush cycle;
8. (h) Tubular traps with gasket in trap seal;
9. (i) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover;
10. (b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2") inch for light commercial and household usage;
11. (c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2") inch and two (2") inch for light commercial and household usage;
12. (d) Little Giant Pump Company, Drainsaurus Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2") inch drain;
13. (e) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates;
14. (f) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use;
15. (g) Electric Drain System as manufactured by Myers for light commercial and household usage;
16. (h) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18") inch by eighteen (18") inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves;
17. (b) Polyethylene root flashing. Polyethylene root flashing shall have a base which shall extend six (6") inches in all directions from the base of a stack vent with a boot of a preformed thermoplastic rubber gasket;
18. (c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation;
19. (d) Oatey eighteen (18") inch by eighteen (18") inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3") inch only;
20. (e) Carlisle syntec systems. Vent flashings for searesal and Brite-Ply roofing systems as required by Carlisle Corporation;
21. (f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc;
22. (g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company;
23. (h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc;
24. (6) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe;
25. (b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.
26. (c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc;
27. (7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2") through four (4") inch inside measurement for above and below ground installation on acid waste. Underground shall be laid on six (6") inches of sand grillage and shall be:
   (a) Backfilled by hand and tamped six (6") inches around piping;
   (b) Surrounded by six (6") inches of sand grillage;
   (c) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc;
   (9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation;
   (10) (a) Water heaters. Heat pump water heaters as manufactured by:
         1. Dec International, Inc., Thermo-Stor Products Group;
         2. Steibel Eltron Accelera 300. If the water heater is shipped with a 100 PSI Pressure and Temperature Relief Valve, it shall be replaced with a 150 PSI Pressure and Temperature Relief Valve;
         (b) Water heaters, point of use or instantaneous;
         1. In-Sink-Erator’s Ultra System. For instant hot water to serve individual fixtures, Model #7777W, W, WH, WA and WHA, W-152 and W-154;
         2. Eemax Electric Tankless water heaters.
            a. Nonpressure type without the requirement of a temperature and pressure relief valve;
            b. The pressure type with the requirements of the temperature and pressure relief valve be of a one-half (1/2") inch short Shank valve and be installed with the product;
            3. Vitacclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater, which shall be equipped with an approved temperature and pressure relief valve installed so that the thermocouple of the relief valve extends into the heat chamber discharge;
            6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve;
            7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater, which shall be equipped with an approved temperature and pressure relief valve;
            8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve;
            9. Amtral hot water maker model numbers WH7P, WH7 and WH7T, with a minimum of two (2) inches (5 cm) in the center of the inlet;
            10. Chronomite Laboratories, Inc. - instantaneous water heater, which shall be equipped with an approved temperature and pressure relief valve;
            11. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve;
            12. Nova Hot Water Generator Models: VESS/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc;
            13. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP. which shall be equipped with an approved temperature and pressure relief valve;
            14. Airston electric water heaters, model numbers P-15S and P-10S, which shall be equipped with an approved temperature and pressure relief valve;
            15. Vaillant Corporation gas fired point of use water heater;
            16. Trinom Hot Man Tankless Water Heater as manufactured by Siemens;
            17. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters;
            18. AcuTemp Instantaneous Water Heater as manufactured by Kenmore, Inc., Model: #100/208; #100/240; #150/208; #150/240; #180/208; #180/240; #150/240; #130/192; #180/240; #183/240; #183/480 and #183/480;
            19. Hot Aqua Instantaneous Tankless Electric Water Heaters, Model Numbers, 18/125PC, 24/125PC, 24/120, 32/120, 24/240, 36/240, 48/240, 59/240, 70/240, 24/208, 35/208, 46/208, 60/208,
28/277, 42/277, 55/277, 69/277, 24/120-P, 59/240-P, 46/208-P, 55/277-P, 18/125PC and 24/125PC. This product shall not be approved for supplying hot water for showers; 20. Steibel Eltron Tankless Water Heater; a. Models DHC 3, DHC 6 and DHC 8 approved for use with lavatories and sinks; b. Models Temptra/DHC-E B/10 and DHC-E 12; c. Models Mini 2, Mini 3, Mini 4, and Mini 6 Point of Use tankless electric water heaters; and d. Models 12/2 Plus, 15/15 Plus, 20/20 Plus, 24/24 Plus, 29 Plus, and 36 Plus; 21. Bosch Aqua Star tankless water heater. Models 125X, 125B, 125S, 125BS, 125FX and 38B. All models shall be installed with temperature and pressure relief valves; 22. Controlled Energy Corporation “Powerstream” tankless water heater; 23. Ariston mini tank electric water heaters in 2.5, 4 and 6 gal-lon models; 24. Powerstar PS19T and PS28T Electric Instantaneous Water Heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valves; 25. Aquastar AQ240 FX (LP, NG) gas fired instantaneous water heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valve; 26. S.E.T.S. Tankless Water Heater Models: #220, #180, #165 and #145 to be installed with temperature and pressure relief valve; 27. Rinnai Continuous Flow Water Heaters: Models 2532FFU(-C), 2532W(-C), 2532FU and 2424W(-C) all requiring an approved pressure and temperature relief valve; 28. Noritz America Corporation Tankless Water Heater Models: N-042, N-063 to be installed with temperature and pressure relief valve; 29. Takagi Industrial Company USA, Inc., Instantaneous Water Heaters, Models: T-KLS; T-KJR; T-K2; T-KD20 to be installed with temperature and pressure relief valve; 30. Envirotech Systems ESI 2000 Series Tankless Water Heaters, all requiring an approved pressure and temperature relief valve; 31. Quietstream Instantaneous Water Heater Models: QW9 - 100, 120, 175. All models shall be equipped with an approved temperature and pressure relief valve and temperature preset at 120 degrees; 32. Seisco Residential Tankless Water Heaters Model: RA 05, RA 07, RA 09, RA 11, RA 14, RA 18, RA 22 and RA 28. All models shall be equipped with an approved temperature and pressure relief valve; (11) Compression joints. Fail-safe hot and cold water systems; (12) Orion fittings for acid waste piping systems for above and below ground; (13) R G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping; (14) Johns Manville Flex I drain roof drain system; (15) Hydricide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick; (16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping; (17) Elakay Aqua-chill water dispensers.; (18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum; (19)(a) Delta Faucet Company’s quick-connect fitting known as “grabber” to be used with hot and cold potable water installations above ground only; (b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only; (20) Interceptors; (a) Town and Country plastic interceptors to be used as a grease trap; (b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ; (c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections; (d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer’s specification and the plumbing code; (e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL; (f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute; (g) Schier Grease Interceptors Trapper II Series meeting ASME 112.14.3 Model numbers 1820, 2025, 2635 and 3020; (h) Schier Grease Interceptors Great Basin Series meeting ASME 112.14.3 Model numbers GB-75 and GB-250 approved only with installation of two-directional, accessible cleanouts on the inlet and the outlet. The discharge of garbage disposals shall not be permitted; (i) Thermax, Inc. models TZ600 (150 GPM), TZ 400 (75 GPM), and the TZ 160 (35 GPM). These interceptors shall be installed with a full size vent (three (3) or four (4) inches as applicable per manufacturer’s instructions to the model being installed); located on the outlet side of the interceptor and returned to the vent stack or located so that it terminates a minimum of twelve (12) inches above the ground; (21) Plastic Oddities Srv (sewer relief vent) clean-out; (22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-06 except dimensions at the time of manufacture; (23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc; (24) Eljer plumbing ware - Elgers ultra one/G water closet; (25)(a) “Power Flush” and “Quik Jon” as manufactured by Zoeller Company, which shall have a three (3) inch vent and alternate additional waste openings shall be located in the pump chamber above the top of the base chamber; (b) Hydromantic JB-1 System as manufactured by Hydromatic Pumps, Inc.; (26) Exemplar Energy garden solar water heater; (27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. Proset E-Z flex coupling shall be approved for similar or dissimilar materials; (28)(a) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries; (b) Flood-Gate Automatic Backwater Valve as manufactured by Bibby-Stie-Croix; (c) Fullport Backwater Valve as manufactured by Mainline Backflow Products, Inc.; (29) Clamp-All Corporation Pipe Coupling Systems shall be approved size for size on dissimilar materials on new or existing installations. The use of Snap-All Increaser/Reducer transition bushings shall be included in this approval; (30) Mission Rubber Company “Band-Seal Specialty Coupling” shall be approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35; (31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans; (b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material; (32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers; (33)(a) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these mate-
(b) Fernco Proflex Shielded Couplings: Series 3000 for service weight cast iron to plastic, steel or extra cast iron in sizes one and one-half (1 1/2) inch to four (4) inch, Series 3001 for cast iron, plastic or steel to copper in sizes one and one-half (1 1/2) inch to two (2) inch, Series 3003 for copper to copper in one and one-half (1 1/2) inch;

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked “meets dimensional specifications of ASTM D-2665.” This pipe shall have been tested for the tensile strength, durability, of ASTM D-2665 except that it is made from recycled, reused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes;

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes;

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through twenty-four (24) inches for underground storm water drainage within a building;

(38) "Flowguard Gold" one (1) step CPVC cement for joining copper tube size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer;

(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line;

(40)(a) Canplas Industries LTD Specialty DWV Fittings: Part #3628 ABS or PVC forty-five (45) degree Discarge Closet Flange, Part #2321 Appliance (dishwasher) Wye, Part #3650A Closet Flange Kit for Concrete Installations;

(b) Flo-Bowl Waxless Leakless Toilet System as manufactured by Flo-Bowl Systems Inc.;

(41)(a) Conbraco 78-RV Series In-Line Water Heater Shut-Off Thermal Expansion Control Valve preset at 125 psi to relieve thermal expansion;

(b) Watts Regulator BRV Expansion Relief Valve to relieve thermal expansion;

(42) Plastic Productions PVC "Quick Stub" approved as a solvent weld transition between tubular PVC and schedule 40 PVC;

(43) HubSett In Line Test Coupling: PVC and ABS test couplings produced by HubSett Manufacturing Inc. for testing soil waste and vent systems;

(44) Viega/Ridgid ProPress System: Copper press fittings for joining copper water tubing and using an elastomeric o-ring that forms the joint;

(a) The fitting shall be made by pressing the socket joint under pressure in accordance with the manufacturer’s installation requirements;

(b) This system shall be approved for pipe sizes one-half (1/2) inch through four (4) inch for above slab installations only;

(45) TRIC Trenchless Systems for replacement sewers in four (4) inch and six (6) inch sizes;

(a) A video camera tape of the existing sewer shall be made to determine proper alignment and reviewed by the plumbing inspector;

(b) After the installation is complete, another tape shall be reviewed by the plumbing inspector to ensure that the installation was successful;

(c) The sewer shall be tested according to 815 KAR 20:150;

(d) The interior heat fusion bead shall be removed to provide a smooth surface with no obstruction;

(46) Envirovac Inc.: Evac Vacuum Systems Condensate Collection System approved for condensate collection and the discharge from lavatories only;

(47) Macerating Systems from Sanitary-for-All, consisting of a sump with a macerating pump, with or without a macerating toilet. The sump shall be air tight and provided with a maximum one and one-half (1 1/4) inch vent. These systems shall be installed in accordance with the manufacturer’s recommendations and shall not be used as a primary means of waste disposal;

(48) Rhino Wet Waste Interceptor manufactured by Ecosys-tems Inc. to be used as a prefiltration of wet wastes before discharging to a grease trap or interceptor;

(49) Quick Snap Multi Level Flange as manufactured by Jett Plumbing Products, Inc;

(50) Sioux Chief Manufacturers Stainless Steel Swivel Ring Closet Flange;

(51) Service Weight and No-Hub Cast Iron Swivel Ring Flange;

(52) American Pipe Lining, Inc. APL 2000, which is an epoxy lining used in restoring water distribution systems. The use of APL 2000 shall be subject to the following conditions;

(a) A plumbing construction permit shall be required;

(b) Installation shall be by a licensed plumber;

(c) Water quality shall be tested before and after each project; and

(d) A water distribution system treated with APL 2000 shall be clearly marked on all exposed piping and water heater with the following notice: "FLAMELESS TECHNIQUES MUST BE USED FOR ALL REPAIRS AND MODIFICATIONS TO THIS PIPING SYSTEM";

(53) Base Products Corporation;

(a) Water powered pump: basepump. Each model shall:

1. Be installed with a reduced pressure principle backflow pre-venter with copper piping only;

2. Be approved for groundwater removal only; and

3. Require incoming water pressure of 50 psi to operate;

(b) Battery back-up pump: hydropump;

(54) Perma-Liner Industries, Inc, Lateral Lining System:

(a) This system shall be approved for pipe sizes three (3) inches through eight (8) inches for interior and exterior installations;

(b) Interior installations shall be videoed before and after installation and shall have a water or air test as required by 815 KAR 20:150, Section 4(2) or (3);

(c) Exterior installations shall be videoed before and after and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6);

(d) A permit shall be obtained prior to an exterior or interior application;

(55) Stainless steel piping system for potable water applications manufactured by Victaulic for above ground applications only;

(56) Walgate Classic Model CME recessed and molded handwasher/dryer;

(57) MaxLiner;

(a) This system shall be approved for pipe sizes three (3) inch through ten (10) inch for interior and exterior installations;

(b) Interior installations shall be videoed before and after installation and shall have a water or air test as required by 815 KAR 20:150, Section 4(2) or (3);

(c) Exterior installations shall be videoed before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6);

(d) Permits shall be required for both interior and exterior applications;

(58) Nulleow Technologies Inc., Nuffle System;

(a) This system shall be approved for pipe sizes one and one-half (1 1/2) inch through twelve (12) inch for interior and exterior installations;

(b) Interior installations shall be videoed before and after installation and shall have a water or air test as required by 815 KAR 20:150, Section 4(2) or (3);

(c) Exterior installations shall be videoed before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6);

(59) Schluter Shower System for waterproofing tiled shower installations installed per manufacturer recommendations;

(60) WATCO Manufacturing Watco Flex and Watco Flex 900 Innovator tub waste and overflow;

(61) J.R. Smith MFG. CO. THE BOSS TEE Series 4505 clea-nout tee; and

(62) Pipe Patch NO-Dig Repair System by Source One Environmental;

(a) The repair shall require a plumbing installation permit issued by the Department.
(b) After the repair has been completed, the building sewer shall be inspected, tested with either a water or a smoke test, and approved by the Department.

AMBROSE WILSON IV, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: April 11, 2013
FILED WITH LRC: April 12, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2013 at 10:00 a.m. at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 2013 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the address below, to the contact person:

CONTACT PERSON: Michael Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone 502-573-0365, ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Davis
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a comprehensive listing of approved parts and materials for use in the state. To be included, an item must meet established national standards and be recommended for inclusion by the State Plumbing Code committee.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation approves plumbing parts and materials found to be acceptable at protecting the public health and safety in Kentucky.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes a listing of approved plumbing parts and materials which are to be used on plumbing installations in the Commonwealth.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment updates the Kentucky Plumbing Code by allowing the utilization of Thermaco Inc models of interceptors. Approving these models updates the approved parts and materials list for the Commonwealth.
(b) The necessity of this amendment to this administrative regulation: Updating standards of plumbing construction and installations will better serve the constituents of the Commonwealth and ensure the technologically advanced plumbing methods and materials.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.130 requires the department, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the approval of parts and materials that may be used in Kentucky. The State Plumbing Code Committee reviewed all amendments during its February 21, 2013 quarterly committee meeting and made final recommendation for promulgation.
(d) How the amendment will assist in the effective administration of the statutes: These amendments to the Kentucky Plumbing Code are intended to enhance public safety and to allow the industry to utilize current technologies, methods and materials in plumbing installations.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Construction projects subject to the Kentucky Plumbing Code will be affected by the amendments to this regulation; plumbers; plumbing contractors; architects; engineers; contractors; project managers; and property owners.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: The identified entities must comply with the new provisions of the updated plumbing code.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities will incur varying expenses based upon the type of approved interceptor chosen for installation. The cost cannot be quantified as the scope of the project will determine the cost of any plumbing project (using formerly approved, or newly approved, parts and materials).
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include enhanced safety features, flexibility in plumbing system design, and increased clarity of plumbing standards.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no additional or new costs associated with the implementation of this amended administrative regulation.
(b) On a continuing basis: There are no additional or new costs associated with implementation of this amended administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments are anticipated to result in no additional costs to the agency beyond the cost of code books. Existing Division of Plumbing funds will be utilized for implementation and enforcement of the Plumbing Code’s provisions.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: If, or by the change if it is an amendment: Implementation of this amended administrative regulation will not necessitate an increase in fees or funding. The updating amendments will not necessitate an increase in fees or funding.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees directly or indirectly, nor increase any enacted fees.
(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation. The Kentucky Plumbing Code is to apply equally to all plumbing projects within the Commonwealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction and the Division of Plumbing.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.040(10) and 318.130.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes no new fees or creates new
Section 1. Requirements for Continuing Education Providers. (1) Continuing education providers shall either be a:
(a) Trade association with affiliation to the plumbing trade;
(b) Trade school;
(c) College;
(d) Technical school;
(e) Business dedicated solely to providing continuing education and that provides at least one (1) course quarterly within each congressional district;
(f) Plumbing contracting company that employs full-time training personnel to conduct continuing education programs providing continuing education for journeymen only; or
(g) Plumbing manufacturer or distributor that employs full-time training personnel to conduct continuing education programs providing continuing education for journeymen only.
(2) Provider Registration. The department shall maintain a list of approved continuing education course providers. An approved provider shall meet the criteria established in Section 2 of this administrative regulation.
(3) Each continuing education course provider shall register with the department as required by subsection (3) of this section before submitting course materials for department approval. Registration shall be valid for two (2) years from the date of issuance.
(4) Course providers shall register on Form PLB-3 provided by the department and shall include the following:
(a) The company name, mailing address, email address, telephone, and fax numbers of the provider;
(b) Contact person; and
(c) The fee, if any, to be charged to participants.
(5) Each course provider shall report to the department any change to the information submitted in the initial application within thirty (30) days after the change takes effect.
(6) For each course approved the provider shall distribute to each applicant in attendance a questionnaire for the purpose of rating the course.
(a) Questionnaires shall include:
1. Name of the course;
2. Date the course was taken;
3. Questions ranking the quality of the course;
4. Questions ranking the quality of the course materials provided; and
5. Questions ranking the quality of the instructor.
(b) Completed questionnaires shall be submitted with license renewal applications.

Section 2. Continuing Education Course Approval. (1) A separate application for approval shall be submitted to the department on Form PLB-4 provided by the department for each course offered by a course provider.
(2) An application for approval of a continuing education course shall be submitted only by approved providers registered with the department. Applications shall be submitted at least thirty (30) days prior to the course offering.
(3) A continuing education course shall provide instruction in at least one of the subject areas specified in Section 3 of this administrative regulation.
(4) The course application shall include the following:
(a) A course syllabus;
(b) Name of the course;
(c) Name and registration number of the provider;
(d) Name of the instructor or presenter along with his or her qualifications;
(e) The amount of actual time needed to present the course;
(f) The objectives of the course; and
(g) A statement of the practicality of the course to the plumbing trade.
(5) Content changes made to the course shall require subsequent submission to the department for review and approval.
(6) Course approval shall be valid for two (2) years from the date approved by the department.
(7) The office shall issue a course number for each approved course. The course number and the provider's number shall appear on all advertisements and certificates for the course.
(8) Providers shall submit to the department a quarterly schedule including date and locations of courses by January 1, April 1, July 1, and October 1 annually and the department shall be notified at least thirty (30) days prior to a course's offering of changes made to scheduled courses.
(9) Providers may submit additional courses to their quarterly schedule if done at least thirty (30) days prior to the course offerings.
(10) The department shall receive written notification of scheduling changes at least ten (10) working days prior to the originally scheduled course date by fax or e-mail to the Director of Plumbing.
(11) Cancellations
(a) The provider shall give notice of cancellation no less than five (5) working days prior to a scheduled class unless the Governor declares a state of emergency or other conditions exist that would preclude a five (5) day notification of cancellation;
(b) If the scheduled class is canceled, providers shall, at the option of the registrant, issue a full refund or allow the registrant to attend a rescheduled course;
(c) A registrant who notifies a provider of cancellation prior to five (5) working days of a scheduled course may choose either a full refund or to attend a subsequent course; and
(d) Providers shall not cancel a course with ten (10) or more registrants, unless cancellation is the result of an emergency.

Section 3. Continuing Education Course Content. (1) All courses shall contain information beneficial in the day-to-day operation of a plumbing business.
(2) Courses relating to business shall include one (1) or more of the following:
(a) Business law;
(b) Accounting practices; or
(c) Insurance.
(3) Courses relating to job safety shall directly relate to the
construction trade.
(4) Courses related to the Kentucky state plumbing code shall
include one (1) or more of the following:
(a) KRS Chapter 318;
(b) Basic plumbing principles;
(c) 815 KAR 20:001 through 815 KAR 20:195;
(d) Kentucky Building Code; or
(e) Kentucky Residential Code.
(5) Providers requesting approval of courses for topics not
listed in this section shall demonstrate the relevancy of the topic to
the plumbing trade.

Section 4. Continuing Education Course Records. (1) Each
registered course provider shall establish and maintain for three (3)
years the following records for each approved course:
(a) Certificates of completion as provided in subsection (2) of
this section;
(b) An attendance sign-in and sign-out sheet; and
(c) A course syllabus.
(2) Certificates of completion.
(a) Each registered course provider shall issue a certificate of
completion for each participant who enrolled and completed an
approved continuing education course.
(b) Certificates of completion shall contain the following in-
formation about the individual participant:
1. Name;
2. Address;
3. License number or numbers;
4. Date of attendance; and
5. Course or courses completed.
(c) One (1) copy of each certificate of completion shall be:
1. Sent to the department electronically;
2. Retained on file by the provider in compliance with subsec-
tion (1) of this section; and
3. Given to the participant upon completion of the course.

Section 5. Online continuing education shall:
(1) Be provided by a continuing education provider approved in
accordance with Section 1 of this administrative regulation;
(2) Include a minimum of six (6) personal security questions,
per course;
(a) One random security question at each log-in; and
(b) Remaining security questions at intervals not to exceed
twenty (20) minutes;
(c) Allow course participants access to the course for a mini-
mum of thirty (30) days following receipt of payment for the course;
(d) Make available online the course certificate of completion
for twelve (12) months to any licensee who completes an online
course;
(5) Retain a record of all course applications and completions
for a minimum of three (3) years; and
(6) Be capable of storing course content questions as follows:
(a) Stored content questions shall equal 150 percent of the
content questions required; and
(b) Duplicate questions shall not be permitted.
(7) A minimum of four (4) content questions, chosen randomly
from stored content questions, shall be answered during each
twenty (20) minutes of continuing education programming;
(8) Notification of correct and incorrect answers, prior to com-
pletion of the online course and issuance of a certificate of comple-
tion, shall not be permitted.

Section 6. Online Courses. Online courses shall meet all re-
quirements of this administrative regulation and 815 KAR 20:032.

Section 7. Course Audits. (1) Records requested in writing by
the department shall be delivered to the department within ten (10)
days of the requesting date.
(2) Representatives of the department may, at any time, attend
an approved continuing education course to ensure that the course
meets the stated objectives and that applicable requirements are
being met.

Section 9[6]. Disciplinary Action. The department may deny,
suspend, or revoke approval of any course provider or may issue a
fine to any course provider who:
(1) Obtains or attempts to obtain registration or course approv-
through fraud, false statements, or misrepresentation;
(2) Does not provide complete and accurate information in ei-
ther the initial registration or in any notification of changes to the
information;
(3) Advertises a course as being approved by the department
before the approval is received; or
(4) Fails to comply with the requirements of this administrative
regulation.

Section 9[4]. Incorporation by Reference. (1) The following
material is incorporated by reference:
(a) Form PLB-3, "Application for Approval as a Plumbing Con-
tinuing Education Course Provider", November 2010; and
(b) Form PLB-4, "Application for a Plumbing Continuing Educa-
tion Course Approval", November 2010.
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Department of Housing,
Buildings and Construction, Division of Plumbing, 101 Sea Hero
Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday
through Friday, 8 a.m. to 4:30 p.m.

AMROSE WILSON IV, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: April 11, 2013
FILED WITH LRC: April 12, 2013 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
May 22, 2013 at 10:00 a.m., EST, at the Department of Housing,
Buildings and Construction, 101 Sea Hero Road, Suite 100, Fran-
kfort, Kentucky. Individuals interested in being heard at this hearing
shall notify this agency in writing by May 15, 2013 (five working
days prior to the hearing) of their intent to attend. If no notific-
tion of intent to attend the hearing is received by that date, the
hearing may be canceled. The hearing is open to the public. Any person
who wishes to be heard will be given an opportunity to comment on
the proposed administrative regulation. A transcript of the public
hearing will not be made unless a written request for a transcript is
made. If you do not wish to be heard at the public hearing, you
may submit written comments on the proposed administrative
regulation. Written comments shall be accepted until May 31,
2013. Send written notification of intent to be heard at the public
hearing or written comments on the proposed administrative regu-
lation by the above date to the contact person:
CONTACT PERSON: Michael Davis, General Counsel, De-
partment of Housing, Buildings and Construction, 101 Sea Hero
Road, Suite 100, Frankfort, Kentucky 40601-5405, phone 502-573-
0365, ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Michael Davis
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation establishes the requirements for approval of plumb-
ing continuing education courses and continuing education courses.
(b) The necessity of this administrative regulation: KRS
318.054 authorizes the department, after review by the State
Plumbing Code Committee, to adopt continuing education re-
quirements for plumbers. KRS 318.130 authorizes the department
to adopt any other reasonable regulation to administer the Plumb-
ing chapter.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: The administrative regulation estab-
ishes the requirements for approval as a Plumbing continuing educa-
tion course provider and the requirements for approval of Plumbing
continuing educations courses, including courses provided via internet.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulations set the requirements for the requirements for continuing education course providers and continuing education classes to gain approval as authorized by KRS 318.054 and 318.130.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates continuing education provider and course approvals to include requirements for online plumbing continuing education courses.

(b) The necessity of the amendment to this administrative regulation: Updating requirements for continuing education providers and courses will better serve the plumbing licensees in the Commonwealth by including the ability to utilize technological advances to satisfy continuing education requirements.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 318.130, the department may adopt regulations to administer the State Plumbing Code and licensing if reviewed and recommended by the State Plumbing Code Committee. The State Plumbing Code Committee reviewed and recommended these amendments at its February 21, 2013 meeting.

(d) How the amendment will assist in the effective administration of the statutes: With the recommended amendments, continuing education classes can be offered which provide educations and up to date plumbing issues facing licensees in the Commonwealth while being offered in traditional classroom settings or via internet for approved courses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Housing, Buildings and Construction, Division of Plumbing, Plumbing continuing education providers, and plumbing licensees will be affected by the amendments to this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: The identified entities must comply with the new provisions relating to continuing education courses and providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated new or additional costs to Plumbing continuing education course providers resulting from these filed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include increased flexibility in scheduling Plumbing continuing education courses which will be accepted towards annual continuing education requirements for license renewal.

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

(a) Initially: There are no additional or new costs associated with the implementation of this amended administrative regulation.

(b) On a continuing basis: There are no additional or new costs associated with implementation of this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing Division of Plumbing funds will be utilized for the administration of approving Plumbing continuing education providers and Plumbing continuing education courses.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not establish new fees nor will it directly, or indirectly, increase existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation. All Plumbing continuing education providers and continuing education courses will continue to be treated equally under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this amended administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 318.054 and 318.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes no new fees or creates new expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The regulation may result in no new revenues or expenditures.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

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

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

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: There is no anticipated fiscal impact from this amended administrative regulation to state or local government.

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

(Admendment)

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS 318.010, 318.130, 318.150, 318.165, 318.200

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130[-EO-2005-522]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department[italics], after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. This administrative regulation establishes the types of piping and pipe sizes required for a potable water supply system and the methods to be used to protect and control the water supply system and requires the manufacturer's specification number of the material accepted in those installations to be identified and published.

Section 1. Definitions. (1) "ASSE" means the American Society of Sanitary Engineers.

(2) "ASTM" means the American Society for Testing Materials.

(3) "Critical level" or the "CL" means the level to which the vacuum breaker may be submerged before backflow will occur, and if the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(4) "DWV" means drain, waste and vent piping.

(5) "NSF" means the National Sanitation Foundation.
(6) "SDR" means standard dimensional ratio.

Section 2. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the administrative regulations of the Office and the Division of Water. Toxic material shall be kept out of a potable water system.

(a) The pipe conveying, and each surface in contact with, potable water shall be constructed of nontoxic material.

(b) A chemical or other substance that could produce either a toxic condition, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in, the system.

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with a material that will affect the taste, odor, color, or potability of the water supply if the tank is placed in or returned to service.

(2) Potable water shall be accessible to a plumbing fixture that supplies water for drinking, bathing, culinary use or the processing of a medicinal, pharmaceutical, or food product.

(3) The potable water supply system shall be designed, installed, and maintained to prevent contamination from a nonpotable liquid, solid, or gas being introduced into the potable water supply through a cross connection or other piping connection to the system.

(4) A cross connection shall meet the requirements of this administrative regulation.

(5) A cross connection between a private water supply and a public water supply shall not be made.

(6) Closed water systems, protection from excess pressure.

(a) If a single check valve is installed in a water system, a thermal expansion tank sized in accordance with manufacturer's instructions shall be installed in the cold water supply located near the water heater.

(b) If a backflow preventer is installed in a water system, a properly sized thermal expansion tank or other pressure relief device listed in 815 KAR 20:020 shall be installed in the water distribution system.

(c) If a pressure reducing valve not equipped with a bypass is installed in the cold water supply line to a water heater, a thermal expansion tank shall be installed in the cold water line near the water heater.

(7) Backflow and back siphonage protection. Protection against backflow shall be provided as required in paragraphs (a) through (i) of this subsection in order of degree of protection provided. Backflow shall include both back pressure and back siphonage.

(a) An air gap shall provide the best level of protection in all backflow situations. The minimum required air gap shall be determined as follows:

1. How measured. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

2. Size. The minimum required air gap shall be:
   a. Twice the effective opening of a potable water outlet; or
   b. If the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, three (3) times the effective opening of the outlet.

3. The minimum required air gap shall not be less than shown in the following table - Minimum Air Gaps for Plumbing Fixtures.

<table>
<thead>
<tr>
<th>Fixture</th>
<th>Minimum Air Gap</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lavatories and other fixtures with effective opening not greater than 1/2 inch diameter</td>
<td>1</td>
</tr>
<tr>
<td>Sink, laundry trays, goose-neck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter</td>
<td>1 1/2</td>
</tr>
</tbody>
</table>

Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter: 2 |

Drinking water fountains - single orifice not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter): 1 1/2 |

Effective openings greater than 1 inch: 2 x diameter of effective opening | 3 x diameter of effective opening |

NOTE 1. Side walls, ribs, or similar obstructions do not affect air gaps if spaced from the inside edge of the spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap if spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three (3) or more vertical walls or ribs has not been determined. In this case, the air gap shall be measured from the top of the wall.

(b) A reduced pressure principle back pressure backflow preventer. A reduced pressure principle back pressure backflow preventer shall provide the best mechanical protection against backflow available and shall be considered equivalent to an air gap.

(c) Double check valve assembly: applicable to low level of hazard back pressure backflow conditions. This device shall be a manufactured assembly consisting of two (2) independently acting check valves and including a shutoff valve at each end, and petcock and test gauge for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable to back siphonage conditions.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions. If applicable, an atmospheric type vacuum breaker shall be installed after the last cutoff valve on the water line. This device may operate under normal atmospheric pressure if the critical level (CL) is installed at the required height in accordance with the table in this paragraph:

<table>
<thead>
<tr>
<th>Fixture or Equipment</th>
<th>Minimum Air Gap</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixture or Equipment</td>
<td>Method of Installation</td>
</tr>
<tr>
<td>Aspirators, ejectives, and showers</td>
<td>CL at least 6 in. above flood level of receptacle</td>
</tr>
<tr>
<td>Bidets</td>
<td>CL at least 6 in. above flood level of receptacle</td>
</tr>
<tr>
<td>Cup beverage vending machines</td>
<td>CL at least 12 in. above flood level of machine</td>
</tr>
<tr>
<td>On models without built-in vacuum breakers:</td>
<td></td>
</tr>
<tr>
<td>Dental units</td>
<td>CL at least 6 in. above flood level rim of bowl</td>
</tr>
<tr>
<td>Dishwashing machines</td>
<td>CL at least 6 in. above flood level of machine</td>
</tr>
<tr>
<td>Flushometers (closet &amp; urinal)</td>
<td>CL at least 6 in. above top of fixture supplied</td>
</tr>
<tr>
<td>Garbage can cleaning machines</td>
<td>CL at least 6 in. above flood level of machine</td>
</tr>
<tr>
<td>Hose bibs (sinks or receptacles)</td>
<td>CL at least 6 in. above flood level of receptacle served</td>
</tr>
<tr>
<td>Hose outlets</td>
<td>CL at least 6 in. above highest point on hose line</td>
</tr>
<tr>
<td>Laundry machines</td>
<td>CL at least 6 in. above flood level of machine</td>
</tr>
<tr>
<td>Lawn sprinklers</td>
<td>CL at least 12 in. above highest sprinkler or discharge outlet</td>
</tr>
</tbody>
</table>

CRITICAL LEVEL (CL) SETTINGS FOR ATMOSPHERIC TYPE VACUUM BREAKERS

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The use of a barometric loop shall not be acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers.
1. A backflow and back siphonage preventer shall be in an accessible location, and accessible from within the same room as the fixture or connection it protects.
2. A backflow device may be installed in a utility or service space.
3. A device or air gap shall not be installed in a location subject to flooding or freezing.

(h) Inspection of devices.
1. A periodic inspection shall be made of each backflow and back siphonage preventer to determine if it is in proper working condition.
2. A reduced pressure principle back pressure backflow preventer shall be tested on at least an annual basis.
3. Records shall be kept on each inspection.

(i) Approval of devices.
1. Before a device for the prevention of backflow or back siphonage is installed, it shall be identified as meeting the applicable specifications as listed in the application chart included in paragraph (l) of this subsection.

2. A device installed in a building potable water supply distribution system for protection against backflow shall be maintained in good working condition by the person responsible for the maintenance of the system.

(j) Protection of potable water system. A potable water opening, outlet, or connection, except one (1) that serves a residential unit, shall be protected against backflow in accordance with paragraphs (a) through (i) of this subsection.

(k) Degree of hazard. The protection required at an outlet or connection shall be determined based on the degree of hazard posed by that outlet or connection as follows:
1. Severe hazard, if there is potential for contamination by a toxic substance or disease-causing organism;
2. Moderate hazard, if there is potential for contamination by a nontoxic but objectionable substance; or
3. Minor hazard, if there is potential for contamination by a generally nontoxic, nonobjectionable substance, but which may cause the consumer to question the quality of water.

(l) Minimum acceptable protection. An opening or outlet shall be protected by an air gap between the opening and flood level rim if possible. The acceptable protection for various types of outlets or connections shall be as shown in the tables in this paragraph:

### APPLICATION TABLE

<table>
<thead>
<tr>
<th>TYPE AND PRESSURE</th>
<th>DESCRIPTION</th>
<th>INSTALLED AT</th>
<th>EXAMPLES OF INSTALLATIONS</th>
<th>APPLICABLE SPECIFICATIONS</th>
</tr>
</thead>
</table>
| Reduced pressure principle backflow preventer for high hazard cross connections | Two independent check valves with intermediate relief valve. Supplied with shut-off valves and ball-type test cocks. | All cross connections subject to backpressure or back siphonage if there is a high potential health hazard from contamination. Continuous pressure. | Main supply lines, commercial boilers, cooling towers, hospital equipment, processing tanks, laboratory equipment, waste digesters, car wash, sewage treatment, lawn sprinklers. | ASSE No. 1013
AWWA C506
FCCHR of U.S.C.
CSA B.64.4
Sizes 3/4" - 10" |
| (A) Double check valve assembly for low hazard cross connections | Two independent check valves. Supplied with shut-off valves and ball type test cocks. | All cross connections subject to back pressure if there is a low potential health hazard or nuisance. Continuous pressure. | Main supply lines, food cookers, tanks and vats, commercial pools. | NONTOXIC
ASSE No. 1015
AWWA C506
FCCHR of U.S.C.
CSA B.64.5
Sizes 3/4" - 10" |
| (B) Dual check valve backflow preventer for low hazard applications | Two independent check valves. Checks are removable for testing. | Cross connections if there is a low potential health hazard and moderate flow requirements. | Post ground hydrants. | ASSE No. 1024
Sizes 3/4" & 1" |
| (A) Backflow preventer with intermediate atmospheric vent for moderate hazard cross connections in small pipe sizes | Two independent check valves with intermediate vacuum breaker and relief valve. | Cross connections subject to back pressure or back siphonage if there is a moderate health hazard. Continuous pressure. | Boilers (small), cooling towers (small), dairy equipment residential. | ASSE No. 1012
CSA B.64.3
Sizes 1/2" & 3/4" |
| (B) Backflow preventer for carbonated beverage machine | Two independent check valves with a vent to atmosphere. | On potable water distribution lines serving beverage dispensing equipment to prevent backflow of carbon dioxide gas and carbonated water into the water supply system. | Postmix carbonated beverage machine. | ASSE 1022 |
### CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS

<table>
<thead>
<tr>
<th>Type of Connection</th>
<th>Degree of Hazard</th>
<th>Acceptable Protection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Severe</td>
<td>Moderate</td>
</tr>
<tr>
<td>I. Connections subject to back pressure from:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Pumps, tanks, and lines handling:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Toxic substance</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>2. Nontoxic substance</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>B. Boilers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. With chemical additives</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>2. Without chemical additives</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>C. Gravity due to obvious site conditions subject to:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Contamination by toxic substances</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>2. Contamination by nontoxic substances</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>II. Water outlets and connections not subject to back pressure:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Connection to sewer or sewage pump</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>B. Outlet to receptacles containing toxic substances</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>C. Outlet to receptacles containing nontoxic substances</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>D. Outlet into domestic water tanks</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>E. Flush valve toilets</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>
Section 3. Water Required. (1) A building equipped with a plumbing fixture and used for habitation or occupancy shall be equipped with a supply of potable water.

(2) In a building used as a residence or a building in which people assemble or are employed, both hot and cold water shall be supplied.

Section 4. Water Service. (1) The water service piping to a building shall:

(a) Not be less than three-fourths (3/4) inch nominal pipe size; and

(b) Be of sufficient size to permit a continuous and ample flow of water to each fixture in the building.

(2) Except as provided in this subsection, the underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth. The pipe may be placed in the same trench if:

(a) The bottom of the water service pipe at all points is at least eighteen (18) inches above the top of the sewer at its highest point;

(b) The water service pipe is placed on a solid shelf excavated at one (1) side of the common trench; and

(c) The number of joints in the water service pipe is kept to a minimum.

Section 5. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of another piping system.

(2) Piping which has been used for a purpose other than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing a water closet or urinal, if the water is piped in an independent system.

(a) If a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified.

(b) An outlet on the nonpotable water distribution system used for a drinking or domestic purpose shall be permanently posted: DANGER - UNSAFE WATER.

2. Each branch, fitting, or valve shall be identified by the phrase - "NONPOTABLE WATER" either by a sign or brass tag that shall be permanently affixed to the pipe, fitting, or valve.

3. The identification marking shall not be concealed and shall be maintained by the owner.

(4) A backflow device or cross-connection control device shall be approved by the department.

(5) A combination stop and waste valve, cock, or hydrant shall not be installed in the underground water distribution system without the installation of an approved backflow preventer.

(6) A private water supply shall not be interconnected with a public water supply.

(7) Water used for cooling of equipment or in another process shall not be returned to the potable water system. The water shall be discharged into a drainage system through an air gap, or used for a nonpotable purpose as referenced in this section.

(8) Hose connections other than those intended for clothes washing machines, frost proof burial hydrants, and water heater drain valves shall be equipped with a vacuum breaker ASSE 1011 for areas not subject to freezing and a vacuum breaker ASSE 1019 for areas subject to freezing.

Section 6. Water Supply to Fixtures. (1) A plumbing fixture shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition.

(2) A water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve.

(3) The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of a water closet, urinal, or similar fixture.

(4) If a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, the valve shall be set above the fixture to prevent the possibility of polluting the potable water supply by back siphonage.

(5) The fixture shall have a vacuum breaker.

(6) A plumbing fixture, device or appurtenance shall be installed in a manner that shall prevent a possibility of a cross connection between the potable water supply system, drainage system, or other water system.

Section 7. Connections to Boilers. (1) A potable water connection to a boiler feed water system in which a boiler water conditioning chemical is introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where a chemical is introduced.

(2) A boiler shall be equipped with a check valve in the cold water supply to the boiler.

Section 8. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent contamination of the potable water supply system.

Section 9. Sizing of Water Supply Piping. (1)(a) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch.

(b) The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch.

(c) More than three (3), one-half (1/2) inch fixture branches shall not be supplied from a one-half (1/2) inch pipe.

(2)(a) The schedule in this subsection shall be used for sizing the water supply piping to a fixture.

(b) The branch pipe to a fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and shall be brought to the floor or wall adjacent to the fixture.

(c) A concealed water branch pipe shall not be less than one-half (1/2) inch nominal pipe size.

<table>
<thead>
<tr>
<th>Fixture Branches</th>
<th>Nominal Pipe Size (Inches)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bath tubs</td>
<td>1/2</td>
</tr>
<tr>
<td>Combination sink and tray</td>
<td>1/2</td>
</tr>
<tr>
<td>Cuspider</td>
<td>1/2</td>
</tr>
<tr>
<td>Drinking fountain</td>
<td>1/2</td>
</tr>
<tr>
<td>Dishwasher</td>
<td>1/2</td>
</tr>
<tr>
<td>Kitchen sink (res.)</td>
<td>1/2</td>
</tr>
<tr>
<td>Kitchen sink (com.)</td>
<td>1/2 or 3/4 as required</td>
</tr>
<tr>
<td>Lavatory</td>
<td>1/2</td>
</tr>
<tr>
<td>Laundry tray</td>
<td>1/2</td>
</tr>
<tr>
<td>Sinks (service, slop)</td>
<td>1/2</td>
</tr>
<tr>
<td>Sinks flushing rim</td>
<td>3/4</td>
</tr>
<tr>
<td>Urinal (flush tank)</td>
<td>1/2</td>
</tr>
<tr>
<td>Urinal (direct flush type)</td>
<td>1/2 or 3/4 as required</td>
</tr>
<tr>
<td>Water closet (tank type)</td>
<td>1/2</td>
</tr>
<tr>
<td>Water closet (flush valve type)</td>
<td>1/2</td>
</tr>
<tr>
<td>Hot water boilers</td>
<td>3/4</td>
</tr>
</tbody>
</table>
Section 10. Water Supply Pipes and Fittings. Materials. (1) Water supply piping for a potable water system shall be as follows:

(a) Galvanized wrought iron
(b) Galvanized steel;
(c) Brass;
(d) Types K, L, and M copper;
(e) Cast iron;
(f) Types R-K, R-L, and R-M brass tubing;
(g) Fusion welded copper tubing produced and labeled as ASTM B-447-2002 and ASTM B-251;
(h) DWV welded brass tubing produced and labeled as ASTM B561;
(i) Seamless stainless steel tubing, Grade H, produced and labeled as ASTM A268/268M;
(j) Filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold);
(k) Polyethylene (PE) plastic pipe produced and labeled as ASTM F2239 or ASTM F-714;
(l) Cross-linked polyethylene (PEX) pipe produced and labeled as ASTM F-876 for cold water and ASTM F-877 for hot or cold water applications;
(m) Cross-linked Polyethylene/Aluminum/Cross-linked Polyethylene (Pex-Al-Pex) pipe produced and labeled as ASTM F-1281;
(n) Polyethylene/Aluminum/Polyethylene (Pe-Al-Pe) pipe produced and labeled as ASTM F-1282;
(o) Copper tubing size PE produced and labeled as ASTM D-2737 for water service, if installed with compression couplings;
(p) Polyvinyl chloride (PVC) plastic pipe produced and labeled as ASTM D1785;
(q) Chlorinated Polyvinyl chloride (CPVC) plastic pipe produced and labeled as ASTM D2846;
(r) Schedule 80 chlorinated polyvinyl chloride (CPVC) plastic pipe shall meet ASTM F441;
(s) Schedule 80 chlorinated polyvinyl chloride (CPVC) plastic solvent fittings shall meet ASTM F439;
(t) Schedule 80 chlorinated polyvinyl chloride (CPVC) plastic threaded fittings shall meet ASTM F437;
(u) Schedule 80 chlorinated polyvinyl chloride (CPVC) plastic pipe and fittings shall be installed using primer meeting ASTM F656 and solvent cement meeting ASTM F493;
(v) Polyvinyl chloride (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 pipe produced and labeled as ASTM D-2241-05;
(w) Welded polypropylene pipe products measuring one-half (1/2) inch to eighteen (18) inches in diameter shall be approved for above-ground use only and using pipe sizes five eighths (5/8) inch through ten (10) inch [or (x) Fusion welded high density polyethylene pipe products which meet NSF Standards 61 and 14, and ASTM F2380 shall be approved. These pipe products shall be tested for compliance with the manufacturer's installation instructions or
(y) Push-fit fitting systems which meet the ASSE Standard 1061. These systems are approved for above-ground use only

(3) Water hammer. In a building supply system in which a device or appurtenance is installed utilizing a quick acting valve that causes noise due to water hammer, a protective device, including an air chamber or approved mechanical shock absorber, shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) If a mechanical shock absorber is installed, the absorber shall be in an accessible place.

(b) If a mechanical device is used, the manufacturer's specifications shall be followed as to location and method of installation.

Section 11. Temperature and Pressure Control Devices for Shower Installations. A temperature or pressure balance device to prevent a sudden unanticipated change in water temperature shall be installed to serve each shower compartment and shower-bath combination.

Section 12. Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition, a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be a full port valve and be accessible from within the occupied space and provided with a drip or drain valve. A pit or similar type installation shall not be used for a potable water supply control valve.

(2) A pressure or gravity tank shall have its supply line valued at or near its source.

(3) A family unit in a two (2) family or multifamily dwelling shall have the unit controlled by an arrangement of shutoff valves which will permit the unit to be shut off without interfering with the cold water supply to another family unit or portion of the building.

(4) In a building other than a dwelling, a shutoff valve shall be installed to permit the water supply to the equipment to be isolated without interference with the supply to other equipment.

(5) A fixture or group of bath fixtures shall be valued and a lawn sprinkler opening shall be valued. In residential construction, each fixture, except a bathtub or shower, shall be installed individually or as a group of fixtures.

(6) A group of fixtures or a fixture group shall include two (2) or more fixtures adjacent to or near each other in the same room or back-to-back on a common wall.

(7) The cold water branch to a hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and serving this equipment. In residential dwellings, the shutoff valve shall be placed within three (3) feet of the water heater and be accessible from the accessible side of the water heater.

Section 13. Water Supply Protection. A concealed water pipe, storage tank, cistern, or other respective pipe or tank subject to freezing temperatures shall be protected against freezing. A water service shall be installed at least thirty (30) inches in depth.

Section 14. Temperature and Pressure Relief Devices for Water Heaters. (1) A temperature and pressure relief device shall:

| Hose bibs | 1/2 |
| Wall hydrant | 1/2 |
| Domestic clothes washer | 1/2 |
| Shower (single head) | 3/4 |

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(a) Be installed on each water heater on the hot water side not more than three (3) inches from the top of the heater;
(b) If a marked opening is provided on the water heater by the manufacturer for the temperature and pressure relief device, be installed according to the manufacturer’s recommendation; and
(c) Be of a type approved by the office in accordance with this administrative regulation and 815 KAR 20:020.

(2) (a) If a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor.
(b) If a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an all turned down and piped to within four (4) inches of the surface of the ground.
(c) The relief device may discharge through an air gap to a sump basin, service sink, open receptacle or other point of discharge in which equivalent safety shall be provided as approved by the Division of Plumbing.

(3) A relief device shall be installed on a pneumatic water system.

Section 15. Protection of a Private Water Supply or Source. A private water supply or source shall be protected from pollution. Approval shall be obtained from the Division of Plumbing prior to using the private water supply or source.

Section 16. Domestic Solar Water Heaters. A domestic solar water heater may have a “single wall heat exchanger” if the following conditions are met:
(1) The solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or an equivalent;
(2) The heat exchanger is pretested by the manufacturer to 450 pounds per square inch;
(3) The water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times; and
(4) A pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. (1) A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater.
(2) Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided.
(3) The water inlet to the heat exchange vessel shall be provided with a check valve. There shall be provided adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) pounds per square inch above the maximum water pressure at the point of installation, if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device.
(4) Condensate drain water shall be piped in accordance to the State Plumbing Code and it shall not be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in an area subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18. Tanks and Vats below Rim Supply. A tank or vat with potable water supply below the rim shall be subject to the following requirements:
(1) If a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the table in this subsection, the overflow pipe shall be provided with an air gap as close to the tank as possible;

<table>
<thead>
<tr>
<th>Sizes of Overflow Pipes for Water Supply Tanks</th>
<th>Diameter of Overflow pipe (inches ID)</th>
<th>Maximum capacity of water supply line to tank</th>
<th>Diameter of overflow pipe (inches ID)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum capacity of supply line to tank</td>
<td></td>
<td>Maximum capacity of water supply line to tank</td>
<td></td>
</tr>
<tr>
<td>0-50 gpm</td>
<td>2</td>
<td>400-700 gpm</td>
<td>5</td>
</tr>
<tr>
<td>50-150 gpm</td>
<td>2 1/2</td>
<td>700-1000 gpm</td>
<td>6</td>
</tr>
<tr>
<td>150-200 gpm</td>
<td>3</td>
<td>Over 1000 gpm</td>
<td>8</td>
</tr>
</tbody>
</table>

(2) The potable water outlet to the tank or vat shall terminate at a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet, closed; and
(3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

Section 19. Water Distribution for Fan Coil Units. (1) If a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees Fahrenheit.
(2) It shall utilize not less than three-fourths (3/4) inch piping and its run shall not exceed 140 feet between the water heater and the heating unit.
(3) The applicable requirements established in 815 KAR 20:070 shall be met.

Section 20. Fire Protection Systems. A fire protection system using water from the potable water distribution system shall be equipped with two (2) check valves, one (1) of which may be an alarm check valve.

Section 21. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home.
(2) All materials, including the pipe or fitting used for a connection, shall conform with the State Plumbing Code.
(3) An individual water connection shall be provided at an appropriate location for each mobile home space.

(a) The connection shall consist of a riser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control.
(b) The ground surface around the riser pipe shall be graded to divert surface drainage.
(c) The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or an equivalent with the intervening space filled with an insulating material to protect it from freezing.
(d) An insulated cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile home during freezing weather.
(e) A shutoff valve may be placed below the frost depth on the water service line, but this valve shall not be a stop-and-waste cock.

Section 22. Conservation of water shall comply with the standards established in 815 KAR 20:070.

AMBROSE WILSON IV, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: April 11, 2013
FILED WITH LRC: April 12, 2013 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2013 at 10:00 a.m., at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 2013 (five working days prior to the hearing) of their intent to attend. If no notification of
intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone 502-573-0365, ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the types of piping and pipe sizes required for a potable water supply system and the methods to be used to protect and control the water supply system and requires the manufacturer's specification number of the material accepted in those installations to be identified and published.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Kentucky accepted piping and piping sizes for potable water supply systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation provides acceptable plumbing methods, materials and procedures approved for use in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth standards relating to piping of potable water supply systems in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the Kentucky Plumbing Code by allowing the utilization of fusion welded joints below ground on Polypropylene and high density Polyethylene piping.

(b) The necessity of the amendment to this administrative regulation: Updating standards of plumbing construction and installations will better serve the constituents of the Commonwealth and ensure the technologically advanced construction methods and materials.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.130 requires the office, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. The State Plumbing Code Committee reviewed all amendments during its February 21, 2013 quarterly committee meeting and made final recommendation for promulgation.

(d) How the amendment will assist in the effective administration of the statutes: These amendments to the Kentucky Plumbing Code are intended to enhance public safety and to allow the industry to utilize current technologies, methods and materials in construction.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Construction projects subject to the Kentucky Plumbing Code will be affected by the amendments to this regulation; plumbers; plumbing contractors; architects; engineers; contractors; project managers; businesses; and local government.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: The identified entities must comply with the new provisions of the updated plumbing code.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities will incur varying expenses due to the newly allowable use of fusion welded materials. The cost cannot be quantified as the scope of the project will determine the cost of any plumbing project (using formerly approved, or newly approved, welding methods).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include enhanced safety features, flexibility in building design, and increased clarity of construction standards.

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

(a) Initially: There are no additional or new costs associated with the implementation of this amended administrative regulation.

(b) On a continuing basis: There are no additional or new costs associated with implementation of this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments are anticipated to result in no additional costs to the agency beyond the cost of code books. Existing Division of Plumbing funds will be utilized for implementation and enforcement of the Plumbing Code’s provisions.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees directly or indirectly, nor increase any enacted fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation. The Kentucky Plumbing Code is to apply equally to all plumbing projects within the Commonwealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction and the Division of Plumbing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.040(10) and 318.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes no new fees or creates new expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are no additional costs anticipated to generate no additional revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? There are no additional costs anticipated to administer the updated Kentucky Plumbing Code.

(d) How much will it cost to administer this program for subsequent years? The costs of administering the Kentucky Plumbing Code are anticipated to remain relatively constant after the first year of implementation and are offset by the revenues received for permits and inspections.

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

Revenues (+/-): Neutral
Section 1. Definitions. (1) "Regular SNAP benefits" means SNAP benefits received in accordance with the procedures specified in:
(a) 921 KAR 3:020, Financial Requirements;
(b) 921 KAR 3:025, Technical Requirements;
(c) 921 KAR 3:030, Application Process; and
(d) 921 KAR 3:035, Certification Process.
(2) "Shelter costs" means monthly rent or mortgage expenses as stated by the applicant.
(3) "Simplified Assistance for the Elderly" or "SAFE" means an optional SNAP program for SSI participants who are age sixty (60) or older.
(4) "State Data Exchange" or "SDX" means files administered by the Social Security Administration that provide states with eligibility and demographic data relating to SSI applicants and participants.

Section 2. SAFE Program Procedures. Unless a different procedure or process for a SNAP requirement is specified in this administrative regulation, all SNAP requirements specified in 921 KAR Chapter 3 shall apply to SAFE, including the process for:
(1) A fair hearing;
(2) An administrative disqualification hearing;
(3) An appeal;
(4) A disqualification;
(5) A claim and collection of a claim; and
(6) EBT issuance.

Section 3. Eligibility for SAFE. (1) An individual may qualify for SAFE benefits if the individual:
(a) Is a Kentucky resident;
(b) Is:
1. A current SSI recipient; or
2. SSI eligible, but SSI benefits are currently in suspension;
(c) Is age sixty (60) or older;
(d) Is not institutionalized;
(e) Is:
1. Single, widowed, divorced, or separated; or
2. Married and living with a spouse who meets the criteria specified in (a) through (f) of this subsection; and
(f) Purchases and prepares food separately from another individual who shares the same residence, but is not a member of the applicant's household as defined in 921 KAR 3:010.
(2) The cabinet shall use SDX to verify an applicant's marital and institutional status.
(3) If a household member does not meet the criteria listed in subsection (1) of this section, the household:
(a) Shall not be eligible for SAFE; and
(b) May apply for regular SNAP benefits in accordance in 921 KAR 3:030.
(4) An individual who meets the criteria of subsection (1) of this section may apply for regular SNAP benefits instead of SAFE benefits.
(5) An individual shall not receive SAFE benefits and regular SNAP benefits at the same time.

Section 4. SAFE Application Process. (1) Through use of the SDX files, the cabinet shall:
(a) Identify SSI participants who are potentially eligible for SAFE; and
(b) Mail each identified SSI household a SF-1, Simplified Assistance for the Elderly (SAFE) Application, and a return envelope.
(2) A SAFE application shall be considered filed if the SF-1 is:
(a) Signed; and
(b) Received at the Department for Community Based Services, Division of Family Support.
(3) In accordance with 7 C.F.R. 273.2(g), the cabinet shall provide an eligible household an opportunity to participate within thirty (30) days of the date the application is filed.

Section 5. SAFE Certification Process. (1) The cabinet shall process a SAFE application without requiring an interview.
(2) Information necessary to certify a SAFE application shall be obtained from SDX with the exception of the information provided by the applicant on the SF-1 or the SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form.
(3) The cabinet shall certify an eligible household for SAFE benefits for up to thirty-six (36) months.
(4) In accordance with 7 C.F.R. 273.10(g), the cabinet shall send an applicant a notice upon certification or denial.
(5) The cabinet shall send a SF-2 to a SAFE household in the month preceding the last month of the household's certification period.

Section 6. SAFE Benefits. (1) The cabinet shall provide a SAFE household a standard monthly benefit amount approved by the U.S. Department of Agriculture's Food and Nutrition Service.
(2) The standard SAFE benefit amounts shall be based on:
(a) Shelter costs;
(b) Household size; and
(c) The average benefits received by a similar household in the regular SNAP.

Section 7. Changes in Household Circumstances. (1) A household receiving SAFE benefits shall not be required to report any changes during the certification period.
(2) The cabinet shall process changes in household circumstances based on information received from SDX.
(3) If information voluntarily reported by the household is contradictory to SDX data, the cabinet shall not act upon the information unless the information is a change in a household member's:
(a) Name;
(b) Date of birth; or
(c) Address.
(4) Unless a change in household circumstance results in a change in benefits, the cabinet shall not provide a SAFE household with notification of a change being made in household circumstances.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "SF-1, Simplified Assistance for the Elderly (SAFE) Application", edition 04/13[0224]; and
(b) "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", edition 04/13[0224].
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621,
Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: March 19, 2013
FILED WITH LRC: March 28, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 2013 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2013, five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 May 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, 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: Justin Dearinger

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Simplified Assistance for the Elderly (SAFE) Program, a demonstration project administered by the Cabinet, to improve access to the Supplemental Nutrition Assistance Program (SNAP) for elderly and disabled individuals.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform application standards for the SAFE program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet for Health and Family Services has responsibility under 7 C.F.R. 271.4 to administer the SNAP program which includes the SAFE demonstration project.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for the SAFE program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will change the monthly allotments received by recipients which are contained on the forms, SF-1, Simplified Assistance for the Elderly (SAFE) Application and SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form. These forms are incorporated by reference and used in the application and recertification process. The non-discrimination statement contained on these forms is updated to meet federal requirements. The amendment also makes technical corrections in accordance with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation will change the monthly allotment received by recipients and the forms used in administering the SAFE program. The changes are being made to comply with federal requirements to maintain cost neutrality within the demonstration project. The amendment to this administrative regulation is necessary to also comply with federal programmatic requirements regarding nondiscrimination and to avoid possibility for federally imposed corrective action or penalty.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by implementing the application requirements of 7 C.F.R. 273.2.
(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by adjusting the monthly benefit amounts and the forms incorporated by reference to meet the federal requirements.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the 12,306 households that are currently participating in SAFE. All SAFE recipients and potential applicants are affected by this administrative regulation.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment to this administrative regulation will not require any additional actions on the part of SAFE program applicants or recipients.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not create a cost to SAFE program applicants or recipients.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment to this administrative regulation will affect SAFE benefits for: one (1) person households with monthly shelter expenses of $199 or less must have their monthly benefit increased from $68 to $54 (-$14); one (1) person households with monthly shelter expenses of $200 or more must have their monthly benefit increased from $96 to $101 (+$5); two (2) person households with monthly shelter expenses of $107 or less must have their monthly benefit reduced from $111 to $97 (-$14); and two (2) person households with monthly shelter expenses of $108.00 or more must have their monthly benefit reduced from $147 to $143 (-$4). The changes in the monthly allotment are required by the United States Department of Agriculture, Food and Nutrition Service to maintain cost neutrality and to continue operating the demonstration project which simplifies the application and recertification process for elderly recipients who receive Supplemental Security Income.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional funding is required initially to implement the administrative regulation.
(b) On a continuing basis: No additional funding is required on a continuing basis to implement this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100 per cent federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50 per cent federal and 50 per cent state and have been appropriated in the enacted 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: An increase in fees or funding is not necessary to amend this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 7 C.F.R. 271.4, 7 C.F.R. 273.2
2. State compliance standards: KRS 194.050 (1)
3. Minimum or uniform standards contained in the federal mandate: 7 C.F.R. 271.4, 7 C.F.R. 273.2
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements,
implement provisions of KRS Chapter 605, Administrative Matters. KRS 605.120(5) authorizes the cabinet, to the extent funds are available, to establish a program for kinship care that provides a permanent placement for a child who is or would otherwise be placed in foster care due to abuse, neglect, or death of both parents. KRS 605.120(6) requires the cabinet to promulgate administrative regulations establishing uniform conditions and requirements regarding eligibility, financial assistance and payment rates, and support and case-management services for kinship care. This administrative regulation establishes the Kinship Care Program in Kentucky.

Section 1. Definitions. (1) "Adolescent member of the household" means a youth who:
  (a) Resides in the home of an individual who applies for approval to be a kinship caregiver; and
  (b) Is age twelve (12) through age seventeen (17).

(2) "Adult member of the household" means an adult who:
  (a) Resides in the home of an individual who applies for approval to be a kinship caregiver; and
  (b) Is age eighteen (18) or older.

(3) "Caretaker relative" means a relative:
  (a) With whom the child is, or shall be, placed by the cabinet; and
  (b) Who is seeking to qualify as a kinship caregiver.

(4) "Case permanent placement plan" is defined at KRS 620.020(1).

(5) "Child" means an individual:
  (a) Age fifteen (15) or under;
  (b) Age sixteen (16), seventeen (17), or eighteen (18) in regular full-time attendance in elementary, middle, or high school, or equivalent level of vocational or technical school; or
  (c) Under age eighteen (18) and a graduate of high school or equivalent.

(6) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky’s Temporary Assistance for Needy Families money payment program established in 921 KAR Chapter 2.

(7) "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the cabinet as an alternative to foster care.

(8) "Supplemental Security Income" or "SSI" means a program established in 42 U.S.C. 1382.

Section 2. Initial Eligibility Determination for A Child. (1)(a) Effective April 1, 2013, the cabinet shall not consider a child for initial eligibility in the Kinship Care Program.

(b) Other cabinet resources for a prospective or existing permanent relative placement may include:
  1. K-TAP for a child if an application is made in accordance with 922 KAR 2:006 and 921 KAR 2:016;
  2. Health benefits for a child if an application is made in accordance with 907 KAR 1:610, 907 KAR 4:020, or 907 KAR 4:030;
  3. Supplemental Nutrition Assistance Program (SNAP) benefits for a household if an application is made in accordance with 921 KAR 3:030; or
  4. Relative placement support benefit in accordance with 922 KAR 1:400, to the extent funds are available.

(2) To the extent funds are available, the cabinet may consider a child for initial eligibility in the Kinship Care Program if the cabinet:
  (a) Determines that the child is at risk of removal from the child’s home with the child’s biological or adoptive parent and would otherwise be placed in foster care, or is in the custody of the cabinet and residing in foster care due to:
    1. A cabinet investigation, pursuant to 922 KAR 1:330, that resulted in a substantiation of abuse or neglect:
      a. Within 120 calendar days of placement in the home of the caretaker relative; and
      b. Prior to April 1, 2013; or
    2. The death of both parents; or
  (b) Places the child with a caretaker relative prior to April 1, 2013, due to:
    1. Abuse or neglect as provided in paragraph (a)(1) of this subsection; or
    2. Death of both parents.
(3) Prior to April 1, 2013. [32] the cabinet may consider a child for the Kinship Care Program if the child is placed with a caretaker relative in Kentucky by another state pursuant to KRS 615.030, and the cabinet receives from the other state agency responsible for the child's placement verification of:

(a) A finding of substantiated abuse or neglect within 120 calendar days of the child's placement, as determined by the state agency responsible for the child's placement; or

(b) The death of both parents.

(4) Prior to April 1, 2013. [33] the cabinet may consider a child placed with a caretaker relative in another state for the Kinship Care Program if the:

(a) Child and caretaker relative become a resident of Kentucky within forty-five (45) calendar days of the child's placement;

(b) Caretaker relative applies for the Kinship Care Program within forty-five (45) calendar days of the child's placement; and

(c) Other state agency responsible for the child's placement provides verification that the placement was due to:

1. A finding of substantiated abuse or neglect within 120 days of the child's placement, as determined by the state agency responsible for the child's placement; or

2. The death of both parents.

(5) [34] The cabinet shall offer the Kinship Care Program benefits shall be available to a child:

(a) Placed by the cabinet with a nonparental relative in accordance with this administrative regulation; and

(b) Whose initial eligibility determination for the Kinship Care Program took place prior to April 1, 2013.[35] to a nonparental relative who has received a child from the cabinet for placement.

Section 3. Initial Eligibility Determination Process for Child's Relative. (1) The caretaker relative of the child and an adult member of the household shall:

(a) Undergo a:

1. Criminal records check in accordance with 922 KAR 1:490;

2. Child abuse and neglect check conducted by the cabinet in accordance with 922 KAR 1:490; and

3. Be approved in accordance with 922 KAR 1:490.

(2) Each adolescent household member of the caretaker relative's home shall:

(a) Undergo a child abuse and neglect check, conducted by the cabinet in accordance with 922 KAR 1:490; and

(b) Be approved in accordance with 922 KAR 1:490.

(3) The caretaker relative, each adult member of the household and each adolescent member of the household shall agree to undergo a relative home evaluation.

Section 4. Relative Home Evaluation. (1) The cabinet shall utilize the "DPP-1276 Relative Home Evaluation" to verify a relative home evaluation for the Kinship Care Program.

(2) During a relative home evaluation, the cabinet shall consider the caretaker relative's:

(a) Willingness and ability to:

1. Protect the child from abuse or neglect;

2. Assume permanent custody;

3. Understand and agree to the "KC-01 Kinship Care Program Statement of Rights and Responsibilities";

4. Participate in the child's case permanency plan;

5. Access:

a. Transportation;

b. Telephone;

c. Medical services;

d. First aid supplies; and

e. School;

6. Provide full-time care; and

7. Accommodate for the child within the home, including:

a. Providing for the child's sleeping and eating;

b. Maintaining adequate heat and ventilation in the home;

c. Using active smoke detectors in the home; and

d. Assuring the child's inaccessibility to:

(i) Medication;

(ii) Alcoholic beverages;

(iii) Poisonous or cleaning materials; and

(iv) Ammunition;

(v) Firearms; and

(vi) Unsupervised contact with a birth parent; and

(b) Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family.

(3) [36] The cabinet shall indicate the need for any start-up costs, as described in Section 14 of this administrative regulation, with the "DPP-1276 Relative Home Evaluation".

(b) Start-up costs shall no longer be available effective April 1, 2013.

Section 5. Completion of Initial Eligibility Determination. (1) To satisfactorily complete the initial eligibility determination, a caretaker relative of a child shall meet the following requirements to qualify as a kinship caregiver:

(a) Achieve a satisfactory relative home evaluation, described in Section 4 of this administrative regulation, from cabinet staff;

(b) Meet approval criteria established in Section 3 of this administrative regulation for criminal records checks;

(c) Meet approval criteria established in Section 3 of this administrative regulation for child abuse and neglect checks, conducted by the cabinet; and

(d) Agree to and sign the "KC-01 Kinship Care Program Statement of Rights and Responsibilities".

(2) The child's designated cabinet worker shall utilize Form "KIM-78KC Kinship Care Financial Assistance Application", to refer the caretaker relative "kinship caregiver" and child to the appropriate cabinet staff for an eligibility determination of the Kinship Care Program's financial assistance for the child.

(3) Prior to the financial assistance eligibility determination by the cabinet for receipt of the Kinship Care Program's financial assistance, the "KIM-78KC Kinship Care Financial Assistance Application" shall be signed and dated by:

(a) The designated cabinet worker assigned to the child; and

(b)1. The caretaker relative with whom the child is placed; or

2. A representative authorized in writing to act on behalf of the caretaker relative.

(4) A caretaker relative who fails to satisfactorily complete the initial eligibility determination required by subsection (1) of this section to qualify as a kinship caregiver shall not be eligible to receive financial assistance from the Kinship Care Program for the child.

Section 6. Application Process for the Kinship Care Program. (1) The date of the "KIM-78KC, Application for Kinship Care Financial Assistance", shall be:

(a) Within the timeframes established in Section 2 of this administrative regulation; or

(b) In accordance with Section 12 of this administrative regulation.

(2) The caretaker relative shall be the primary source of a child's information and shall be required to:

(a) Furnish verification of income, resources, and technical eligibility, as required by Section 8 of this administrative regulation; and

(b) Give written consent to those contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(3) The application shall be processed in the county of residence of the caretaker relative.

(4) If the caretaker relative is unable to go to the local department office to complete the application process, the caretaker relative may:

(a) Designate an authorized representative; or

(b) Request a home visit.

(5) The caretaker relative may be:

(a) Assisted by an individual of his choice in the application process; or

(b) Accompanied by an individual of his choice during a contact with the cabinet.

(6) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for a person who is:

(a) Deaf; or

(b) Hard of hearing.

(7) Interpreter services shall be provided for a non-English
Section 7. Timeframe for Eligibility Determination. (1) A decision shall be made regarding eligibility for Kinship Care Program financial assistance and payment issued within forty-five (45) calendar days of the date the "KIM-78KC Kinship Care Financial Assistance Application" is signed by the caretaker relative or representative.

(2) Exception to the time standard established in subsection (1) of this section may be provided by the cabinet if the caretaker relative or cabinet requires additional time to obtain verification necessary for an eligibility determination.

(3) The case record shall document the reason for not meeting the timeframe established in subsection (1) of this section.

(4) Failure to process an application within the timeframe shall not be used as a basis for denial for the Kinship Care Program.

(5) Use or disclosure of information obtained from the caretaker relative, child, or household, exclusively for the Kinship Care Program, shall be restricted pursuant to KRS 61.870 to 61.884, 194A.060(194B.060), 205.175, 205.177, and 620.050.

Section 8. Eligibility Determination for Financial Assistance Under the Kinship Care Program. (1) Except as provided in this administrative regulation, to be eligible a child shall meet technical eligibility requirements that are established for a K-TAP child in accordance with 921 KAR 2:006.

(2) The resource limit and countable resources of the child shall be the same as a K-TAP child in accordance with 921 KAR 2:016, Section 3.

(3) Except for the maximum payment scale and child's income limit in Section 11(1) of this administrative regulation, countable income of the child shall be the same as a K-TAP child in accordance with 921 KAR 2:016, Section 4(1).

(4) A child eligible for the Kinship Care Program living in the home with a sibling receiving K-TAP shall not be considered a sibling in a K-TAP benefit group in accordance with 921 KAR 2:016.

(5) Income and resources of a caretaker relative shall be disregarded when determining eligibility benefits for the child.

(6) A child shall not be concurrently eligible for a payment from the Kinship Care Program and:

(a) A foster care payment as established in 922 KAR 1:350 or 922 KAR 1:360.

(b) A K-TAP payment as established in 921 KAR 2:016; or

(c) An SSI payment as established in 42 U.S.C. 1382.

(7) The kinship caregiver shall cooperate in the child support activities pursuant to 42 U.S.C. 608(a)(2) and 921 KAR 2:006, Section 18. If the approved kinship caregiver refuses to cooperate with a child support activity, the kinship care financial assistance shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate number of eligible members, as established in Section 11(1) of this administrative regulation.

(b) The cabinet shall attempt to obtain a protective payee to administer the Kinship Care payment on behalf of the child in the same manner as for a K-TAP child in accordance with 921 KAR 2:006, Section 15(3). (b)

(8) The penalty in subsection (7) of this section shall not be applied on a showing of good cause in accordance with 921 KAR 2:006, Section 18(4).

(9) As a condition of eligibility of the Kinship Care Program for a child, the caretaker relative shall make an assignment of rights to the state for support, as required by 42 U.S.C. 608(a)(3) and KRS 205.720(1). The assignment shall:

(a) Include members of the case for whom support rights apply; and

(b) Be completed at the time of application for Kinship Care Program financial assistance.

(10) If all technical and financial eligibility factors are met, the effective date of eligibility for Kinship Care financial assistance shall be the date of placement of the child in the home of the kinship caregiver that is listed on the "KIM-78KC Kinship Care Financial Assistance Application".

Section 9. Ineligible Child for the Kinship Care Program. A child shall not be eligible for the Kinship Care Program if the:

(1) Child applying for the Kinship Care Program does not have a KIM-78KC signed by the cabinet worker designated to monitor the child's permanency, safety, and well being;

(2) Child's parental relative resides with the child or has legal custody of the child, including joint custody/Child receiving Kinship Care Program benefits does not have a designated cabinet worker to monitor the child's permanency, safety, and well being, unless the kinship caregiver has pursued permanent custody of the child;

(3) Prospective caretaker relative of a child declines by form KC-01 the initial offer of the Kinship Care Program and related benefits;

(4) Child or caretaker relative lives in or relocates to another state;

(5) Child's removal is based on a cabinet finding of dependency, in accordance with 922 KAR 1:330, except for a finding of dependency based on the death of both parents of the child;[6] or

(6) Child no longer meets the definition of a "child" in Section 1 of this administrative regulation; or

(7) Child's initial eligibility determination for the Kinship Care Program is made on or after April 1, 2013.

Section 10. Permanency for the Child. (1) Pursuant to KRS 620.090, the cabinet shall recommend to the court that the caretaker relative of kinship caregiver be granted temporary custody of the child, and the caretaker relative shall agree to take temporary custody of the child.

(2) A judicial authority granting temporary custody to the cabinet, pursuant to KRS 620.080, shall not be used to deny the caretaker relative's access to the Kinship Care Program.

(3) In accordance with KRS 922 KAR 1:140, the child's designated worker shall develop a case permanency plan pursuant to KRS 620.230(2) and conduct regular visits with the child.

(4) Prior to the 12th month of placement into the kinship caregiver's home the cabinet shall:

(a) Review the case permanency plan and placement to determine if Kinship Care is in the best interest of the child;

(b) Prepare a court report recommendation pertaining to permanent custody of the child; and

(c) Request that the case be redocketed for court action to determine permanent custody pursuant to KRS 620.027, if appropriate.

(5) To continue receiving the Kinship Care Program financial assistance, the kinship caregiver shall pursue permanent custody of the child without undue delay on the part of the kinship caregiver.

(6) The kinship caregiver shall meet the criteria of pursuing permanent custody, as required in subsection (5) of this section, if a petition for permanent custody of the child is filed no later than thirty (30) calendar days after the 12th month of:

(a) Receiving financial assistance from the Kinship Care Program;

(b) Signing the KC-01[KC-14].

(7) If the kinship caregiver is not pursuing permanent custody of the child as required in subsections (5) and (6) of this section, the child shall not be eligible for the Kinship Care Program and the cabinet shall:

(a) Discontinue Kinship Care Program benefits for the child;

(b) Notify the overseeing court in accordance with KRS 620.130(2); and

(c) Accept an application for K-TAP for the child in accordance with 921 KAR 2:006 and 921 KAR 2:016.

Section 11. Kinship Care Payment. (1) The maximum monthly payment scale and child's income limit shall be as follows:
Section 12. Eligibility Shall Follow the Child. To the extent funds are available, a child’s initial eligibility determination made prior to April 1, 2013 [the initial finding of substantiated abuse or neglect of the child], as specified in Section 2 of this administrative regulation, may be used for a reaplication and redetermination of eligibility for financial assistance under the Kinship Care Program if:

1. The child leaves the home of the kinship caregiver and the cabinet:
   a. Places the child with another caretaker relative due to:
      1. Death of the kinship caregiver;
      2. An illness or injury of the kinship caregiver, as supported by medical documentation, that inhibits adequate care of the child; or
      3. Active duty in military service of the kinship caregiver; or
   b. Returns the child to the kinship caregiver if the absence is temporary in accordance with:
      1. Section 16(2) of this administrative regulation; or
      2. Paragraph (a)2 or 3 of this subsection; or
      3. Cabinet initiation of a civil action in the court of appropriate jurisdiction; or
   c. A psychiatric residential treatment facility as defined in KRS 600.020(20).

2. The cabinet shall provide services or facilitate access to services, including case-management services, described in the child’s case permanency plan for at least six (6) months beginning with the date of placement of the child with the caretaker relative [or (b) Until the caretaker relative has permanent custody of the child].

3. To the extent funds are available, a child in Kinship Care shall be eligible for an educational bonus under the same conditions as a K-TAP recipient, as described at 921 KAR 2:017, Section 11.

Section 13. Eligibility Redetermination. (1) The cabinet shall redetermine eligibility if a report or information about a change in circumstance is received.

(2) The cabinet shall redetermine eligibility every twelve (12) months to reassess a Kinship Care case for continued eligibility and financial assistance.

(3) A kinship caregiver shall be responsible for reporting within ten (10) calendar days a change in circumstance that may affect eligibility or the amount of financial assistance.

(4) A kinship caregiver shall be responsible for requirements during eligibility redetermination for continued Kinship Care Program financial assistance pursuant to Sections 6(2) and 6(8) of this administrative regulation.

Section 14. Start-up Costs. (1) To the extent funds are available, a one (1) time start-up amount may be provided prior to April 1, 2013, for the purpose of supplying a child’s immediate need for:

a. Clothing;
b. School supplies;
c. Additional furniture;
d. A deposit for a larger apartment; or

e. An essential documentable cost up to the maximum allowed in subsection (2) of this section.

(2) The total amount of assistance allowed for the Kinship Care case for start-up costs shall not exceed the maximum amount for the appropriate number of eligible children in the Kinship Care case as follows:

<table>
<thead>
<tr>
<th>Number of Eligible Children</th>
<th>Maximum Monthly Payment and Income Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Child</td>
<td>$300</td>
</tr>
<tr>
<td>2 Children</td>
<td>$600</td>
</tr>
<tr>
<td>3 Children</td>
<td>$900</td>
</tr>
<tr>
<td>4 Children</td>
<td>$1,200</td>
</tr>
<tr>
<td>5 Children</td>
<td>$1,500</td>
</tr>
<tr>
<td>6 or More Children</td>
<td>$1,800</td>
</tr>
</tbody>
</table>

(2)[Except as provided by Section 8(7)(b) of this administrative regulation.] The kinship caregiver shall not be eligible for Kinship Care financial assistance, but shall be the payee for the eligible child’s kinship care benefits.

(3) The caretaker relative shall not receive the Kinship Care financial assistance for a child:

a. Until approval of an application for the Kinship Care Program’s financial assistance; or
b. Prior to the application date for the Kinship Care Program's financial assistance.

Section 15. Supportive Services. (1) To the extent funds are available, the following services may be provided as needed on a case-by-case basis to ensure a placement is not disrupted:

a. Foster care;

b. Family counseling;

c. Parenting training; or

d. Referral to an available support group or other community-based services.

(2) The cabinet shall provide services or facilitate access to services, including case-management services, described in the child’s case permanency plan for at least six (6) months beginning with the date of placement of the child with the caretaker relative [or (b) Until the caretaker relative has permanent custody of the child].

(3) To the extent funds are available, a child in Kinship Care shall be eligible for an educational bonus under the same conditions as a K-TAP recipient, as described at 921 KAR 2:017, Section 11.

(4)(a) If child care assistance is requested, the cabinet shall refer the kinship caregiver to the area child care broker;

(b) Eligibility for child care assistance shall be determined in accordance with criteria established in 922 KAR 2:160; and

(c) Eligibility for the Kinship Care Program shall not establish entitlement to a child care subsidy payment.

Section 16. Discontinuance from the Kinship Care Program. (1) Financial assistance under the Kinship Care Program shall not be provided to a child;

a. If the kinship caregiver fails to meet eligibility redetermination requirements as specified in Section 13 of this administrative regulation;

b. Who meets a criterion in accordance with Section 9 of this administrative regulation; or

c. Who is absent from the home of the kinship caregiver for a period of thirty (30) consecutive calendar days or more unless the child:

1. Is absent due to medical care or school attendance; and
2. Continues to be under the care and control of the kinship caregiver.

(2) A child shall be temporarily discontinued from the Kinship Care Program during the period of time the child is residing in:

a. Foster care as defined in KRS 620.020(5);

b. A residential treatment facility as defined in KRS 600.020(50)(45);

c. A psychiatric residential treatment facility as defined in KRS 216B.450(5)(44);

d. The parent’s home for up to sixty (60) days for reunification purposes on a trial basis; or

e. Detention as defined in KRS 600.020(20).

(3) Cabinet initiation of a civil action in the court of appropriate jurisdiction after:

- 2223 -
(a) Notice and an opportunity for an administrative hearing in accordance with Section 19 of this administrative regulation is provided to the kinship caregiver; or
(b) The kinship caregiver has exhausted or abandoned the administrative and judicial remedies as specified in 921 KAR 2:055.

Section 18. No Individual or Family Entitlement. (1) The Kinship Care Program shall not entitle an individual or family to receive financial assistance in accordance with 42 U.S.C. 601(b).
(2) The Kinship Care Program financial assistance may be provided to an eligible child only to the extent funds are available, in accordance with KRS 605.100(1).

Section 19. Service Appeal. (1) An administrative hearing or service appeal in accordance with 922 KAR 1:320 may be requested by a kinship caregiver denied:
(a) Supportive services designed to facilitate the child's placement stability with the kinship caregiver in accordance with Section 15 of this administrative regulation; or
(b) Start-up costs offered to facilitate the child's adjustment to the new environment with the kinship caregiver prior to April 1, 2013.
(2) A kinship caregiver who is dissatisfied with an action or inaction on the part of the cabinet relating to financial assistance under the Kinship Care Program shall have rights to a hearing pursuant to 921 KAR 2:055.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "KC-01 Kinship Care Program Statement of Rights and Responsibilities, edition 07/03";
(b) "KC-14 Kinship Care Rights and Responsibilities, edition 07/03";
(c) "DPP-1276 Relative Home Evaluation, edition 07/03"; and
(d) "KIM-78KC Kinship Care Financial Assistance Application, edition 07/03".
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: March 19, 2013
FILED WITH LRC: March 28, 2013 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until May 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Tricia Orme, 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: Justin Dearinger
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the Kinship Care Program to the extent that funding is available.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Kinship Care Program to the extent funding is available.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Kinship Care Program in Kentucky to the extent that funds are available.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes through its establishment of the Kinship Care Program in Kentucky to the extent that funds are available.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will sunset provisions of the Kinship Care Program to align programmatic costs with existing state and federal funding and will make other technical corrections in accordance with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to maintain programmatic costs of the Kinship Care Program within available state and federal funding and to avoid negative consequences to the benefit amount of children in the Kinship Care Program. In addition, companion administrative regulations will ensure that children subject to future nonparental relative placements by the cabinet will have supportive services and benefits aligned with available resources.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing and maintaining the Kinship Care Program to the extent funding is available.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its establishment and maintenance of the Kinship Care Program to the extent funds are available.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: During the month of January 2013, there were 11,348 children receiving benefits through the Kinship Care Program.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new or different action will be required of the regulated entities as result of the amendment 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 new or different costs will be required of the regulated entities as a result of the amendment to this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will preserve current benefit levels for existing beneficiaries in the Kinship Care Program. Regulated entities will maintain current benefit levels if other technical and financial eligibility requirements are met.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There will be no new costs to the agency to implement this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.
(b) On a continuing basis: There will be no new costs to the
agency to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Funding used for the implementation and enforcement of this administrative regulation includes federal funds made available through the Temporary Assistance for Needy Families Block Grant (TANF) and state match or state maintenance of effort funds for TANF.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-609
2. State compliance standards. KRS 194A.050(1), 205.200(2), (3), 605.120(5), (6), 605.150(1)
3. Minimum or uniform standards contained in the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

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 Cabinet for Health and Family Services, Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.200(2), (3), 605.120(5), (6), 605.150(1), 42 U.S.C. 601-609

(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 Kinship Care Program has been operational for a number of years. It does not produce any revenue for the state. This administrative regulation will not generate any new revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no new costs to the agency to implement this administrative regulation for the first year. Without the amendment, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

(4) (Amendment)


STATUTORY AUTHORITY: KRS 194A.050(1), 199.467, 620.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. Pursuant to the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. Sections 620 to 679, KRS 199.467 requires the Secretary for Health and Family Services to promulgate administrative regulations establishing specific goals for the cabinet, for each fiscal year, regarding the maximum number of children who will remain in foster care longer than twenty four (24) months, and describing the steps to be taken to achieve the goals. KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. This administrative regulation establishes the maximum number of children remaining in foster care longer than twenty four (24) months, and establishes permanency services available to children in placement.

Section 1. Definitions. (1) “Absent parent search” means cabinet initiated efforts to locate a biological or legal parent, or a relative.

(2) “Cabinet” is defined by KRS 199.011(2) and 600.020(6).

(3) “Case permanency plan” is defined by KRS 620.020(1).

(4) “Concurrent planning” means the cabinet simultaneously plans for:

(a) The return of a child in the custody of the cabinet to the child’s parent; and

(b) Another permanency goal for the child if return to parent is not achieved within fifteen (15) of the last twenty two (22) months, in accordance with 42 U.S.C. 671(a)(18).

(5) “Parent” is defined by 42 U.S.C. 675(2).

(6) “Reasonable efforts” is defined at KRS 620.020(11)(40).

(7) “Relative” means an individual related to a child by blood, marriage, or adoption to a child.

(8) “Sufficient progress” means compliance with case permanency plan objectives that support the safe return of the child to the child’s parent.

Section 2. Children in Care. Unless the secretary of the cabinet or designee approves an exception based on overall trends in the foster care population, the maximum number of children who receive foster care in excess of twenty four (24) months shall be
3,000 during a state fiscal year.

Section 3. Permanency Planning. (1) In a court permanency hearing held pursuant to KRS 610.125, the cabinet shall demonstrate that reasonable efforts to return the child to the child's parent:
(a) Have been unsuccessful; or
(b) Are not required under the provisions of KRS 610.127.
(2) A child shall be removed from the child's home if:
(a) An emergency custody order has been obtained pursuant to KRS 620.060;
(b) A temporary custody order has been obtained pursuant to KRS 620.090; or
(c) A court orders the removal pursuant to KRS 620.140(1)(d).
(3) Upon removal of a child from the child's home, a placement shall be:
(a) Selected according to the least restrictive appropriate placement available, as required by KRS 620.090(2); and
(b) Closer to the child's home, in accordance with KRS 199.801; and (b) A child placed with a relative shall be considered for the Kinship Care Program, as established in 922 KAR 1:130.
(4) In the provision of permanency services, the cabinet shall meet the requirements of:
(b) Multi-ethnic Placement Act as amended by the Interethnic Adoption Provisions of 1996 in accordance with 42 U.S.C. 622(b)(9), 671(a)(18)(I)(I), and 1996;
(c) Be conducted within thirty (30) days of a child entering the custody of the cabinet;
(d) Be conducted to gather as much information as possible related to the person and the person's location which may include:
1. Date of birth;
2. Social Security number;
3. Present or previous employers; and
4. Present or most recent address; and
(c) Include a written record of all search attempts, written correspondence, and telephone contacts with any person to assist in locating a parent or relative.
(6) If a relative placement is in the best interest of the child, the cabinet shall:
(a) Use an absent parent search to locate a relative;
(b) Conduct background checks on the relative consistent with a caretaker relative pursuant to 922 KAR 1:490; and
(c) Complete a home evaluation with consideration given to the relative's:
1. Willingness and ability to:
   a. Protect the child from abuse or neglect;
   b. Participate in the child's case permanency plan;
   c. Access:
      (i) Transportation;
      (ii) Telephone;
      (iii) Medical services;
      (iv) First aid supplies; and
   (v) School;
   d. Provide full-time care;
   e. Provide for the child's sleeping and eating;
   f. Maintain adequate heat and ventilation in the home;
   g. Use active smoke detectors in the home; and
   h. Assure the child's inaccessibility to:
      (i) Medication;
      (ii) Alcoholic beverages;
      (iii) Poisonous or cleaning materials;
      (iv) Firearms or ammunition; and
   (v) Unsupervised contact with the birth parent; and
2. Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family;
3. Upon removal of a child from the child's home, the cabinet shall develop and document a case permanency plan, using Form DPP-1281, Family Case Plan.
(8) The case permanency plan shall identify the permanency goal described in Section 4(2) of this administrative regulation.
(9) Concurrent planning shall be considered:
(a) During development of the case permanency plan; and
(b) At the six (6) month case review.

Section 4. Permanency Goals. (1) A permanency goal for a child in the custody of the cabinet shall be established according to the particular needs and best interest of the child.
(2) A permanency goal shall include one (1) of the following:
(a) Return to parent;
(b) Adoption;
(c) Permanent relative placement;
(d) Legal guardianship;
(e) Another planned permanent living arrangement; or
(f) Emancipation.

Section 5. Return to Parent. (1) The cabinet shall recommend to the court that a child in the custody of the cabinet is returned to the parent if the cabinet determines:
(a) A family has made sufficient progress toward completing the case permanency plan; and
(b) Return to the parent is in the best interest of the child.
(2) If the cabinet determines that a family has not made sufficient progress towards achieving the objectives specified in the case permanency plan, the cabinet shall seek a court order for:
(a) A change in the permanency goal; or
(b) Termination of parental rights or civil action.
(3) If the court determines that a circumstance occurs that negates the requirement to make reasonable efforts to reunify the child and family, as described in KRS 610.127, the cabinet shall select a permanent goal other than return to parent.

Section 6. Adoption. (1) The permanency goal for a child in the custody of the cabinet shall be adoption if:
(a) The parent pursues voluntary termination of parental rights pursuant to KRS 625.040; or
(b) The cabinet pursues involuntary termination of parental rights:
1. Pursuant to KRS 625.090; or 2. If the child has been in foster care for fifteen (15) of the most recent twenty-two (22) months pursuant to 42 U.S.C. 675.
(2) The cabinet shall request an exception for proceeding with involuntary termination of parental rights pursuant to subsection (1)(b) of this section, if:
(a) A relative placement has been secured;
(b) Termination is not in the best interest of the child, for a compelling reason:
   1. Documented in the case permanency plan; and
   2. Monitored on a continual basis; or
   (c) A service necessary for return to parent has not been provided within the time period specified in the case permanency plan.
(3) Cabinet staff shall consider involuntary termination of parental rights at each permanency hearing held pursuant to KRS 610.125(1).

Section 7. Permanent Relative Placement. The permanency goal for a child in the custody of the cabinet shall be permanent relative placement if:
(1) Return to the parent is not in the child's best interest; and
(2) The cabinet determines that a relative who does not pursue adoption or legal guardianship is able to provide a permanent home for the child.

Section 8. Legal Guardianship. (1) The permanency goal for a child in the custody of the cabinet shall be legal guardianship if the cabinet determines that:
(a) Return to the parent or adoption is not in the child's best interest; and
(b) There is an identified adult willing to seek legal guardianship of this child; and
(c) Legal guardianship by the adult identified in subsection (1)(b) of this section is in the child's best interest.
(2) Legal guardianship shall be requested pursuant to KRS
Section 9. Another Planned Permanent Living Arrangement. (1) The permanency goal for a child in the custody of the cabinet shall be another planned permanent living arrangement if:
(a) An unsuccessful effort has been made to place the child for adoption or with a relative, and the child has been placed on a national adoption register;
(b) Other permanency goal options have been exhausted and are no longer appropriate due to the specific circumstances of the child;
(c) The cabinet has reviewed documentation that a goal of another planned permanent living arrangement is in the best interest of the child;
(d) The court has determined that another planned permanent living arrangement is in the best interest of the child to be placed; and
(e) The child has formed psychological ties with those with whom the child resides, and adoption and guardianship have been discussed with the care provider and are not viable alternatives.
(2) Approval shall be obtained from the commissioner or designee prior to the establishment of another planned permanent living arrangement as a permanency goal for a child:
(a) Under the age of sixteen (16); or
(b) Placed with a private child caring agency.

Section 10. Emancipation. (1) The permanency goal for a child in the custody of the cabinet shall be emancipation when:
(a) The youth is age sixteen (16) or older; and
(b) Other permanency options have been considered and are not appropriate due to the specific circumstances of the child.
(2) If emancipation is established as a permanency goal, the youth shall be referred to an independent living program administered by the cabinet.

Section 11. Permanency Services. (1) The cabinet shall provide services for a child in the custody of the cabinet so that permanency is achieved.
(2) Permanency services may include:
(a) Ongoing case work and monitoring of the family to:
   1. Maintain the child safely in the child's home; and
   2. Ensure safe return of the child if the goal is return to the parent;
(b) Adoption assistance pursuant to 922 KAR 1:050 or 922 KAR 1:060;
(c) Postfinalization adoption assistance if adoption assistance has not been previously approved pursuant to KRS 199.555 and 195.557;
(d) Postadoption placement stabilization services as described in 922 KAR 1:530; or
(e) Referral to other cabinet and community resources necessary for the achievement or maintenance of the child's permanency goal. Other cabinet resources for a prospective or existing permanent relative placement may include:
   1. The Kentucky Transitional Assistance Program (K-TAP) for a child if an application is made in accordance with 922 KAR 2:006 and 921 KAR 2:016;
   2. Health benefits for a child if an application is made in accordance with 907 KAR 1:610, 907 KAR 4:020, or 907 KAR 4:030;
   3. Supplemental Nutrition Assistance Program (SNAP) benefits for a household if an application is made in accordance with 921 KAR 3:030; or
   4. Relative placement support benefit in accordance with 922 KAR 1:400, to the extent funds are available.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 19, 2013
FILED WITH LRC: March 28, 2013 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 2013, and comments or objections may be submitted to the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until May 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, 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: Justin Dearinger
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the maximum number of children remaining in foster care longer than twenty-four months, and establishes permanency services available to children in placement.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the maximum number of children remaining in foster care longer than twenty-four months, and permanency services available to children in placement.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the maximum number of children remaining in foster care longer than twenty-four months, and permanency services available to children in placement.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing the maximum number of children remaining in foster care longer than twenty-four months, and permanency services available to children in placement.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates provisions pertaining to the Kinship Care Program and permanent relative placement for consistency with the concurrent amendments to 922 KAR 1:130 governing the Kinship Care Program and 922 KAR 1:400 governing Supportive Services. It also makes technical corrections in accordance with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to maintain programmatic costs of the Kinship Care Program and relative caregiver placements within available state and federal funding. This and companion amendments are necessary to avoid negative consequence to the benefit amounts available to current children in the Kinship Care Program and to ensure that children subject to future nonparental relative placements by the cabinet have supportive services and benefits conforming to available funding resources.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by aligning and updating permanency services for children who are placed by the cabinet with a nonparental relative congruent with available state and federal funding.
(d) How the amendment will assist in the effective administra-
tion of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes through its alignment and update of permanency services for children placed by the cabinet with a nonparental relative. The amendment assures that programmatic costs conform to available state and federal funding resources.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: During the month of January 2013, there were 11,348 children receiving benefits through the Kinship Care Program and 284 children in state custody who were placed with relatives. Approximately 300 new children are placed by the cabinet with caretaker relatives as an alternative to foster care each month.

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) required as a result of the amendment 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 new or different costs will be required of the regulated entities as a result of the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children currently receiving benefits in the Kinship Care Program will maintain eligibility for the same level of benefits if other technical and financial eligibility requirements are met. Children subject to future nonparental relative placements by the cabinet will have supportive services and benefits aligned with available funding resources.

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

(a) Initially: There will be no new costs to the agency to implement this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

(b) On a continuing basis: There will be no new costs to the agency to implement this administrative regulation.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds used for the implementation and enforcement of this administrative regulation include federal Titles IV-B and IV-E of the Social Security Act, federal Temporary Assistance for Needy Families Block Grant (TANF), federal Social Services Block Grant (SSBG), restricted funds derived from Medicaid, and state funds.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

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

9. TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards, KRS 194A.050(1), 199.467, 620.180


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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

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 Cabinet for Health and Family Services, Department for Community Based Services will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.467, 620.180, 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 622, 670-679b, 1996, 1996b

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 current fiscal year or subsequent years:

(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 current fiscal year or subsequent years? If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenses (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Commissioner’s Office
(Amendment)

922 KAR 1:320. Service appeals.

RELATES TO: KRS Chapter 13B, 194A.005, 194A.030(8), 199.555(2), 199.557, 209.020(4), (5), 209A.020(4), (5), 600.020(43)[42], 605.090(1)(b), (6), 620.020(1), 620.180(2)(a)1, 620.230, 45 C.F.R. 98.392, 205.10, 1355.21(b), 1355.30(p), 29
(a) Providing respite service for a family approved to care for a child under the custodial control of the cabinet.

Section 2. Right to Appeal. (1) A parent may request review of the following through an administrative hearing:

(a) Denial, reduction, modification, suspension, or termination of child welfare services provided by the cabinet;

(b) Closure of a child protective services case in accordance with:

1. 922 KAR 1:330, Section 11(3); or
2. 922 KAR 1:430, Section 4(4)(b); or
(c) Failure by the cabinet to:

1. Respond with reasonable promptness to a request for child welfare services provided by the cabinet;
2. Complete a case plan, or case permanency plan;
3. Provide or refer for services as specified in the case plan or case permanency plan; or
4. Meet the mandated time frames for child protective services specified in 922 KAR 1:350.

(2) A resource home parent or adoptive parent may request review of the following through an administrative hearing:

(a) Failure by the cabinet to:

1. Process reimbursement to a resource home with reasonable promptness;
2. Provide information required by KRS 605.090(1)(b) and (6);
3. Advise an adoptive parent of the availability of adoption assistance in accordance with 922 KAR 1:050, Approval of adoption assistance, or 922 KAR 1:060, Federal Title IV-E adoption assistance;
4. Provide an adoptive parent, except as otherwise required by law, with known relevant facts regarding the:
   a. Child;
   b. Child's background prior to finalization of the adoption; and
   c. Child's biological family;
(b) Determination of ineligibility for adoption assistance upon execution of an adoptive placement agreement under 922 KAR 1:050, Approval of adoption assistance, or 922 KAR 1:060, Federal Title IV-E adoption assistance;
(c) Denial of a request for a change in payment level due to a change in circumstances of an adoptive parent or child at the time of renewal of an adoption assistance agreement under 922 KAR 1:050, Approval of adoption assistance, or 922 KAR 1:060, Federal Title IV-E adoption assistance;
(d) Closure of a resource home under 922 KAR 1:350, Family preparation, unless a provision of Section 3(1)(f), (g), (h), or (i) of this administrative regulation applies.

(3) An approved and available adoptive parent outside the jurisdiction with responsibility for handling the case of an adoptive child may request an administrative hearing for the cabinet's denial or delay in placement of the child for adoption pursuant to 42 U.S.C. 671(a)(23).

(4)(a) A kinship caregiver may request an administrative hearing pursuant to 922 KAR 1:130, Section 19(1), Pursuant to 922 KAR 1:130, Section 19(1), a kinship caregiver may request an administrative hearing under the provisions of this administrative regulation for denial by the cabinet of:

1. Supportive services to facilitate the child's placement with the kinship caregiver;
2. A request for start-up costs to facilitate the child's adjustment to the new environment with the kinship caregiver;
(b) Pursuant to 922 KAR 1:130, Section 19(2), a kinship caregiver who is dissatisfied with an action or inaction on the part of the cabinet relating to financial assistance under the Kinship Care Program may request an administrative hearing under the provisions of 921 KAR 2:055, Hearings and appeals.

(5) An applicant determined by the cabinet to be ineligible for a tuition waiver may request an administrative hearing pursuant to 922 KAR 1:450, Section 3.

(6) An applicant determined by the cabinet to be ineligible for an educational and training voucher may request an administrative hearing pursuant to 922 KAR 1:500, Section 5.

(7) An adult may request review of the following through an administrative hearing:

(a) The cabinet's denial of general adult services or protective

1. Supportive services to facilitate the child's placement with the kinship caregiver;
2. A request for start-up costs to facilitate the child's adjustment to the new environment with the kinship caregiver;
services to an adult identified as a victim of abuse, neglect, or exploitation; or

(b) Failure by the cabinet to respond with reasonable promptness to a request for:
   1. General adult services; or
   2. Protective services for an adult.

(8) An applicant for child care assistance or the parent of a child receiving assistance may request an administrative hearing for the denial, reduction, suspension, or termination of benefits pursuant to 922 KAR 2:160, Section 18.

(9) An applicant for child care registration or a registered child care provider may request an administrative hearing in accordance with 922 KAR 2:180, Section 9.

(10) An individual aggrieved by an action of the cabinet may request an administrative hearing for a matter by which a Kentucky Revised Statute or 922 KAR Chapters 1 through 5 expressly permits the appeal of a cabinet action or alleged act.

(11) A parent or an adult aggrieved by an action of the cabinet may request review of the following through an administrative hearing:
   (a) A cabinet denial, reduction, suspension, or termination of services or federally-funded benefits, payments, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 through 5; or
   (b) A cabinet failure to act with reasonable promptness to a request for a federally-funded benefit, payment, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 through 5.

Section 3. Matters Not Appealable through an Administrative Hearing. (1) The following shall not be subject to review through an administrative hearing:
   (a) A matter in which a court:
      1. Has previously made a judicial determination or issued an order on the same issue being appealed; or
      2. Is currently engaged in legal proceedings regarding the same issue being appealed;
   (b) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;
   (c) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;
   (d) Failure to submit a written request for appeal within the time frame established by Section 6(4)(b) of this administrative regulation;
   (e) A decision to deny:
      1. Approval of an individual seeking to provide foster or adoptive services in accordance with 922 KAR 1:350 or 922 KAR 1:310; or
      2. A caretaker relative approval as a kinship caregiver if the:
         a. Caretaker relative fails to meet the provisions of 922 KAR 1:130, Section 5; or
         b. Child is ineligible in accordance with 922 KAR 1:130, Section 9.
   (f) Removal of a foster child from a resource home if the resource home parent or another individual residing in the home has been found by the cabinet to have abused, neglected, or exploited a child and the:
      1. Resource home parent or other individual waived the right to appeal the substantiated incident; or
      2. Substantiated incident was upheld after:
         a. An administrative hearing; or
         b. Judicial review;
   (g) Removal of a child from a resource home for the purpose of:
      1. Achieving a permanency goal described by 922 KAR 1:140, Foster care and adoption permanency services; or
      2. Uniting or reuniting the child with a sibling at the next placement;
   (h) Closure of a resource home if the cabinet has not placed a child in the home within the previous two (2) years;
   (i) Closure of a resource home according to the terms of the contract between the cabinet and the resource home;
   (j) A situation where state or federal law requires adjustment of a payment or grant, except when a payment or grant computation is incorrect;
   (k) The per diem rate of reimbursement paid to a resource home parent who provides foster care services; or
   (l) Decision to not recommend a resource home parent in accordance with 922 KAR 1:350, Section 9(12) for enrollment in specialized training as an emergency shelter, medically fragile, specialized medically fragile, or care plus resource home.

(2) A complaint of discrimination may be filed with the cabinet's Office of Human Resource Management in accordance with 920 KAR 1:090.

Section 4. Service Complaints. (1) If a matter is not subject to review through an administrative hearing, a parent, caretaker relative, kinship caregiver, or an adult may:
   (a) Attempt to resolve the issue by submitting a written complaint to the service region administrator or designee within thirty (30) calendar days after the date of the cabinet action or alleged act; or
   (b) Contact the cabinet's Office of the Ombudsman if the matter was not previously reviewed:
      1. By that office; or
      2. Pursuant to paragraph (a) of this subsection.
   (2)(a) The service region administrator, administrator's designee, or the cabinet's Office of the Ombudsman shall provide a written response to the complainant within thirty (30) calendar days of receipt of a written complaint not subject to review through an administrative hearing.
   (b) The commissioner or the ombudsman may grant an extension to the response timeframe given in paragraph (a) of this subsection if:
      1. Exculpatory circumstances prolong the review of the complaint; and
      2. Notice of the extension is provided to the complainant.
   (3)(a) A parent, caretaker relative, kinship caregiver, or an adult dissatisfied with a written response rendered by the service region administrator, administrator's designee, or the Office of the Ombudsman may request that the commissioner review the complaint and the written response.
   (b) A request for review shall be submitted in writing to the commissioner within ten (10) days of receipt of the written response provided in accordance with subsection (2) of this section.
   (c) Upon completion of the review, the commissioner shall render a written order regarding the complaint within thirty (30) days unless:
      1. Exculpatory circumstances prolong the review of the complaint; and
      2. The commissioner notifies the complainant of the need for an extension to the timeframe specified in this paragraph.
   (d) The department shall abide by the written order.
   (4) The department shall compile data regarding service complaints to:
      (a) Fulfill federal and state reporting requirements; and
      (b) Use for program development and evaluation.

Section 5. Appeal of a Child Abuse or Neglect Investigative Finding. An individual who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's finding through an administrative hearing in accordance with 922 KAR 1:480, Appeal of child abuse and neglect investigative findings.

Section 6. Request for Appeal. (1) The cabinet shall provide a copy of the:
   (a) DPP-154, Protection and Permanency Service Appeal Request form to an individual:
      1. At each case planning conference;
      2. Upon denial, reduction, modification, suspension, or termination by the cabinet of:
         a. Child welfare services provided by the cabinet;
         b. General adult services or protective services, if notification does not present a risk of harm to the victim;
         c. Adoption assistance; or
         d. Other federally-funded program benefits described in 922 KAR Chapter 1, 3, or 5; or
      3. Upon determination that a student is not eligible for a tuition

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waiver or education and training voucher:
   (b) DCC-88, Child Care Service Appeal Request, to an individual:
   1. Upon the denial, reduction, or termination of child care assistance;
   2. In accordance with 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program for a:
      a. Withdrawal or denial of child care registration application, not at the request of the applicant; or
      b. Revocation or closure of a registered child care provider, not at the request of the provider;
   3. Upon a reduction or revocation of a child care provider's STARS level in accordance with:
      a. 922 KAR 2:170, STARS for KIDS NOW Program Type I licensed child-care centers; or
      b. 922 KAR 2:210, STARS for KIDS NOW Program for Type II licensed and certified family child-care homes; or
   4. Upon a revocation of a trainer's credential in accordance with 922 KAR 2:240, Kentucky Early Care and Education Trainer's Credential and training approval.
   (2) At least ten (10) days prior to the denial, reduction, modification, suspension, or termination of a benefit or services, the cabinet shall hand-deliver or mail a:
   (a) DPP-154A, Protection and Permanency Notice of Intended Action;
   (b) DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals; or
   (c) Notice in accordance with 922 KAR 2:160, Section 12(7).
   (3) The cabinet may take emergency action under KRS 13B.125.
   (4) A request for appeal shall:
      (a) Be written by the appellant, with the assistance of the cabinet or contract agency if the appellant is unable to comply without assistance;
      (b) Be submitted to the cabinet no later than thirty (30) calendar days from the date:
         1. That the notice provided in accordance with subsection (2) of this section was issued; or
         2. Of the occurrence of the disputed action;
      (c) Describe:
         1. Cabinet action in dispute; or
         2. Alleged act;
      (d) Specify:
         1. The reason the appellant disputes the cabinet's action; and
         2. Name of each cabinet staff person involved with the disputed action, if known; and
         3. Date of the cabinet action or alleged act in dispute; and
      (e) Include the notice provided in accordance with subsection (2) of this section, if available.
   (5)(a) Upon receipt of a written request for appeal, the cabinet shall determine whether the matter is subject to review through an administrative hearing.
   (b) If the matter is not subject to review, the cabinet shall inform the individual in writing that:
      1. Matter is not appealable; and
      2. Resolution of the matter may be pursued through the service complaint process described in Section 4 of this administrative regulation.
   (6) If the cabinet receives a written request for appeal within ten (10) calendar days from the date the notice provided in accordance with subsection (2) of this section was issued or date of the disputed action and the matter is appealable, the cabinet shall continue to provide federally-funded assistance in accordance with 45 C.F.R. 205.10(a)(6) pending the outcome of the appeal.
   (7) The cabinet shall not dismiss a request for appeal if an appellant demonstrates good cause. Justification may include:
      (a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or
      (b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:
         1. Submit a written request for appeal; or
         2. Participate in a proceeding related to an administrative hearing.
Section 7. Administrative Hearing. (1) Each administrative hearing conducted by the cabinet or designee shall comply with KRS Chapter 13B.
   (2) Unless waived by the appellant, final administrative action shall be taken in accordance with the ninety (90) day time frame established by KRS 13B.120(4).

Section 8. Contract Agencies. (1) A contract agency shall offer a complaint process consistent with:
   (a) Section 4 of this administrative regulation; or
   (b) Provisions of the contract or agreement between the contract agency and the cabinet, if the provisions are different from Section 4 of this administrative regulation.
   (2)(a) An individual dissatisfied with a final written decision rendered by a contract agency in response to a complaint may request that the commissioner review the complaint and the final decision.
   (b) A request for review shall be submitted to the commissioner within (10) days of receipt of the agency's final decision.
   (c) Upon completion of the review, the commissioner shall render a written order regarding the complaint within thirty (30) days unless:
      1. Extenuating circumstances prolong the review of the complaint; and
      2. The commissioner notifies the client of the need for an extension to the timeframe specified in this subparagraph.
   (d) The contract agency shall abide by the order.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "DCC-88, Child Care Service Appeal Request", edition 11/09;
   (b) "DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals", edition 11/09;
   (c) "DPP-154, Protection and Permanency Service Appeal Request", edition 11/09; and
   (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 19, 2013
FILED WITH LRC: March 28, 2013 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2013, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who 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 May 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearinger

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administra-
tive regulation establishes the procedures related to service appeals and complaints for benefits and services under 922 KAR Chapter 1 through 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide service appeal and complaint procedures as expressly permitted by 922 KAR Chapters 1 through 5 and Kentucky Revised Statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with due process standards set forth in KRS Chapter 13B and 45 C.F.R. 205.10.

(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 KRS Chapter 13B and 45 C.F.R. 205.10 by establishing procedures related to due process and service complaints.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation aligns hearing rights and responsibilities for the Kinship Care Program congruent with other concurrent amendments to administrative regulations. The amendment also makes other technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment and companion amendments are necessary to avoid negative consequence to the benefit amounts available to current children in the Kinship Care Program and to ensure that children subject to future nonparental relative placements by the cabinet have supportive services and benefits conforming to available funding resources. Relative placements help the child avoid foster care and preserve family continuity for the child.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the due process standards in KRS Chapter 13B and 45 C.F.R. 205.10.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of KRS Chapter 13B and 45 C.F.R. 205.10 by establishing procedures related to due process and service complaints.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts individuals who request an administrative hearing or submit a service complaint to the cabinet as permitted by 922 KAR Chapters 1 through 5 or Kentucky Revised Statutes.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation clarifies the service appeal and complaint procedures, and matters which are subject to review through an administrative hearing or service complaint before the cabinet. The amendment is technical and conforming in nature.

(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 the regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation ensures alignment with other administrative regulations and greater clarity regarding the cabinet’s procedures for service appeals and complaints.

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

(a) Initially: There will be no new costs to the agency to implement this administrative regulation. Without this and companion amendments, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

(b) On a continuing basis: There will be no new costs to the agency to implement this administrative regulation.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Social Services Block Grant, Child Care and Development Fund Block Grant, Title IV-E (of the Social Security Act) funds are federal funds that support the implementation and enforcement of this administrative regulation. State General Funds are also utilized.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 45 C.F.R. 98.205.10, 1355.21(b), 1355.30(p), 29 U.S.C. 794, 42 U.S.C. 625, 629a, 671(a)(23), 673, 675, 9858-9858q

2. State compliance standards. KRS Chapter 13B, 194A.010(2), 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98.205.10, 1355.21(b), 1355.30(p), 29 U.S.C. 794, 42 U.S.C. 625, 629a, 671(a)(23), 673, 675, 9858-9858q

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(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 first year? This administrative regulation will not generate any new revenue for the first year.

(c) How much will it cost to administer this program for the first year? There will be no new costs to the agency to implement this administrative regulation. Without this and companion amendments, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive ser-
services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

(d) How much will it cost to administer this program for subsequent years? There will be no new costs to the agency 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:400. Supportive services.


STATUTORY AUTHORITY: KRS 194A.050(1), 605.130(4), 605.150(1), 206 Ky. Acts Ch. 252 Part 1, H.10(9).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill responsibilities vested in the cabinet. KRS 605.150 authorizes the cabinet to promulgate administrative regulations necessary to implement the provisions of KRS 605.130(4), which authorizes the cabinet to perform services to a youth currently or formerly in foster care necessary for the protection of children. [206 Ky. Acts Ch. 252 Part 1, H.10(9) requires the cabinet to promulgate an administrative regulation to implement the Foster Youth Transitional Assistance Program.] This administrative regulation establishes standards for provision of supportive services to a family receiving ongoing case management services or to safely maintain a child in the child's home through the cabinet, to the extent funds are available.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 194A.005(1), 600.020(6), 209.020(2), and 209A.020(2).

(2) "Case permanency plan" is defined by KRS 620.020(1).

(3) "Child" is defined by KRS 199.011(4), 600.020(8), and as extended by KRS 610.110(6).

(4) "Intensive family-based support services" means the goal of keeping the family united or if removal of a child is necessary, placing the child in the least restrictive setting consistent with his or her individual needs.

(5) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families Program, a money payment program for a child who is deprived of parental support or care, as described at 921 KAR 2:006, Section 1(9).

(6) "Kentucky Works" means a program that assists a: (a) Recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or (b) Former K-TAP recipient with job retention service.

(7) "Preventive assistance" means a service to provide emergency funds to a family during crisis.

(8) "Rehabilitative services" means medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his or her practice, under state law, for maximum reduction of physical or mental disability and restoration of a recipient to his or her best possible functional level.

(9) "Relative placement benefit support" means a monetary benefit to address a child's immediate need during the cabinet's placement of the child with a nonparental relative.

(10) "Safety net services" means: (a) A short-term intervention or maintenance service to help an individual or family develop and maintain skills and abilities to prevent out-of-home placement for a child in that family; or (b) Monetary benefits to assist in maintaining self-sufficiency.

[11] "Targeted case management" means a set of activities which assist an individual in accessing needed medical, social, educational, and other support services. [114] "Youth" means a person age eighteen (18) through twenty-three (23) years inclusive.

Section 2. Child Care Services. The cabinet may refer an individual or family for child care services pursuant to 922 KAR 2:160 if the individual or family:

(1) Makes a request for assistance for child care expenses;
(2) Needs child care for protection or prevention of child abuse, neglect or exploitation; or
(3) Needs child care for a child of a teen parent attending high school.

Section 3. Child Support Service. The cabinet may make a referral for child support services, by means of the process described at 921 KAR 1:380, on behalf of a child entering out-of-home care through a: (1) Voluntary commitment agreement; or (2) Court order assigning legal responsibility for the child to the cabinet.

Section 4. Intensive Family-based Support Services. (1) Intensive family-based support services shall be provided through a contractual agreement, for the purpose of: (a) Stabilizing a child in the child's own home or foster home; (b) Preventing further hospitalization or institutionalization; and (c) Enabling a child and the child's family to improve their lives.

(2) An intensive family-based support service may be provided to a child with one (1) or more of the following: (a) Mental retardation or developmental disability; (b) Emotional or behavioral disturbance; (c) Dual diagnosis; or (d) Risk of institutionalization; or (e) Need for aftercare services following release from an institution or other highly structured setting.

(3) Except for the assessment and discharge planning, intensive family-based support services shall not start while a child is in a hospital or an institution.

(4) Intensive family-based support services shall be available to a family with a child living in a: (a) Biological home; (b) Foster home; or (c) Adoptive placement.

(5) The cabinet may make a referral for intensive family-based support services which may include the following: (a) A comprehensive assessment, to include: 1. Review of medical, psychiatric, social and educational assessments conducted within the last twelve (12) months; and 2. An in-home assessment; (b) If appropriate, discharge planning provided through the service provider's involvement with a foster or biological family, the child, and the hospital or institution to ensure: 1. A coordinated approach upon discharge; and 2. That communication is clear regarding behaviors, goals, and recommended interventions; (c) Planned support services provided to assist with routine day-to-day activity that is crucial to stabilization of a child within the family unit; (d) Family intervention services, such as behavioral and family counseling, to assist a child and family in: 1. Identifying and resolving issues underlying the dysfunctional behaviors within a family; and 2. Eliminating barriers to change; (e) Respite care services provided to allow a biological or foster parent relief for a designated period of time from the stress of caring for an emotionally disturbed or physically disabled child or to allow time to attend to other needs;
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(f) A paraprofessional attendant to provide direct in-home services to a child, or a biological or foster parent, as identified in the case plan;
(g) Purchase of care in an alternate living unit, as a component of an intensive family-based support services contract;
(h) Art or music therapy from a qualified professional;
(i) Educational consultation and support;
(j) Crisis intervention;
(k) Skill development; or
(l) Other service identified in the case plan.

(6) The type, frequency, intensity, and duration of services shall be determined according to each individual situation.

(7) A family case plan shall be developed to address:
(a) Family strengths and needs;
(b) Goals, objectives, and tasks;
(c) Time frames; and
(d) Anticipated outcomes.

Section 5. Safety Net Services. (1) Safety net services shall be provided for a former K-TAP recipient who:
(a) Has total income at or below 200 percent of federal poverty level; and
(b) Is no longer eligible for K-TAP benefits due to:
1. Failure to comply with Kentucky Works requirements of 921 KAR 2:370, Section 7(2)(a); or
2. Reaching benefit time limitations established at 921 KAR 2:006, Section 21.

(2) A safety net service shall include contact with the family and may address the following:
(a) Assistance to the individual or family to identify the problem and resources available to improve the situation;
(b) Linkage to the appropriate resources; or
(c) Intervention in a crisis situation including:
1. Fuel shortage;
2. Utility shutoff;
3. Insufficient food, clothing, housing, or employment; or
4. Response to an inquiry regarding the family situation.

(3)(a) The cabinet may authorize fund distribution to an appropriate vendor, in order to provide for a family’s safety net services.
(b) Up to a total of $635 may be paid over a period of four (4) months during the twelve (12) month period following an event specified in subsection (1)(b) of this section.

Section 6. Medicaid Services. (1) Rehabilitative services shall be provided to a Medicaid-eligible child under the age of twenty-one (21) who meets the Department for Community Based Services’ conditions and circumstances as a child in the custody of, or under the supervision of, or at risk of being in the custody of, the cabinet.

(2) Targeted case management services shall be provided to a Medicaid-eligible individual in accordance with 907 KAR 3:020, Section 3(1).

Section 7 [Preventative Assistance. (1) Preventative assistance services shall be provided in order to:
(a) Assist an individual who is identified at risk and is in need of protective services intervention;
(b) Prevent the removal of a child from his or her home; or
(c) Facilitate the return of a child to his or her natural parents.

(2) Preventative funds may be utilized for:
(a) Shelter;
(b) Food;
(c) Clothing;
(d) Utilities; or
(e) Other necessary services.

(3) The cabinet may authorize up to $500 in a state fiscal year to the appropriate vendor for a family.

Section 8.] K-TAP Determination for Domestic Violence Victims. If a report of alleged domestic violence is made the cabinet shall:

(1) Attempt to arrange a face-to-face interview with the alleged victim to conduct an assessment or investigation, according to the procedure established at 921 KAR 2:006, Section 25, and, if necessary, shall offer protective and general adult services; and
(2) Upon completion of the assessment or investigation, provide information to K-TAP whether the reported victim:
(a) Is in a domestic violence situation; and
(b) Has agreed to services.

Section 8[9]. Assessment of Minor Teenage Parents. (1) If a determination is made that a minor teenage parent is an applicant or recipient of K-TAP and is not living with an adult or legal guardian, the minor teenage parent shall be referred for an assessment of his safety, including assistance with an alternative living arrangement if necessary.

(2) The cabinet shall:
(a) Conduct a face-to-face contact with the minor teenager’s parent and the minor parent’s child;
(b) Conduct a face-to-face interview with the minor parent in order to assess the minor parent’s current situation and the safety issues for the minor teenage parent and child;
(c) Determine if the minor teenager’s parent or guardian accepts the minor teenager’s living arrangement;
(d) Refer the family to the appropriate services; and
(e) Provide the following to the Division of Family Support:
1. Identification of safety issues;
2. A recommendation regarding opening a protective or preventive services case on the family; and
3. Services to which the minor teenage parent has been referred.

Section 9. Relative Placement Support Benefit. (1) Effective April 1, 2013, to the extent that funds are available, the cabinet shall provide a one (1) time relative placement support benefit:
(a) To facilitate the cabinet’s placement of a child with a nonparental relative;
(b) If the cabinet determines that a child is at risk of being placed in foster care, or is in the custody of the cabinet and residing in foster care due to:
1. A cabinet investigation pursuant to 922 KAR 1:330 that resulted in a substantiation of abuse or neglect naming the child’s biological or adoptive parent as the perpetrator; or
2. The death of both parents;
(c) That will provide for a child’s immediate need for:
1. Clothing;
2. School supplies;
3. Additional furniture;
4. A deposit for a larger apartment; or
5. An essential documentable cost up to the maximum amount allowed in paragraph (d) of this subsection; and
(d) That does not exceed the maximum amount for the appropriate number of eligible children as follows:

<table>
<thead>
<tr>
<th>Number of Eligible Children</th>
<th>Maximum Payment Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$350</td>
</tr>
<tr>
<td>2</td>
<td>$700</td>
</tr>
<tr>
<td>3</td>
<td>$1,050</td>
</tr>
<tr>
<td>4</td>
<td>$1,400</td>
</tr>
<tr>
<td>5 or more</td>
<td>$1,750</td>
</tr>
</tbody>
</table>

(2) The relative placement support benefit shall be issued by check directly to a vendor providing the needed service or item listed in subsection (1)(c) of this section.

(3) The cabinet shall indicate the need for a relative placement support benefit in the relative’s home evaluation in accordance with 922 KAR 1:140.

(4) In accordance with Kentucky’s Title IV-A Temporary Assistance for Needy Families Block Grant state plan, the cabinet shall prioritize a child for the relative placement support benefit if the child is:
(a) Placed with a relative whose household income is at or below 200% of the federal poverty level as determined annually by the U.S. Department of Health and Human Services; or
(b) Determined eligible for K-TAP.

Section 11. Improper Payments. The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-241 and
205.211, including assistance paid pending the outcome of a hear-  
ing, from the claimant-payee.

Section 12. State Plan. A copy of the state's Title IV-A Tempo- 
rary Assistance for Needy Families state plan may be obtained by  
a request in writing made to the Commissioner of the Department  
for Community Based Services, Cabinet for Health and Family  
Services, 275 East Main Street, Frankfort, Kentucky 40621[10].  
Foster Youth Transitional Assistance (FYTA). (1) In accordance  
with 2006 K. Acts ch. 252, Part I, H.10, grants or vouchers from  
the Foster Youth Transitional Assistance program shall be pro- 
vided to a youth who:

(a) Was in foster care on the youth's eighteenth birthday;  
(b) Is currently in foster care; or
(c) Is:
1. Currently working;
2. Currently working and attending a community;
3. Currently working and attending a four (4) year college or  
university.
(2) A recipient in the FYTA program shall submit documenta- 
tion of program eligibility under paragraph (e) of this section to the  
cabinet monthly.
(3) A youth shall utilize funds for transitional assistance into  
individual assistance in the following:
(a) Housing;
(b) Clothing;
(c) Transportation;
(d) Tuition;
(e) Medical services;
(f) Dental services; or
(g) Other expenses that the cabinet may authorize for the  
youth.
(4) For each state fiscal year, the cabinet may authorize:
(a) Up to $7,500 per working youth; or
(b) Up to $10,000 per working youth also attending a
1. Community college; or
2. Four (4) year college or university.

TERESA C. JAMES, Commissioner  
AUDREY TAYSE HAYNES, Secretary  
APPROVED BY AGENCY: March 19, 2013  
FILED WITH LRC: March 28, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested,  
be held on May 21, 2013, at 9:00 a.m. in the Health Services Audi- 
torium, Health Services Building, First Floor, 275 East Main Street.  
Frankfort, Kentucky. Individuals interested in attending this hearing  
shall notify this agency in writing by May 14, 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 pro- 
posed administrative regulation. A transcript of the public hearing  
will not be made unless a written request for a transcript is made. If  
you do not wish to attend the public hearing, you may submit writ- 
ten comments on the proposed administrative regulation. You may  
submit written comments regarding this proposed administrative  
regulation until May 31, 2013. Send written notification of intent to  
attend the public hearing or written comments on the proposed  
administrative regulation to:

CONTACT PERSON: Tricia Orme, 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: Justin Dearinger  
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra- 
tive regulation establishes standards for the provision of supportive 
services to a family receiving ongoing case management services 
or to safely maintain a child in the child’s home through the cabi- 
et, to the extent funds are available.
(b) The necessity of this administrative regulation: This adminis- 
trative regulation is necessary to establish standards for the pro- 
vision of supportive services to a family receiving ongoing case 
management services or to safely maintain a child in the child’s 
home through the cabinet, to the extent funds are available.
(c) How this administrative regulation conforms to the content of 
the authorizing statutes: This administrative regulation conforms to 
the content of the authorizing statutes by establishing supportive 
services for vulnerable children and families to the extent funds are 
available.
(d) How this administrative regulation currently assists or will 
assist in the effective administration of the statutes: This adminis- 
trative regulation assists in the effective administration of the sta- 
tutes by establishing supportive services for vulnerable children 
families and to the extent funds are available.
(2) If this is an amendment to an existing administrative regula-
tion, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation adds a 
new supportive service for children placed by the cabinet with a  
nonparental relative. The service is one-time and may be used for 
an item that addresses an immediate need of the child being placed  
to help secure the placement and promote its stability. The service  
replaces a similar service formerly available under the Kinship Care Program. The amendment also makes other technical 
corrections in accordance with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: This and companion amendments are necessary to 
avoid negative consequence to the benefit amounts available to 
current children in the Kinship Care Program and to ensure that 
children subject to future nonparental relative placements by the 
cabinet have supportive services and benefits conforming to avail-
able funding resources. Relative placements help the child avoid 
foster care and preserve family continuity for the child.
(c) How the amendment conforms to the content of the autho-
rizing statutes: The amendment conforms to the content of the 
authorizing statutes by establishing supportive services for a child  
placed by the cabinet with a nonparental relative.
(d) How the amendment will assist in the effective administra-
tion of the statutes: The amendment will assist in the effective admin-
istration of the statutes by establishing a supportive service for 
children and families served by the cabinet.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation: During the month of January 2013, there were 
11,348 children receiving benefits through the Kinship Care Pro-
gram and 284 children in caretaker custody who were placed with rela-
tives. Approximately 300 new children are placed by the cabinet 
with caretaker relatives as an alternative to foster care each month.
(4) Provide an analysis of how the entities identified in question  
(3) will be impacted by either the implementation of this administra-
tive regulation, if new, or by the change, if it is an amendment,  
including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative  
regulation or amendment: There will be no new action required of 
the child or the nonparental relative caregiver accepting the child  
for placement as a result of this amendment. The cabinet’s social 
service worker and supervisor will assess the need for the new 
service as a part of the relative’s home evaluation.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (3): There will be no cost to the regulated entities as a result of this 
amendment.
(c) As a result of compliance, what benefits will accrue to the  
entities identified in question (3): The service included in this  
amendment is one-time and may be for an item that addresses an  
immediate need of the child being placed with a nonparental rela-
tive to help secure the placement and promote its stability. Relative 
placements further promote the permanency and wellbeing of 
children through the avoidance of foster care and preservation of  
family continuity for the child.
(5) Provide an estimate of how much it will cost the administra-
tive body to implement this administrative regulation:

(a) Initially: There will be no new costs to the agency to implement this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

(b) On a continuing basis: There will be no new costs to the agency to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The funding sources to be used for the implementation and enforcement of this administrative regulation include the federal funds from the Temporary Assistance for Needy Families Block Grant (TANF) and Social Service Block Grant (SSBG), Restricted Funds (derived from Medicaid), General Funds; and state funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 260-265, 42 U.S.C. 601-679b
2. State compliance standards. KRS 194A.050(1), 605.130(4), 605.150(2)
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

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 Cabinet for Health and Family Services, Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.130(4), 605.150, 45 C.F.R. 260-265, 42 U.S.C. 601-679b

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

How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? These programs and services have been operational for a number of years. They do not produce any revenue for the state. This administrative regulation will not generate any new revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no new costs to the agency to implement this administrative regulation. Without the amendment, an increase in funding will be required to sustain current and new enrollment in the Kinship Care Program, supportive services and benefits to other children in relative placements, or additional foster care placements; and to meet prospective federal standards to be levied on the Kinship Care Program.

(d) How much will it cost to administer this program for subsequent years? There will be no new costs to the agency 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Division of Child Care
(Amendment)

922 KAR 2:020. Child Care Assistance Program (CCAP) improper payments, claims, and penalties.

STATUTORY AUTHORITY: KRS 45.237(4), 194A.050(1), 199.8994, 45 C.F.R. 98.60(i)
NECESSITY, FUNCTION, and CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, quality for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. 45 C.F.R. 98.60(i) and KRS 45.237(4) require the cabinet, as the lead agency for Kentucky, to recover child care payments that are the result of fraud or improper payment. This administrative regulation establishes procedures for improper payments, claims, and penalties used by the cabinet in the administration of the Child Care Assistance Program (CCAP).

Section 1. Definitions. (1) "Agency error" means an error on the part of the cabinet or its designee.
(2) "Cabinet" means the Cabinet for Health and Family Services or its designee.
(3) "Child Care Assistance Program" or "CCAP" means Kentucky’s child care subsidy program providing families, who meet the eligibility requirements of 922 KAR 2:160, with the financial resources to find and afford quality child care.
(4) "Child care provider" means the individual, business, or business proprietor who is receiving, or has received, payment for child care services under CCAP.
(5) "Claim" means an amount owed to the cabinet as a result of an overpayment of CCAP.
(6) "Claimant" means a current or former CCAP recipient or child care provider subject to a claim.
(7) "Compromise a claim" means accepting less than the full value of a claim.
(8) "Intentional program violation" or "IPV" means a CCAP recipient or child care provider having intentionally:
(a) Made a false or misleading statement; or
(b) Misrepresented, concealed, or withheld facts.
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(9) “Hearing officer” is defined by KRS 13B.010(7).
(10) “Improper payment” is defined by KRS 45.237(1)(d) or 45 C.F.R. 98.100(d).
(11) “Inadvertent error claim” means an overpayment resulting from a misunderstanding or unintended error on the part of a recipient or a child care provider.
(12) “Overpayment” means a CCAP payment which exceeded the amount a CCAP recipient or a child care provider was eligible to receive.
(13) “Recipient” means a family who has been found eligible for CCAP.
(14) “Terminate a claim” means ceasing all collection actions on a claim.
(15) “Underpayment” means a payment which was less than the amount a recipient or a child care provider was eligible to receive.

Section 2. Responsibility for a Claim. (1) A parent of a recipient household or a child care provider shall be responsible for paying a claim which resulted from:
(a) Overpayment due to an action or inaction on the part of the recipient or the child care provider, including failure to report a change in circumstance in accordance with 922 KAR 2:160, Section 11; or
(b) Agency error that provided the recipient or the child care provider with an overpayment.
(2) The cabinet shall make an exception to subsection 1(b) of this section if the recipient:
(a) Is approved for CCAP in accordance with 922 KAR 2:160, Section 5 or 6; and
(b) Complied with the requirements of the recipient’s:
1. Case plan developed in accordance with 922 KAR 1:430; or
2. Kentucky Works Program self-sufficiency plan developed in accordance with 921 KAR 2:370.

Section 3. Claim Category. (1) A claim shall be classified in one (1) of the following three (3) categories:
(a) A claim resulting from an IPV;
(b) Inadvertent error claim; or
(c) Agency error claim.
(2) The cabinet shall establish an IPV against a recipient or a child care provider if:
(a) A court of appropriate jurisdiction issues a conviction, or accepts an Alford or guilty plea, related to an IPV in CCAP against a parent of the recipient household or the child care provider;
(b) A parent of the recipient household or a child care provider completes, signs, and returns the:
1. DCC-84, Supplement A, Voluntary Waiver of Administrative Disqualification Hearing; or
2. DCC-83, Deferred Adjudication Disqualification Consent Agreement; or
(c) A hearing officer or an agency head makes a determination finding an IPV as a result of an administrative disqualification hearing.

Section 4. Action on an Improper Payment. (1) The cabinet shall investigate each:
(a) Instance of an improper payment; or
(b) Allegation of an IPV related to a:
1. Recipient; or
2. Child care provider.
(2) The cabinet shall initiate action to correct an improper payment in a CCAP case.
(3) If an overpayment has occurred, the cabinet shall:
(a) Determine the amount of overpayment in accordance with Section 5 of this administrative regulation; and
(b) Categorize and establish a claim to recover the amount of the overpayment.
(4) If the cabinet has sufficient documentary evidence to confirm substantiates that a recipient or child care provider has committed an IPV, the cabinet shall:
(a)1. Refer the case to the cabinet’s Office of Inspector General (OIG) for investigation or referral for prosecution if warranted by the facts of the case;
2. Initiate an administrative disqualification hearing in accordance with Section 9 of this administrative regulation; or
3. Accept a parent of a recipient household or a child care provider’s waiver of an administrative disqualification hearing through the parent or child care provider’s completing, signing, and returning a DCC-84 Supplement A; and
(b) Take an action necessary to establish a claim to collect any overpayment resulting from the suspected IPV.

Section 5. Calculating a Claim. (1) The cabinet shall calculate the amount of an overpayment for an:
(a) Agency error back to the month that the error first occurred, but not more than twelve (12) months prior to the date that the cabinet became aware of the overpayment;
(b) Inadvertent error back to the month that the misunderstanding or error first occurred, but not more than three (3) years prior to the date that the cabinet became aware of the overpayment; and
(c) IPV back to the month of the fraudulent act first occurred, but not more than five (5) years prior to the date that the cabinet became aware of the overpayment.
(2) If an overpayment occurred as a result of a change during the period of CCAP eligibility, the first day of the claim shall begin thirty-one (31) days from the date of the change.
(3) If the overpayment occurred due to the failure of a parent of a recipient household to report information at application or redetermination for eligibility in accordance with 922 KAR 2:160, Section 2 or 8, the claim shall start the first day of the approval of the application or redetermination.
(4)(a) The cabinet shall:
1. Calculate the amount of CCAP for each month that a recipient or a child care provider received the improper payment; and
2. Subtract the correct amount of CCAP from the CCAP actual benefits received.
(b) The difference shall be the amount of the overpayment.
(5) If the overpayment exists for the entire period of CCAP eligibility, the cabinet shall calculate the full amount of benefits overpaid:
(a) On behalf of the recipient; or
(b) To the child care provider.
(6) If an overpayment and an underpayment exist for a recipient or a child care provider, the amounts of the overpayment and the underpayment shall be offset to determine the total amount of the claim.
(7) The amount of a claim may differ from a calculation obtained through the methods outlined in this section if a different claim amount is ordered by:
(a) An administrative hearing officer or agency head in accordance with 922 KAR 1:320; or
(b) A court of appropriate jurisdiction.

Section 6. General Claim Notices. (1) A KCD-2, General Claims Notice, shall serve many purposes in the administration of CCAP claims collections, including the use as:
(a) An appointment letter;
(b) A demand letter;
(c) A notification of benefit reduction;
(d) A past due notice;
(e) A repayment agreement;
(f) A claim adjustment notice;
(g) A claim termination notice;
(h) A payment receipt;
(i) Notice of a claim being paid in full; or
(j) Notice of a delinquent claim’s referral for collection in accordance with Section 11(2) of this administrative regulation.
(2) The language on the KCD-2 shall differ according to the purpose of the notice as described in subsection (1) of this section.

Section 7. Notification of a Claim. (1) The cabinet shall:
(a) Provide initial notice in accordance with Section 6 of this administrative regulation to a recipient or a child care provider suspected of having a claim;
(b) Provide notice of a suspected IPV, if applicable, with a:
1. DCC-84, Notice of Suspected Intentional Program Violation; and
2. DCC-84 Supplement A; and
(c) Offer the recipient or the child care provider an opportunity to meet with the cabinet to:
1. Discuss the potential claim;
2. Determine the category of the claim as specified in Section 3 of this administrative regulation; and
3. Sign the DCC-84 Supplement A, if an IPV is suspected.
(2) If a recipient or a child care provider requests to reschedule the meeting within ten (10) days of the date of the notice provided in accordance with subsection (1) of this section, the cabinet shall reschedule the meeting.
(3) The cabinet shall determine the claim’s category in accordance with Section 3 of this administrative regulation and the amount of the claim based on the information available to the cabinet if the recipient or the child care provider:
(a) Fails to attend the meeting to discuss the claim; and
(b) Does not contact the cabinet to reschedule the meeting in accordance with subsection (2) of this section.
(4) If the cabinet determines the category and amount of a claim in accordance with subsections (1) through (3) of this section:
(a) Collection shall be initiated in accordance with Section 10 of this administrative regulation; and
(b) Subsequent notice pursuant to Section 6 of this administrative regulation shall be mailed to the recipient or the child care provider to give the claim:
1. Amount;
2. Time period;
3. Reason; and
4. Classification in accordance with Section 3 of this administrative regulation.
(5) A recipient or a child care provider shall return the notice mailed pursuant to subsection (4)(b) of this section within ten (10) days of receipt if the recipient or child care provider chooses to request an administrative hearing on the establishment of the claim in accordance with Section 18 of this administrative regulation.

Section 8. Disqualification Period. (1) A recipient or a child care provider determined to have committed an IPV in accordance with Section 3(2) of this administration regulation shall have a period of disqualification from CCAP pursuant to subsection (2) of this section.
(2)(a) A disqualification period from CCAP shall adhere to the following guidelines:
1. Three (3) months disqualification for a first occurrence of IPV;
2. Six (6) months disqualification for a second occurrence of IPV; and
3. Permanent disqualification for a third occurrence of IPV.
(b) The cabinet shall make an exception to paragraph (a) of this subsection if:
1. The recipient is approved for CCAP in accordance with 922 KAR 2:160, Section 5 or 6; and
2. CCAP is necessary for the recipient to comply with the requirements of the recipient’s:
   a. Case plan developed in accordance with 922 KAR 1:430; or
   b. Kentucky Works Program self-sufficiency plan developed in accordance with 921 KAR 2:370.
(3) If a court of appropriate jurisdiction issues a disqualification period upon conviction of a charge or acceptance of an Alford or guilty plea related to the IPV, the cabinet:
(a) May make exception to a disqualification period specified in subsection (2) of this section; and
(b) Shall enforce the court-ordered disqualification period.
(4) Unless subsection 2(b) of this section applies, the disqualification period shall continue uninterrupted until it is completed regardless of the eligibility of the recipient or the child care provider.
(5) Regardless of the disqualification period, the recipient or the child care provider shall continue to be responsible for the payment of a claim resulting from the IPV.
(6) Eligibility of a recipient or payment to a child care provider shall not be affected by a suspected IPV until a disqualification is established in accordance with subsection (1) of this section.

(7) If a court of appropriate jurisdiction fails to impose a disqualification period for an IPV, the cabinet shall impose a penalty in accordance with this section.
(8) The cabinet shall not separate the same act of IPV repeated over a period of time for the imposition of multiple, separate penalties.

Section 9. Administrative Disqualification Hearing. (1) The cabinet shall initiate an administrative disqualification hearing on the establishment of an IPV if the:
(a) Facts of the IPV do not warrant civil or criminal prosecution through a court of appropriate jurisdiction; and
(b) Referral for prosecution is declined by prosecutorial authorities;
(c) Referral for prosecution is withdrawn by the cabinet; or
(d) Recipient or child care provider declines to sign the DCC-84 Supplement A.
(2) If the facts of the case arise out of the same or related circumstances, the cabinet shall make an exception to the administrative disqualification hearing against a recipient or a child care provider:
(a) Whose case is currently referred for prosecution; or
(b) Subsequent to an action taken against the recipient or the child care provider by the prosecutor or a court of appropriate jurisdiction.
(3) Unless a different procedure is specified in this section, an administrative disqualification hearing shall:
(a) Be conducted in accordance with 922 KAR 1:320 and KRS Chapter 13B; and
(b) Include:
   1. The issuance of a recommended order; and
   2. Procedures for written exceptions; and
   3. The issuance of a final order.
(4) If the cabinet may initiate an administrative disqualification hearing regardless of the current eligibility of a recipient or the payment status of a child care provider.
(5)(a) In accordance with KRS 13B.050, an administrative disqualification hearing notice shall be sent:
1. By certified mail; and
2. To the addressee only; and
3. With a return recipient requested.
(6) Timeframes for an administrative disqualification hearing shall provide information in accordance with KRS 13B.050.
(7)(a) The cabinet shall combine a request for an administrative hearing in accordance with Section 16 of this administrative regulation and an administrative disqualification hearing into a single hearing if the:
1. Factual issues arise out of the same or related circumstances; and
2. Recipient or the child care provider receives prior notice that the hearings are being combined.
(b) If the hearings are combined for the purpose of settling the amount of the claim concurrent with a determination of whether an IPV occurred, the recipient or the child care provider subject to the claim shall lose the right to a subsequent administrative hearing on the amount of the claim.
(8) During an administrative disqualification hearing, the hearing officer shall advise the recipient or child care provider accused of an IPV of the option to refuse to answer questions during the hearing.
(9)(a) In accordance with KRS 13B.080(6), if a recipient or child care provider does not appear for the administrative disqualification hearing, the hearing officer shall review the case file to determine if the hearing shall:
1. Proceed without recipient or child care provider representation because the return receipt from the hearing notice verified the notice was received by the recipient or the child care provider; or
2. Not be conducted because the hearing notice or return receipt is annotated as unclaimed or undeliverable.
(b) The cabinet shall conduct a new administrative disqualification hearing if the:
1. Recipient or the child care provider was not represented at the hearing;
2. Recipient or the child care provider was determined to have committed an IPV; and
3. Hearing officer determined the household had good cause, in accordance with 922 KAR 1:320, Section 6(7), for not appearing.

(10) The determination of an IPV made through an administrative disqualification hearing shall not be reversed by a subsequent administrative hearing decision.

(b) A recipient or child care provider shall be entitled to seek relief through a court of appropriate jurisdiction in accordance with KRS 13B.140.

Section 10. Collection of a Claim. (1) The cabinet shall collect a claim from a claimant through:
(a) Voluntary payment arrangement, negotiated either orally or in writing, which includes a payment schedule;
(b) Court-ordered repayment;
(c) State tax refund interception in accordance with KRS 45.238;
(d) Lottery offsets;
(e) Wage garnishment; or
(f) Referral to a collection agency.

(2)(a) The cabinet shall accept a lump sum payment on a claim from a recipient or a child care provider.
(b) The lump sum payment may be a full or partial payment.

(3)(a) If a claimant who is a child care provider submits a completed DCC-97 Supplement A, Voluntary Payment Reduction, indicating the amount the provider wishes to have applied to the claim, the child care provider currently receiving CCAP payment may choose to have an amount withheld from the provider’s CCAP payment to be applied towards a claim.
(b) The amount indicated on the DCC-97 shall not be less than ten (10) percent of the total CCAP payment.

(4) The cabinet shall direct CCAP withheld in accordance with 922 KAR 2:160, Section 17, towards a child care provider's claim.

(5) The cabinet shall refund to a claimant any amount the claimant pays in excess of the amount of the claim.

Section 11. Delinquent Claims. (1) In accordance with KRS 45.237(4), a claim shall be considered delinquent if:

(a) A claimant has not made a payment or entered into a satisfactory payment arrangement with the cabinet sixty (60) calendar days from the date on the notice provided in accordance with Section 7(4)(b) of this administrative regulation; or

(b) Sixty (60) days have lapsed since the claimant has missed a scheduled payment pursuant to the payment arrangement with the cabinet.

(2) The cabinet shall pursue collection on a delinquent claim through a collection method specified in Section 10(1)(b) through (f) of this administrative regulation.

(3)(a) If the cabinet determines that a claimant who is a recipient is delinquent on a payment in accordance with subsection (1) of this section for ninety (90) days, the cabinet shall:

1. Terminate the recipient’s CCAP; and

2. Not reapprove the recipient for CCAP until the recipient has paid two (2) months of delinquent payments.

(b) The cabinet shall make an exception to paragraph (a) of this subsection if:

1. The recipient is approved for CCAP in accordance with 922 KAR 2:160, Section 5 or 6; and

2. CCAP is necessary for the recipient to comply with the requirements of the recipient’s case plan developed in accordance with KRS 1:430; or

b. Kentucky Works Program self-sufficiency plan developed in accordance with 921 KAR 2:370.

(4) If the cabinet determines that a claimant who is a child care provider is delinquent on a payment in accordance with subsection (1) of this section for ninety (90) days, the cabinet shall:

(a) Disallow any CCAP payments to the child care provider; and

(b) Not approve the child care provider for further CCAP payments until the provider has paid two (2) months of delinquent payments.

(5) The cabinet shall provide notice in accordance with Section 6 of this administrative regulation prior to an action specified in subsection (3) or (4) of this section.

(6) If the cabinet is unable to determine a claim’s delinquency status because the claim collection is coordinated through the court system, the cabinet shall not subject a claim to the requirements for delinquent claims in accordance with this section.

(7) A claim shall not be considered delinquent if:

(a) Another claim for the same claimant is currently being paid through a repayment agreement or court order; and

(b) The cabinet expects to begin collection on the claim once the prior claim is settled.

(8)(a) A claim awaiting an administrative hearing shall not be considered delinquent.

(b) If a hearing officer or agency head determines that a claim does not exist as result of an administrative hearing, the cabinet shall:

(1) Send subsequent notice of the claim in accordance with Section 6 of this administrative regulation; and

(2) Base delinquency on the due date of the subsequent notice.

(c) If a hearing officer or agency head determines that a claim does not exist as a result of an administrative hearing, the cabinet shall terminate the claim in accordance with Section 12(2) of this administrative regulation.

Section 12. Compromising or Terminating a Claim. (1) Except for a claim that is established by a court of appropriate jurisdiction, the cabinet may compromise a claim or a portion of a claim if:

(a) A request for a compromise is received from the claimant; and

(b) The cabinet makes a determination that the claimant will be unable to pay the claim within five (5) years.

(2) The cabinet shall terminate a claim if the:

(a) Claim:

1. Is invalid, unless pursuing the overpayment as a different type of claim is appropriate;

2. Balance is twenty-five (25) dollars or less, and the claim has been delinquent for ninety (90) days or more, unless another claim is pending against the same claimant resulting in an aggregate claim total of greater than twenty-five (25) dollars; or

3. Has been delinquent for at least three (3) years;

(b) Claimant dies; or

(c) Cabinet is unable to locate the claimant.

(3) The cabinet shall provide notice in accordance with Section 6 of this administrative regulation if the cabinet:

(a) Compromises or terminates a claim; and

(b) Has a mailing address for the claimant.

Section 13. Underpayments and CCAP Restoration. (1) If an underpayment has occurred, the cabinet shall issue a payment to the child care provider that includes the difference between the amount that the child care provider:

(a) Was entitled to receive; and

(b) Actually received.

(2) CCAP shall be restored for no more than twelve (12) months to a recipient or child care provider if benefits were lost:

(a) Due to agency error; or

(b) By a disqualification period for an IPV that is subsequently reversed through an order of a court of appropriate jurisdiction.

Section 14. Disclosure of Information. The disclosure or the use of CCAP information shall be restricted in accordance with:

[1] KRS 194A.060; and


Section 15. Retention of Records. (1) Records for CCAP shall be retained in accordance with 45 C.F.R. 98.90(e).

(2) The cabinet shall retain:

(a) The official records of an administrative disqualification hearing until all appeals have been exhausted; and

(b) A CCAP record with an IPV disqualification indefinitely.

Section 16. A parent in the recipient household or a child care provider may request an appeal of the establishment of a claim in accordance with 922 KAR 1:320, Section 2(10).

Section 17. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference:

(a) "DCC-83, Deferred Adjudication Disqualification Consent Agreement", edition 11/09;
(b) "DCC-84, Notice of Suspected Intentional Program Violation", edition 11/09;
(c) "DCC-84 Supplement A, Voluntary Waiver of Administrative Disqualification Hearing", edition 11/09;
(d) "DCC-97 Supplement A, Voluntary Payment Reductions", edition 11/09; and
(e) "KCD-2, General Claims Notice", edition 11/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 am through 4:30 pm.

922 KAR 2:020

TERESA C. JAMES, Commissioner
AUDREY TAYE, Secretary
APPROVED BY AGENCY: March 19, 2013
FILED WITH LRC: March 27, 2013 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals desiring to attend this hearing shall notify this agency in writing by May 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless requested 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 May 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, 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: Justin Dearinger
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for claims, collections, and penalties used by the cabinet in the administration of the Child Care Assistance Program (CCAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish policies and procedures for the handling of improper payments, whether that is an overpayment or underpayment; claims; collections; intentional program violations that may or may not also include an overpayment; and penalties in CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes governing the management of improper payments by state agencies and federal regulations and guidelines for the administration of fund under the Child Care and Development Fund Block Grant, the funding source for CCAP, through the administrative regulation's establishment of the criteria for claims, collections, and penalties used by the cabinet in the administration of the Child Care Assistance Program.

(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 all child care funds in a manner which is consistent with federal requirements, state statutes governing improper payments and program administration, and the interests of the clients to be served, child care providers, and taxpayers.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation aligns the improper payments, claims, and penalty processes with 922 KAR 2:020 and 502 KAR 2:160 & governing the Child Care Assistance Program. In addition, it makes updates to applicable federal law governing records and technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to deter and respond appropriately to provider fraud and abuse within CCAP. This amendment is also necessary to make technical corrections and clarifications.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by strengthening fraud and abuse prevention and penalties in CCAP.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes through its enforcement of benefit accuracy and program integrity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The parent of a child eligible for CCAP or a provider serving a child eligible for CCAP could be impacted by this administrative regulation if an overpayment or underpayment or a suspected intentional program violation has occurred involving the child's case eligibity or payment to the child care provider. During State Fiscal Year 2012, CCAP served, on average, 44,000 children in 25,000 families per month. For State Fiscal Year 2013, the numbers for providers participating in CCAP are as follows: 1,675 licensed (Type I and Type II), 367 certified, and 770 registered. For the first half of State Fiscal Year 2013, July through December, 380 claims were established on both recipients and providers participating in CCAP. For the 11-month period, March 30, 2012 to February 28, 2013, two providers were disqualified temporarily from CCAP due to intentional program violation.

(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 new requirements created for applicants, recipients, or providers in CCAP as a result of the amendment to this administrative regulation. Measures incorporated within the regulatory amendment do not impact providers who are participating in CCAP and are not engaged in fraud and abuse within the program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation does not create direct costs to CCAP applicants, recipients, or providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will foster accuracy in benefits and program integrity for applicants, recipients, and providers participating in CCAP. Benefits to CCAP recipient households include reduced fraud in CCAP and correction of underpayments. Overpayments returned to CCAP will be utilized to support new or existing recipients.

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

(a) Initially: There will be no new costs to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no new costs to the agency to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this administrative regulation will be federal Child Care and Development Fund Block Grant, state matching, and maintenance of effort funds.

(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: An increase in fees or funding is not necessary to change this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. Part 98, 205.50

2. State compliance standards. KRS Chapter 13B, 45.237-45.241, 194A.050(1), 194A.060, 199.8994

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. Part 98, 205.50

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 will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

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 Cabinet for Health and Family Services, Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, 45.237-45.241, 194A.050(1), 194A.060, 199.8994

(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 new revenues for state or local government in its first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation is cost neutral or cost saving due to reductions in fraud and correction of improper payments.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation is cost neutral or cost saving due to reductions in fraud and correction of improper payments.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR COMMUNITY BASED SERVICES
DIVISION OF CHILD CARE
(AMENDMENT)


STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), (6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, quality for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the Cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. KRS 199.896(6) requires the cabinet to establish an informal dispute resolution process. This administrative regulation establishes licensure standards for a child-care center and describes the informal dispute resolution process.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Sex Offender Registry to determine if a person’s residence is a known address of a registered sex offender.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Child" is defined by KRS 199.011(4).

(4) "Child-care center" is defined by KRS 199.894(3).

(5) "Finding of fraud" means a suspected intentional program violation referred in accordance with 922 KAR 2:020. Section 4(4)(a)1, that is accepted for investigation and substantiated by the cabinet’s Office of Inspector General.

(6) "Licensee" means the owner and operator of a child-care center to include:

(a) Sole proprietor;
(b) Corporation;
(c) Limited liability company;
(d) Partnership;
(e) Association; or
(f) Organization, such as:
    1. Board of education;
    2. Private school;
    3. Faith-based organization;
    4. Government agency; or
    5. Institution.

(7)[46] "Nontraditional hours" means the hours of:
(a) 7 p.m. through 5 a.m. Monday through Friday; or
(b) 7 p.m. on Friday until 5 a.m. on Monday.

(8)[22] "Parent" is defined by 45 C.F.R. 98.2.

(9) "Premises" means the building and contiguous property in which child care is licensed [provided]

(10)[92] "Secretary" is defined by KRS 199.011(1).

(11)[45] "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

Section 2. Child-care Centers. The following child-care centers shall meet the requirements of this administrative regulation:

(1) A Type I child-care center. This child-care center shall be licensed to regularly provide child care services for:
(a) Four (4) or more children in a nonresidential setting; or
(b) Thirteen (13) or more children in a designated space separate from the primary residence of a licensee; and

(2) A Type II child-care center. This child-care center shall be the primary residence of the licensee in which child care is regularly provided for seven (7), but not more than twelve (12), children including children related to the licensee.

Section 3. Exempt Child Care Settings. The following child-
care settings shall be exempt from licensure requirements of this administrative regulation, 922 KAR 2:110, and 922 KAR 2:120:

(1) Summer camps certified by the cabinet as youth camps which serve school-age children;

(2) Kindergarten through grade 12 in private schools while school is in session;

(3) All programs and preschools regulated by the Kentucky Department of Education governed by KRS Chapter 157;

(4) Summer programs operated by a religious organization which a child attends no longer than two (2) weeks;

(5) Child care provided while parents are on the premises, other than the employment and educational site of parents;

(6) Child care programs operated by the armed services located on an armed forces base;

(7) Child care provided by educational programs that include parental involvement with the care of the child and the development of parenting skills;

(8) Facilities operated by a religious organization while religious services are being conducted; and

(9) A program providing instructional and educational programs:

(a) That operates for a maximum of twenty (20) hours per week; and

(b) Which a child attends for no more than ten (10) hours per week.

Section 4. Application. (1) An applicant for a license shall submit to the cabinet a completed OIG-DRCC-01, Child Care Center License Application.

(2) Approval of an applicant for initial licensure shall result in the issuance of a preliminary license for a probationary period not to exceed six (6) months.

(3) The issuance of a preliminary license, or the issuance or reapproval of a regular license, shall be governed under the provisions of Sections 4 through 7 of this administrative regulation.

(4) If the applicant for licensure is a:

(a) Corporation or a limited liability company, the application shall include a current certificate of existence or authorization from the Secretary of State; or

(b) Partnership, the application shall include:

1. A written statement from each partner assuring that the partnership is current and viable; and

2. Proof that each individual is twenty-one (21) years or older by photo identification or birth certificate.

(5) If the status of a corporation, partnership, or ownership of the child-care center changes, the new entity shall submit a completed OIG-DRCC-01.

(6) If the ownership of a child-care center changes and the cabinet approves preliminary licensure upon inspection of the child-care center under the new ownership, the effective date on the preliminary license shall be the date of the approved inspection under the new ownership.

(7) The cabinet shall return the OIG-DRCC-01 and accompanying fee to an applicant if the applicant:

(a) Has an ownership interest in a facility that is licensed or regulated by the cabinet, and that is subject to a finding of fraud or other investigation by:

1. The cabinet’s Office of Inspector General; or

2. An agency with investigative authority; and

(b) Is requesting a:

1. Change in ownership; or

2. License for a new facility.

(8) An applicant or an applicant’s lead representative shall submit to background checks in accordance with Section 6(4) of this administrative regulation to confirm compliance with Section 11(7)(j) of this administrative regulation even if the applicant for licensure will not be serving as the child-care center’s director, employee, volunteer, or another person with supervisory or disciplinary control over, or having unsupervised contact with, a child.

(9) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

Section 5. Evacuation Plan. (1) A licensed child-care center shall have a written evacuation plan in the event of a fire, natural disaster, or other threatening situation that may pose a health or safety hazard for a child in care in accordance with KRS 199.895.

(2) The cabinet shall post an online template of an evacuation plan that:

(a) Fulfills requirements of KRS199.895; and

(b) Is optional for a child-care center’s use; and

(c) Is available to a licensed child-care center without charge.

Section 6. License Issuance. (1) The cabinet shall monitor a child-care center that operates under a preliminary license issued pursuant to Section 4(2) of this administrative regulation.

(2) Upon completion of the probationary period required in Section 4(2) of this administrative regulation, the cabinet shall:

(a) Approve regular licensure for a child-care center operating under a preliminary license; or

(b) If a condition specified in Section 11 of this administrative regulation exists, deny regular licensure.

(3) A preliminary or regular license shall not be issued unless each background check required by KRS 199.896(19) has been completed on behalf of an applicant for licensure.

(4) An applicant or an applicant’s lead representative shall:

(a) Submit to background checks described in paragraph (b) of this subsection;

(b) May be employed or work with a child on a probationary basis for up to ninety (90) calendar days, pending completion of:

1. Child abuse or neglect check using the central registry in accordance with KRS 199 1:470;

2. Criminal records check required by KRS 199.896(19);

3. Criminal records check for any previous state of residence if the person resided outside the state of Kentucky in the last five (5) years; and

4. An address check of the Sex Offender Registry; and

(c) Not be left alone in the presence of a child until copies of the background checks in accordance with paragraph (b) of this subsection have been received by the licensee.

(5) On completion of background checks described in subsection (4)(b) of this section, a licensee shall discharge immediately a:

(a) Director, employee, volunteer, or any person:

1. [A] Whose name is listed on the central registry established by 922 KAR 1:470;

2. [b] Who has been convicted of, or has entered an Alford plea or a plea of guilty to, a crime in accordance with KRS 17.165; or

3. [c] Who is confirmed by an address check of the Sex Offender Registry and supporting document as a registered sex offender; or

4. [d] Who has been convicted of, or has entered an Alford plea or a plea of guilty to, a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole;

(b) Director who has been convicted of, or entered an Alford plea or a plea of guilty to, a felony offense involving fraud, embezzlement, theft, or forgery; and

(c) Director, employee, volunteer, or any person who has been convicted of, or has entered an Alford plea or a plea of guilty to, an offense under a criminal statute of the United States or of another state similar to an offense specified in this subsection;

(d) A director, employee, volunteer, or any person:

1. [A] Who has been convicted of, or entered an Alford plea or a plea of guilty to, a nonviolent felony or misdemeanor not specified in this section shall be handled on a case-by-case basis by the licensee with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Individual’s life experiences after conviction, Alford plea, or guilty plea.

(7) If an applicant for licensure has had previous ownership interest in a child-care provider which has had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action, the cabinet shall grant the
applicant a license if:

(a) A seven (7)[three (3)] year period has expired from the:
   1. Date of the prior denial, suspension, or revocation;
   2. Date the certification, license, registration, or permit was
      voluntarily relinquished as a result of an investigation or pending
      adverse action;
   3. Last day of legal remedies being exhausted; or
   4. Administrative hearing decision; and
(b) The applicant has:
   1. Demonstrated compliance with the provisions of this admin-
      istrative regulation, 922 KAR 2:110, 922 KAR 2:120, and KRS
      199.896(3), (13), (15), (16), (18), and (19).
   2. Completed, since the time of the prior denial, suspension,
      revocation, or relinquishmeni, sixty (60) hours of training in
      child development and child care practice, approved by the cabinet
      or its designee; and
   3. Not had an application, certification, license, registration, or
      permit denied, revoked, suspended, or voluntarily relinquished
      as a result of an investigation or pending adverse action:
      a. For one (1) of the reasons set forth in:
         (i) KRS 199.896(19);
         (ii) Subsection (5) of this section; or
         (iii) Section 11(2) or 11(7)(ii) of this administrative regulation; or
      b. Due to a disqualification from:
         (i) The Child Care Assistance Program established by 922
             KAR 2:150, including an intentional program violation in accor-
            dance with 922 KAR 2:020; or
         (ii) Another governmental assistance program for fraud or
             abuse of that program.
   (8)(19) If a license is granted after the seven (7)[three (3)] year
   period specified in subsection (7)(a)(5)(a) of this section, the li-
   censee shall serve a two (2) year probationary period during which
   the child-care center shall be inspected on at least a quarterly ba-
   sis.

   (9)(22) A preliminary or regular license shall specify:
   (a) A particular premises;
   (b) A designated licensee;
   (c) Age category of the children in care;
   (d) The maximum number of children allowed under center
       supervision at one (1) time, including a child related to the licensee
       or an employee, based upon:
   1. Available space as determined by the State Fire Marshal's
      Office in conjunction with the cabinet;
   2. Adequacy of program;
   3. Equipment; and
   4. Staff;
   (e) If provided, nontraditional hours;
   (f) If provided, transportation; and
   (g) A list of services to be provided by the child-care center.
   (10)(49) To qualify for a preliminary license, or(ending) maintain a
   regular license, a child-care center shall:
   (a) Provide written documentation from the local authority
       showing compliance with local zoning requirements;
   (b) Be approved by the Office of the State Fire Marshal or de-
       signee;
   (c) Have an approved water and sewage system in accordance
       with local, county, and state laws;
   (d) Provide written proof of liability insurance coverage of at
       least $100,000 per occurrence;
   (e) Comply with provisions of this administrative regulation,
       922 KAR 2:110, and 922 KAR 2:120;
   (f) Cooperate with the cabinet, the cabinet’s designee, or
       another agency with regulatory authority during:
      1. An investigation of an alleged complaint, including an allega-
         tion of child abuse or neglect pursuant to KRS 620.030(4); and
      2. Unannounced [cabinet] inspections; and
   (g) Have a director who meets the requirements listed in 922
       KAR 2:110.
   (11)(91) A child-care center shall allow the cabinet or its design-
   ee, another agency with regulatory authority, and a parent of an
   enrolled child unannounced access to the child-care center during
   the hours of operation.
   (12) Denial of access, including any effort to delay, interfere
   with, or obstruct an effort by a representative of the cabinet or
   another agency with regulatory authority, to enter the child-care
   center or deny access to records relevant to the inspection shall
   result in the cabinet pursuing adverse action in accordance with
   Section 10, 11, or 12 of this administrative regulation.
   (13)(14) A regular license shall be issued and reapproved if
   the center has met the requirements contained in this administra-
   tive regulation, 922 KAR 2:110, 922 KAR 2:120, and KRS
   199.896(3), (13), (15), (16), (18), and (19).
   (14)(11) A preliminary or regular license shall not be sold or
   transferred.
   (15)(42) Changes to a child-care center as listed in 922 KAR
   2:110, Section (4), (5), and (6) shall be:
   (a) In writing to the cabinet or its designee; and
   (b) Signed by each owner listed on the preliminary or regular
       license.
   (16)(43) The cabinet or its designee shall not charge a fee for
   acting upon reported changes.
   (17)(44) The preliminary or regular license shall be posted in a
   conspicuous place in the child-care center.
   (18)(45) A child-care center shall not begin operation without
   a preliminary license to operate from the cabinet.
   (19)(46) A child-care center operating without a preliminary or
   regular license shall be subject to legal action.
   (20) The voluntary relinquishment of a preliminary or regular
   license shall not preclude the cabinet’s pursuit of adverse action.

Section 7. Fees. (1) A nonrefundable licensing fee of fifty (50)
dollars shall be charged according to KRS 199.896(3).
(2) Licensing fees shall be:
   (a) Payable to the Kentucky State Treasurer;
   (b) Attached to the licensure application; and
   (c) Paid by:
      1. Cashier’s check; or
      2. Certified check; or
      3. Money order.

Section 8. Annual Reapproval. (1) A licensee seeking reap-
proval of a regular license shall:
   (a) Submit, one (1) month prior to license expiration, an OIG-
       DRCC-01; and
   (b) Meet the requirements specified in Sections 4 through 7 of
       this administrative regulation.
   (2) An application for renewal shall be denied in accordance
   with Section 11 of this administrative regulation.

Section 9. Statement of Deficiency and Corrective Action
Plans. (1) If a center is found not to be in regulatory compliance,
the cabinet or its designee shall complete a written statement of
deficiency in accordance with KRS 199.896(5).
(2) Except for a violation posing an immediate threat as handled
in accordance with KRS 199.896(5)(c), a child-care center shall
submit a written corrective action plan to the cabinet or its
designee within ten (10) calendar days of receipt of the statement
of deficiency to eliminate or correct the regulatory violation.
(3) A corrective action plan shall include:
   (a) Specific action undertaken to correct a violation;
   (b) The date action was or shall be completed; and
   (c) Action utilized to assure ongoing compliance.
(4) The cabinet or its designee shall review the plan and notify
the child-care center within thirty (30) calendar days of receipt of
the plan, in writing, of the decision to:
   (a) Accept the plan;
   (b) Not accept the plan; or
   (c) Deny, suspend, or revoke the child-care center’s license, in
       accordance with Section 11 of this administrative regulation.
(5) A notice of unacceptability shall state the specific reason
the plan is unacceptable.
(6) A child-care center notified of the unacceptability of its plan
shall:
   (a) Within ten (10) calendar days of notification, submit an
       amended plan; or
   (b) Have its license revoked or denied for failure to submit an
       acceptable amended plan in accordance with KRS 199.896(4).
(7) Following two (2) unacceptable plans of correction, in a
Section 9. Central Registry. (2) The cabinet may institute a preliminary or regular investigation, in accordance with KRS 199.896(4) and (19) if the applicant, director, employee, or a person who has supervisory authority over, or unsupervised contact with, a child fails to meet the requirements of this administrative regulation or those of KRS 224.840(4) or 922 KAR 2:120.

Section 10. Emergency Action. (a) The cabinet may revoke, suspend, or partake in an emergency order to suspend license, or registrant or require the provider to notify a parent of a child who may be affected by the situation for which an intermediate sanction has been imposed.

(2) An intermediate sanction shall result in a suspension or revocation of the license if a child-care center

(a) Fails to meet a condition of the intermediate sanction; or

(b) Violates a requirement of an intermediate sanction.

Section 11. Basis for Denial, Suspension or Revocation. (1) The cabinet shall deny, suspend, or revoke a preliminary or regular license in accordance with KRS 199.896(4)(a) and (19) if the applicant, director, employee, or a person who has supervisory authority over, or unsupervised contact with, a child fails to meet the requirements of this administrative regulation or those of KRS 224.840(4) or 922 KAR 2:120.

(2) For the purposes of KRS 199.896(19), an applicant who has been found by the cabinet to have abused or neglected a child shall mean an individual who is listed on the central registry described in KRS 199.896(4)(a) and (19) if the applicant, director, employee, or a person who has supervisory authority over, or unsupervised contact with, a child fails to meet the requirements of this administrative regulation or those of KRS 224.840(4) or 922 KAR 2:120.

(3) A director, employee, volunteer, any person with supervisory or disciplinary control over, or having unsupervised contact with, a child shall report to the licensee if

(a) Convicted of or entered an Afford or guilty plea to;

1. A violent crime or sex crime in accordance with KRS 17.165;

or

2. A crime specified in Section 6(5) of this administrative regulation;

(b) The subject of a cabinet child abuse or neglect investigation;

(c) Found by the cabinet or a court to have abused or neglected a child;

(d) Convicted of or entered an Afford or guilty plea to, a drug-related felony, and five (5) years have not elapsed since the person was fully discharged from imprisonment, probation, or parole;

(e) Placed on the Sex Offender Registry; or

(f) Determined by a physician to have a health condition that renders the person unable to care for children.

(4) Each licensee shall report to the cabinet or its designee if the

(a) Licensee, director, employee, volunteer, or another person who submitted to a background check meets a criterion of subsection (3) of this section; or

(b) Licensee meets a criterion of subsection (7)(i) of this section.

(5) Emergency Action. (a) The cabinet shall take emergency action in accordance with KRS 199.896(4) and (19) if the applicant, director, employee, or a person who has supervisory authority over, or unsupervised contact with, a child fails to meet the requirements of this administrative regulation or those of KRS 224.840(4) or 922 KAR 2:120.

(b) An emergency order shall

1. Be served to a licensed child-care center in accordance with KRS 13B.050(2); and

2. Specify the regulatory violation that caused the emergency condition to exist.

(c) Upon receipt of an emergency order, a child-care center shall

1. Notify a parent of each child in care of the center’s suspension; and

2. Refer a parent for assistance in locating alternate child care arrangements.

(e) A child-care center required to comply with an emergency order, issued in accordance with this subsection may submit a written request for an emergency hearing within five (5) calendar days of receipt of the order to determine the propriety of the license’s suspension.

(f) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing.

(g) 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 order to suspend license.

(h) A provider’s license shall be revoked if the

1. Provider does not request a hearing within the timeframes established in paragraph (e) of this subsection; or

2. The emergency order is upheld by the administrative hearing conducted in accordance with KRS Chapter 13B.

(6) Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).

(7) Unless an applicant for a license meets requirements of Section 6(7)(i)(5) of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if

(a) The applicant has been convicted of a crime specified in Section 6(5) of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if

1. Is listed on the Central registry as described in Section 6(5) of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if

2. The emergency order shall be affirmed if the

(a) Cabinet representative’s ability to perform an official duty

2. Refer a parent for assistance in locating alternate child care arrangements.

(e) A child-care center required to comply with an emergency order, issued in accordance with this subsection may submit a written request for an emergency hearing within five (5) calendar days of receipt of the order to determine the propriety of the license’s suspension.

(f) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing.

(g) 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 order to suspend license.

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1. Provider does not request a hearing within the timeframes established in paragraph (e) of this subsection; or

2. The emergency order is upheld by the administrative hearing conducted in accordance with KRS Chapter 13B.

(6) Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).

(7) Unless an applicant for a license meets requirements of Section 6(7)(i)(5) of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if

(a) The applicant has been convicted of a crime specified in Section 6(5) of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if

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(e) A child-care center required to comply with an emergency order, issued in accordance with this subsection may submit a written request for an emergency hearing within five (5) calendar days of receipt of the order to determine the propriety of the license’s suspension.

(f) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing.

(g) 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 order to suspend license.

(h) A provider’s license shall be revoked if the

1. Provider does not request a hearing within the timeframes established in paragraph (e) of this subsection; or

2. The emergency order is upheld by the administrative hearing conducted in accordance with KRS Chapter 13B.

(6) Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).

(7) Unless an applicant for a license meets requirements of Section 6(7)(i)(5) of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if

(a) The applicant has been convicted of a crime specified in Section 6(5) of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if

1. Is listed on the Central registry as described in Section 6(5) of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if

2. The emergency order shall be affirmed if the

(a) Cabinet representative’s ability to perform an official duty

2. Refer a parent for assistance in locating alternate child care arrangements.

(e) A child-care center required to comply with an emergency order, issued in accordance with this subsection may submit a written request for an emergency hearing within five (5) calendar days of receipt of the order to determine the propriety of the license’s suspension.

(f) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing.

(g) 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 order to suspend license.

(h) A provider’s license shall be revoked if the

1. Provider does not request a hearing within the timeframes established in paragraph (e) of this subsection; or

2. The emergency order is upheld by the administrative hearing conducted in accordance with KRS Chapter 13B.
operating hours to:
1. A child; or
2. The child-care center;
(c) The licensee is discontinued or disqualified from participation;
1. The Child Care Assistance Program as a result of an intentional program violation in accordance with 922 KAR 2:020; or
2. A governmental assistance program as a result of fraud or abuse of that program;
(d) The licensee fails to meet a condition of, or violates a requirement of an intermediate sanction pursuant to Section 10(2) of this administrative regulation;
(e) The applicant or licensee knowingly misrepresents or submits false information on a form required by the cabinet; or
(f) The licensee is the subject of more than two (2) intermediate sanctions during a three (3) year period.
(9) The cabinet or its designee shall suspend the license if:
(a) Regulatory violations are found that pose an immediate threat to the health and safety of the children in care as described in KRS 199.896(4); or
(b) The child-care center fails to comply with the approved corrective plan.

Section 12. Civil Penalty. The cabinet shall assess and enforce a civil penalty in accordance with 922 KAR 2:190.

Section 13. Right of Appeal. (1) If an application has been denied or a licensee receives notice of suspension or revocation, the cabinet shall inform the applicant for licensure or licensee by written notice of the right to appeal the notice of adverse action in accordance with KRS Chapter 13B and 199.896(7).
(2) An adverse action may be appealed by filing form OIG-DRCC-02, Licensed Request for Appeal or Informal Dispute Resolution. The request shall:
(a) Be submitted to the Secretary of the cabinet or designee within twenty (20) calendar days of receipt of the notice of adverse action; and
(b) Specify if an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.
(3) If an applicant for licensure or a licensee files an OIG-DRCC-02 for a hearing, the cabinet shall:
(a) Appoint a hearing officer; and
(b) Proceed pursuant to KRS 13B.050.
(4) If an applicant for licensure or a licensee files a request for a hearing and a request for an informal dispute resolution, the cabinet shall:
(a) Abate the formal hearing pending completion of the informal dispute resolution process; and
(b) Proceed to informal dispute resolution.

Section 14. Informal Dispute Resolution. (1) A request for informal dispute resolution shall:
(a) Accompany the request for a hearing;
(b) Identify the licensure deficiency in dispute;
(c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency; and
(d) Include documentation that disputes the deficiency.
(2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:
(a) Review documentation submitted by the applicant for licensure or licensee; and
(b) Schedule the informal dispute resolution meeting with the applicant for licensure or licensee.
(3) The first-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.
(4) The first-level informal dispute resolution meeting shall be conducted by:
(a) The regional program manager or designee; and
(b) A child care surveyor who did not participate in the survey resulting in the disputed deficiency.
(5) Within ten (10) calendar days of completion of the first-level informal dispute resolution meeting or request, the regional program manager or designee shall:
(a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution;
(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and
(c) Specify whether the adverse action has been rescinded.
(6) An applicant or a licensee may appeal a decision issued by the regional program manager or designee by:
(a) Proceeding with a hearing according to KRS 13B.050; or
(b) Filing a written request for a second-level informal dispute resolution to the Director of the Division of Regulated Child Care or designee within ten (10) calendar days of receipt of the first level decision. The request shall specify whether the applicant for licensure or licensee requests a meeting with cabinet staff.
(7) Upon receipt of the written request for second-level informal dispute resolution, the Director of the Division of Regulated Child Care or designee shall:
(a) Review the decision issued from the first-level informal dispute resolution;
(b) Review the documentation described in subsection (1)(d) of this section; and
(c) If requested, schedule a second-level informal dispute resolution meeting with the applicant for licensure or licensee.
(8) The second-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.
(9) Within ten (10) calendar days of completion of the second-level informal dispute resolution meeting or request, the Director of the Division of Regulated Child Care or designee shall:
(a) Issue a decision by written notification to the return address specified in the request for second-level informal dispute resolution;
(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and
(c) Specify whether the adverse action has been rescinded.
(10) If a second-level informal review is requested in lieu of a first-level informal dispute resolution meeting, the Director of the Division of Regulated Child Care or designee shall comply with the provisions of subsection (9)(a) through (c) of this section within ten (10) calendar days of receipt of the request for second-level informal dispute resolution.
(11) If an applicant for licensure or licensee is satisfied with the decision issued during informal dispute resolution, the request for a hearing shall be withdrawn.
(12) If an applicant for licensure or licensee is not satisfied with the decision issued from the second-level informal dispute resolution, the hearing previously held in abeyance shall be conducted in accordance with KRS Chapter 13B concerning the deficiencies that were reviewed in the informal review process.
(13) A request for informal dispute resolution shall not:
(a) Limit, modify, or suspend enforcement action against the applicant for licensure or licensee; or
(b) Delay submission of a written plan of correction.
(14) Emergency action taken in accordance with Section 11(5) of this administrative regulation shall conform to the requirements of KRS 199.896(4). The informal dispute resolution process shall not restrict the cabinet's ability to issue an emergency order to stop, prevent, or avoid an immediate threat to public health, safety, or welfare under KRS 13B.125(2) and 199.896(4).

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "OIG-DRCC-01, Child-Care Center License Application", edition 4/2013/8/3/12; and
(b) "OIG-DRCC-02, Licensed Request for Appeal or Informal Dispute Resolution", edition 8/3/12.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Inspector General's Office, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: March 19, 2013
FILED WITH LRC: March 27, 2013 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held in May 2013, at 9:00 a.m., in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until May 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, 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: Justin Dearinger
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes license standards for a child care center, and describes an applicant’s and a child care center’s appeal rights and informal dispute resolution processes.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a child care center’s license standards, appeal rights, and informal dispute resolution process.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of license standards for a child care center and related due process.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a child care center license and related due process.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation: (1) clarifies background check requirements for applicants who may not serve in the role of the child care center’s director, employee, volunteer, or other person having contact with children in care; (2) prohibits a license applicant and a licensed child care center’s director from having been convicted of, or entered an Alford or guilty plea to, a felony offense involving theft, fraud, embezzlement, or forgery; (3) extends the disqualification period from license from three to seven years; (4) specifies the cabinet can continue to pursue adverse action even if the child care center’s license is voluntarily relinquished; (5) adds conditions that can result in revocation or denial of a license to include refusal of access by a parent, the cabinet, or another agency with regulatory authority; having more than two intermediate sanctions in a three year period; submitting false information to the cabinet; and being disqualified or disqualified from the Child Care Assistance Program (CCAP) or another governmental assistance program due to fraud or abuse; (6) clarifies due process for emergency actions; (7) prohibits a licensee subject to a finding of fraud from changing ownership of the license or requesting a license for a new facility pending the outcome of the fraud investigation; and (8) creates a process for preliminary licensure of a new child care center prior to regular license issuance. The amendment also makes technical corrections in accordance with KRS Chapter 13A, including corresponding updates to material incorporated.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to better support the health, safety, and welfare of children in care; respond appropriately and timely to waste, fraud, abuse, and deficient practice by licensed providers; and foster provider integrity and quality assurance thereby protecting the state and federal funding available to child care in Kentucky.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes through its update and clarification of child care center licensure standards.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for child care center licensure or an existing licensed child care center will be impacted by this administrative regulation. As of December 31, 2012, there were 2,297 Kentucky licensed child care centers, both Type I and Type II.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will require new licensees to seek preliminary licensure prior to regular licensure, thereby allowing the cabinet to monitor the licensee after initial inspection of the facility, once children are admitted for care. An individual with a felony conviction, Alford plea, or guilty plea involving fraud, theft, embezzlement, or forgery will be prohibited from being a new applicant or a director of licensed child care centers. The amendment clarifies that applicants are required to submit to background checks, and that licensees are to provide access to the cabinet, a parent of a child in care, and another agency with regulatory authority during hours of operation. Other provisions incorporated within this administrative regulation should not impact the vast majority of providers, but rather those providers who have engaged in repeatedly deficient, wasteful, abusive, and/or fraudulent practices.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation should entail no new costs to existing licensed child care centers. New applicants who are not subject to a background check requirement will be required to undergo initial background checks to ensure no threat, harm, or danger to children in care and to better assure integrity in providers’ billing, operations, and programmatic oversight.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicant and licensed child care centers and the children in their care will benefit from measures to prevent and adequately respond to waste, fraud, and abuse; and greater program integrity and quality assurance in the child care community.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.
(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and state agency funds support the direct implementation of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required as a result of this amendment.

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STATE WHETHER OR NOT THIS ADMINISTRATIVE REGULATION ESTAB-
ISHED ANY FEES OR DIRECTLY OR INDIRECTLY INCREASED ANY FEES: THIS
ADMINISTRATIVE REGULATION DOES NOT ESTABLISH ANY FEES, OR DIRECTLY OR
INDIRECTLY INCREASE ANY FEES.
(9) TIERINGS: IS TIERRING APPLIED? TIERRING IS NOT APPLIED, BECAUSE
THIS ADMINISTRATIVE REGULATION WILL BE APPLIED IN A LIKE MANNER STATE-
WIDE.

FEDERAL MANDATE ANALYSIS COMPARISON

Agency Contact: Justin Dearinger

2. State compliance standards. KRS 194A.050(1), 199.896(2), (6).
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.
4. This administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.
5. For the imposition of the stricter standard, or additional or different responsibilities or requirements, than those required by the federal mandate, is a conference between the provider and the parent; or
6. Is not required to be licensed under 922 KAR 2:100; and

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8982(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.8982(1)(f) requires the cabinet to promulgate administrative regulations to establish standards for the issuance, monitoring, release of information, renewal, denial, revocation, and suspension of a certificate of operation, and to impose minimum staff-to-child ratios for a family child-care home. The statutory authorizes the cabinet to establish minimum safety requirements for operation of a certified family child-care home. This administrative regulation establishes minimum requirements intended to protect the health, safety, and welfare of children cared for by certified family child-care home providers.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.
(2) "Assistant" means a person:
(a) Who meets the requirements listed in Section 2(6) and Section 10 (7), (8), and (9) of this administrative regulation; and
(b) Whose work is either paid or unpaid.
(3) "Cabinet" is defined by KRS 199.011(2).
(4) "Child" is defined by KRS 199.011(4).
(5) "Corporal physical discipline" is defined by KRS 199.896(18).
(6) "Developmentally appropriate" means suitable for the specific age range and abilities of a child.
(7) "Family child-home care" is defined by KRS 199.894(5).
(8) "Health professional" means a person currently licensed as a:
(a) Physician;
(b) Physician's assistant;
(c) Registered nurse or practitioner; or
(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.
(9) "Home" means the private primary residence of the certified family child-care home provider and contiguous property.
(10) "Infant" means a child who is less than twelve (12) months of age.
(11) "Parent" is defined by 45 C.F.R. 98.2.
(12) "Parental or family participation" means a family child-care home's provision of information or inclusion of a child's parent in the child-care home's activities such as:
(a) Distribution of a newsletter;
(b) Distribution of a program calendar;
(c) A conference between the provider and the parent; or
(d) Other activity designed to engage a parent in the program's activities.
(13) "Pediatric abusive head trauma" is defined by KRS 620.020(8).
(14) "Premises" means the building and contiguous property in which child care is [provided and] certified.
(15) "Preschool-age" means a child who is older than a toddler and younger than school-age.
(16) "Provider" means an owner, operator, or person who:
(a) Cares for a child in the provider's own home;
(b) Is not required to be licensed under 922 KAR 2:090; and

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)

922 KAR 2:100. Certification of family child-care homes.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.8982(1)(f) requires the cabinet to promulgate administrative regulations to establish standards for the issuance, monitoring, release of information, renewal, denial, revocation, and suspension of a certificate of operation, and to impose minimum staff-to-child ratios for a family child-care home. The statutory authorizes the cabinet to establish minimum safety requirements for operation of a certified family child-care home. This administrative regulation establishes minimum requirements intended to protect the health, safety, and welfare of children cared for by certified family child-care home providers.
(c) Meets the requirements of Section 2 of this administrative regulation.

(17) "Related" means having one (1) of the following relationships with the provider:
(a) Child;
(b) Grandchild;
(c) Niece;
(d) Nephew;
(e) Sibling;
(f) Step-child; or
(g) Child in legal custody of the provider.

(18) "School-age child" means a child attending kindergarten, elementary, or secondary education.

(19) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(20) "Toddler" means a child between the age of twelve (12) months and twenty four (24) months.

Section 2. Certification Process. (1) The cabinet or its designee shall be responsible for certifying a family child-care home.
(2) An applicant for certification shall:
(a) Show proof by photo identification or birth certificate that the individual is at least eighteen (18) years of age;
(b) Obtain commercial liability insurance of at least $50,000 per occurrence; and
(c) Submit within ninety (90) days of initiation of the application process:
1. A completed OIG-DRCC-03, Certification Application for Family Child-Care Home;
2. A nonrefundable certification fee pursuant to KRS 199.8982(1)(b);
3. Written documentation from the local authority showing the child-care home is in compliance with local zoning requirements;
4. Documentation of the requirements of KRS 199.8982(1)(a) through 3 and 5;
5. A DCC-157(OIG-DRCC-04), Certified Family Child-Care Home Central Registry Check, to complete:
   a. A child abuse or neglect check using the central registry in accordance with 922 KAR 1:470; and
   b. An address check of the Sex Offender Registry;
6. A completed criminal records check required by KRS 17.165(5); and
7. A criminal records check for any previous state of residence completed once if:
   a. The applicant resided outside the state of Kentucky in the last five (5) years; and
   b. No criminal records check has been completed for the applicant's previous state of residence.
(3) An initial applicant for certification shall have a:
(a) High school diploma, general equivalency diploma (GED), or documentation from a comparable educational entity; or
(b) Commonwealth Child Care Credential in accordance with 922 KAR 2:250.
(4) An applicant shall be currently certified by an agency approved in accordance with 922 KAR 2:240 in infant and child:
(a) Cardiopulmonary resuscitation (CPR); and
(b) First aid.
(5) An adult living in the home of the applicant present during the hours of operation, or having unsupervised contact with a child in care, and the applicant's assistant shall submit to the cabinet:
(a) A criminal records check pursuant to KRS 17.165(5) by the Kentucky State Police or the Administrative Office of the Courts within one (1) year prior to application;
(b) A DCC-157(OIG-DRCC-04) to complete:
   1. A child abuse or neglect check using the central registry in accordance with 922 KAR 1:470; and
   2. An address check of Sex Offender Registry;
(c) A criminal records check completed once for any previous state of residence if:
   1. The adult resided outside the state of Kentucky in the last five (5) years; and
   2. No criminal records check has been completed for the adult's previous state of residence;
   (d) A copy of negative tuberculin results or a health professional's statement documenting that the adult is free of active tuberculosis.
(6) An applicant or assistant who has been convicted of, or entered an Alford or guilty plea to, a non-violent felony or misdemeanor may be approved on a case by case basis with consideration given to the:
(a) Nature of the offense;
(b) Length of time that has elapsed since the event; and
(c) Applicant's life experiences after the conviction, Alford plea, or guilty plea.
(7) Upon receipt of a completed application for certification, and a nonrefundable certification fee pursuant to KRS 199.8982(1)(b), cabinet staff shall:
(a) Review and process the application; and
(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b), including review of the evacuation plan in accordance with Section 18(7) of this administrative regulation.
(c) The requirements of subsections (1) through (7) of this section, Section 3, and Sections 10 through 19 of this administrative regulation have been met, an applicant shall be certified as described in KRS 199.8982.
(9) Within three (3) months of submission to the cabinet of a complete OIG-DRCC-03, an applicant shall:
(a) Demonstrate completion of six (6) hours of cabinet-approved training in accordance with KRS 199.8982(1)(a); and
(b) Develop and implement a written plan for obtaining nine (9) hours of annual cabinet-approved training as required in Section 10(1) of this administrative regulation.
(10) A family child-care home certificate shall:
(a) Be displayed in a prominent place, as required by KRS 199.8982(1)(c);
(b) Contain the:
   1. Name and address of the child care provider;
   2. Maximum number of unrelated children who may be served;
   3. Identification number; and
   4. Effective and expiration dates; and
(c) Be valid for only the:
   1. Name of the individual authorized on the certificate to operate a family child-care home; and
   2. Residential address printed on the certificate.
(11) A change of location shall require:
(a) A ten (10) calendar day notice;
(b) A completed OIG-DRCC-03;
(c) An inspection of the new home; and
(d) Continued compliance with this administrative regulation.

Section 3. Renewal of Certification. (1) A family child-care certification shall be renewed every two (2) years.
(2) A family child-care home provider shall submit one (1) month prior to expiration of the provider's certification:
(a) A completed OIG-DRCC-03;
(b) A nonrefundable renewal fee pursuant to KRS 199.8982(1)(b);
(c) A physician's statement documenting that the family child-care home provider's health is satisfactory for continued operation of a family child-care home;
(d) Proof that the family child-care home provider continues to meet the minimum requirements specified in Sections 2, 3, and 10 through 19 of this administrative regulation.
(3) The cabinet shall:
(a) Review and process the application;
(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b); and
(c) Approve the family child-care home within fifteen (15) calendar days of receipt of the application if the requirements in Sections 2, 3, and 10 through 19 of this administrative regulation are met.
(4) To the extent funds are available, the cabinet may conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b) annually as a condition of certification renewal.

Section 4. Statement of Deficiency and Corrective Action Plans. (1) If the cabinet finds a provider noncompliant with Sec-
tions 2, 3, or 10 through 19 of this administrative regulation, the cabinet or its designee shall complete a written statement of deficiency.

(2) Except for a violation posing an immediate threat, a family child-care home shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days from receipt of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:
   (a) Specific action undertaken to correct a violation;
   (b) The date action was or will be completed; and
   (c) Action utilized to assure ongoing compliance.

(4) The cabinet or its designee shall review the plan and notify a family child-care home within thirty (30) calendar days from receipt of a plan, in writing, of the decision to:
   (a) Accept the plan;
   (b) Not accept the plan; or
   (c) Deny, suspend, or revoke the family child-care home’s certification in accordance with Section 6, 7, or 8 of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons a plan was not accepted.

(6) A family child-care home notified of an unacceptable plan shall:
   (a) Submit an amended plan within ten (10) calendar days of notification; or
   (b) Have its certification revoked or denied for failure to submit an acceptable amended plan.

(7) Following two (2) unacceptable plans of correction in a forty-five (45) calendar day period, the cabinet shall deny an application for certification or revoke a provider’s certification.

(8) An administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected by the family child-care home provider within five (5) working days of notification.

(9) The voluntary relinquishment of a family child-care home’s certification shall not preclude the cabinet’s pursuit of adverse action.

Section 5. Denial of Application for Certification. (1) An application for initial certification or renewal of certification as a family child-care home shall be denied if the applicant, an assistant, or an adult residing in the household:
   (a) Has abused or neglected a child according to a check of the central registry in accordance with 922 KAR 1:470;
   (b) Has a history of behavior that may impact the safety or security of a child in care including:
      1. A criminal conviction of, or an Alford plea or a plea of guilty to, a sex crime or violent crime in accordance with KRS 17.165;
      2. A conviction for, or an Alford plea or a plea of guilty to, a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole; or
      3. Other behavior or condition indicating inability to provide reliable care to a child; or
   (c) Is placed on the Sex Offender Registry.

(2) An application for certification as a family child-care home provider shall be denied if the applicant:
   (a) Fails to comply with the minimum certification standards specified in Sections 10 through 19 of this administrative regulation and KRS 199.8982:[ae]
   (b) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee;
   (c) Refuses, during the hours of operation, access by:
      1. A parent of a child in care, the cabinet, the cabinet’s designee, or another agency with regulatory authority to:
         a. A child in care; or
         b. The provider’s premises; or
      2. The cabinet, the cabinet’s designee, or another agency with regulatory authority to the provider’s records;
   (d) Is placed on intermediate sanction more than two (2) times in a three (3) year period; or
   (e) Has been discontinued or disqualified from participation in:
      1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or
      2. Another governmental assistance program due to fraud or abuse of that program.

(3) Effect of previous denial or revocation.
   (a) If an applicant has had a previous child care registration, certification, [ae] license, or permit to operate subject to denial, suspension,[ac] revocation, or voluntary relinquishment pending an investigation or adverse action, the cabinet shall grant the applicant a certificate to operate a family child-care home if:
      1. A seven [(7)]two (2) year period has expired from the:
         a. Date of the prior denial, suspension, or revocation;
         b. Date the certification, license, registration, or permit was voluntarily relinquished as a result of an investigation or a pending adverse action;
         c. Last day of legal remedies being exhausted; or
      2. The applicant has:
         a. The proven ability to comply with the provisions of this administrative regulation and KRS 199.8982;
         b. Completed, since the time of the prior denial or revocation, sixty (60) hours of cabinet-approved training in developmentally appropriate child care practice; and
         c. Not had an application for registration, certificate,[ae] license, or permit to operate as a child care provider denied or revoked for:
            (i) Conviction of, or an Alford plea or a plea of guilty to, a sex crime or violent crime in accordance with KRS 17.165;
            (ii) Abuse or neglect of a child according to a child abuse and neglect check of the central registry in accordance with 922 KAR 1:470;
            (iii) Placement on the Sex Offender Registry;[ae]
            (iv) Conviction of, or an Alford or guilty plea to, a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole; or
            (v) Has been discontinued or disqualified from participation in:
               1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

   (b) If a certificate is granted after the seven [(7)]two (2) year period specified in paragraph (a) of this subsection, the provider shall serve a two (2) year probationary period during which the home shall be inspected on at least a quarterly basis.

Section 6. Intermediate Sanctions. (1) If the cabinet determines that a certified family child-care home provider is in violation of this administrative regulation, the cabinet may, based on the severity of the violation:
   (a) Require the provider to participate in additional training;
   (b) Increase the frequency of monitoring by cabinet staff;
   (c) Enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance; or
   (d) Notify or require the provider to notify a parent of a child who may be affected by the situation for which an intermediate sanction has been imposed.

(2) An intermediate sanction shall result in a suspension or revocation of certification if a certified family child-care home provider:
   (a) Fails to meet a condition of the intermediate sanction; or
   (b) Violates a requirement of an intermediate sanction.

Section 7. Suspension. The cabinet shall take emergency action in accordance with KRS 13B.125, by issuing an emergency order that results in suspension of the operation of a certified family child-care home. (1) An emergency order shall:
   (a) Be served to a certified family child-care home provider in accordance with KRS 13B.050(2); and
   (b) Specify the regulatory violation that caused the emergency condition to exist.

(2) Upon receipt of an emergency order, a provider shall surrender the certificate of operation to the cabinet.
(3) The cabinet or its designee and the provider shall make reasonable efforts to:
(a) Notify a parent of each child in care of the suspended provider and
(b) Refer a parent for assistance in locating alternate child care arrangements.

(4) A certified family child-care home required to comply with an emergency order issued in accordance with this section may submit a written request for an emergency hearing within five (5) calendar days of receipt of the order to determine the propriety of the certification’s suspension.

(5) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing.

(a) 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 order to suspend certification.
(b) The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

(7) A provider’s certification shall be revoked if the:
(a) Provider does not request a hearing within the timeframes established in subsection (6) of this section;
(b) The emergency order is upheld by the administrative hearing conducted in accordance with KRS Chapter 13B; or
(c) A provider’s certification for operation of a family child-care home shall be revoked if:
   (1) The provider does not request a hearing;
   (2) The condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.

Section 8. Revocation.(1) A family child-care home provider’s certification shall be revoked if a provider:
(a) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee;
(b) Interferes with a cabinet representative’s ability to perform an official duty;
(c) Refuses, during the hours of operation, access by;
1. A parent of a child in care, the cabinet, the cabinet’s designee, or another agency with regulatory authority to;
   a. A child in care; or
   b. The provider’s premises; or
2. The cabinet, the cabinet’s designee, or another agency with regulatory authority to the provider’s records[a parent or cabinet representative to:
   1. A child or
   2. Space in the home used for child care];
(d) Is convicted of, or enters an Alford or guilty plea to, a criminal charge that threatens the health, safety, or welfare of a child in care;
(e) Is unable to continue to meet the requirements of KRS 199.8982(1) or Sections 2, 3, and Sections 10 through 19 of this administrative regulation;
(g) Is placed on intermediate sanction more than two (2) times in a three (3) year period; or
(h) Has been discontinued or disqualified from participation in:
   1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:202; or
   2. Another governmental assistance program due to fraud or abuse of that program.
(2) If the cabinet determines that a condition of subsection (1) of this section exists, the cabinet or its designee shall send a written notice of revocation delivered by personal service or through certified mail at least thirty (30) calendar days prior to the effective date of the revocation.
(3) The notice of revocation shall:
(a) Explain the reason for the revocation;
(b) Specify that the child care provider shall cease operation as a certified family child-care home upon revocation;
(c) Advise the family child-care home provider of the right to request an appeal on an OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal, prior to the effective date of the revocation;
(d) Specify that revocation shall be stayed if an appeal is requested; and
(e) Require the family child-care home provider to surrender the certificate of operation to cabinet staff when the revocation becomes effective.
(4) If a provider’s certification has been revoked, the cabinet or its designee and the provider shall make reasonable efforts to:
(a) Notify a parent of each child in care; and
(b) Refer the parent for assistance in locating alternate child care arrangements.

Section 9. Appeal of Denials, Intermediate Sanctions, Suspension, and Revocation. (1) If the cabinet denies certification, imposes an intermediate sanction, suspends certification, or revokes certification, the family child-care home provider may request an appeal by completing an OIG-DRCC-05 within twenty (20) calendar days of receipt of the notice of adverse action.
(2) Upon request of the appeal, the provider shall be afforded a hearing in accordance with KRS Chapter 13B.
(3) If a final order from an administrative hearing does not uphold a suspension, the provider may resume providing child care.

Section 10. Standards for the Provider. (1)(a) A provider shall complete annually at least nine (9) hours of cabinet-approved early care and education training beginning with the second year of operation, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training in accordance with KRS 199.8982(2):
1. Within the second year of employment or operation in child care; and
2. Every subsequent five (5) years of employment or operation in child care.
(b) A provider or assistant’s compliance with the training in accordance with paragraph (a) of this subsection or subsection (9) of this section may be verified through the cabinet-designed database maintained pursuant to 922 KAR 2:240.
(2) A provider shall not provide care for more unrelated children than the number authorized on the certificate of operation.
(3) If a provider cares for more than four (4) infants, including the provider’s own or related infants, the provider shall have an assistant present.
(4) A provider shall not care for more than six (6) children under the age of six (6) years old, including the provider’s own or related children.
(5) The maximum number of unrelated children in the care of a certified family child-care home provider shall not exceed six (6) at any one (1) time. A provider may care for four (4) related children in addition to six (6) unrelated children for a maximum child care capacity of ten (10) at any one (1) time.
(6) If a provider operates the in-home child care business for twenty-four (24) consecutive hours, the provider shall:
(a) Receive an eight (8) hour period of respite after working sixteen (16) consecutive hours; and
(b) Employ an assistant during the period of respite.
(7) Prior to being left alone with a child, an assistant shall be certified by a cabinet-approved agency in infant and child:
(a) CPR; and
(b) First aid.
(8) An assistant shall be:
(a) Eighteen (18) years of age or older;
(b) Under direct supervision of a provider;
(c) Used for providing care in a certified family child-care home; and
(d) Used in the absence of the certified provider.
(9) An assistant used in the absence of the family child-care home provider in excess of fourteen (14) calendar days during a one (1) year period shall demonstrate completion of at least nine (9) hours of cabinet-approved training, including pediatric abusive head trauma training pursuant to KRS 199.8982(2), in accordance.
with subsection (1) of this section.

(10) If a provider, an assistant, or a member in a provider's household is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:320, the individual shall be removed from direct contact with a child in care:
(a) For the duration of the family-in-need-of-services assessment or investigation; and
(b) Pending completion of an administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

(11) During hours of operation, a provider and another person in the home shall:
(a) Be free of the influence of alcohol or a controlled substance except for use of a controlled substance as prescribed by a physician; and
(b) Prohibit smoking in the presence of children in care.

(12) During a provider's absence, an assistant shall be physically present at the home during hours of operation.

(13) A provider shall:
(a) Not be employed outside of the home during regular hours of operation; and
(b) Maintain daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the provider through the Child Care Assistance Program.

Section 11. The General Requirements of the Family Child-Care Home Environment. (1) A provider's home and each play area used for child care shall:
(a) Be free from risk of harm in accordance with the requirements of this administrative regulation; and
(b) Have adequate:
1. Heating and cooling;
2. Light; and
3. Ventilation.

(2) Each floor level used for child care shall have at least one

(1):
(a) Unblocked exit to the outside;
(b) Smoke detector;
(c) Fire extinguisher; and
(d) Carbon monoxide detector if the home:
1. Uses fuel burning appliances; or
2. Has an attached garage.

(3) A new applicant or a provider who changes location shall have at least two (2) unblocked exits to the outside on each floor level used for child care.

(4) The areas of the home that are accessible to children in care shall be free from items harmful to children including the following items:
(a) Cleaning supplies, poisons, paints, and insecticides;
(b) Knives, scissors, and sharp objects;
(c) Power tools, lawn mowers, hand tools, nails, and other equipment;
(d) Matches, cigarettes, lighters, combustibles, and flammable liquids;
(e) Alcoholic beverages;
(f) Plastic bags; and
(g) Litter and rubbish.

(5) In accordance with KRS 527.070(1), firearms and ammunition shall be stored away from the presence of children, in separate locked containers, which, in order to be opened, require a:
(a) Key; or
(b) Combination.

(6) Electrical outlets not in use shall be covered.

(7) An electric fan, floor furnace, or freestanding heater or fireplace shall:
(a) Be out of the reach of a child; or
(b) Have a safety guard to protect a child from injury.

(8) A certified family child-care home shall have:
(a) At least one (1) working land-line telephone on each level used for child care unless the cabinet has been notified that the telephone is temporarily out of service; and
(b) A list of emergency numbers posted by each telephone, including numbers for the:
1. Police;
2. Fire station;
3. Emergency medical care and rescue squad; and
4. Poison control center.

(9) Equipment and toys shall be:
(a) Designated by the manufacturer as developmentally appropriate to the age of children in care;
(b) In sufficient quantity for the number of children in care; and
(c) Safe, sound, clean, and in good repair.

(10) Stairs and steps used for children in care shall be:
(a) Solid;
(b) Safe; and
(c) Railed.

(11) If an infant or toddler is in the care of a provider, indoor stairs with more than two (2) steps shall be blocked.

(12) Exclusive of the bathroom and storage area, an indoor area shall include furnishings, used for child care shall contain at least thirty five (35) square feet per child for:
(a) Play; and
(b) Activities that meet the developmental needs of the children in care.

(13) An outdoor play area shall be free of unavoidable danger or risk.

(14) Each child in an outdoor play area shall be under the direct supervision of the provider or assistant.

(15) Outdoor play equipment shall be:
(a) Securely anchored;
(b) Developmentally appropriate; and
(c) Safe.

(16) A trampoline shall not be accessible to a child in the care of a provider.

(17) A swimming pool on the premises shall:
(a) Be maintained;
(b) Have a water filtering system;
(c) Be supervised when in use; and
(d) Be inaccessible to children when not in use.

(18) An above-ground pool shall have:
(a) A stationary wall no less than four (4) feet tall; and
(b) Hand holds or foot holds that are inaccessible when the pool is not in use.

(19) A fire drill shall be:
(a) Conducted during hours of operation at least monthly; and
(b) Documented.

(20) An earthquake drill and a tornado drill shall be:
(a) Conducted during hours of operation at least quarterly; and
(b) Documented.

(21) A family child-care home shall:
(a) Be clean;
(b) Be uncluttered;
(c) Be free of insects and rodents;
(d) Have a water supply that is:
1. Potable;
2. Adequate; and
3. From an approved public water supply; and
(e) Have bathrooms, including toilets, sinks, and potty chairs that are:
1. Sanitary; and
2. In good working condition.

(22) Windows, doors, and outer openings shall be screened to prevent the entrance of vermin.

(23) Indoor and outdoor garbage shall be stored in a water-proof container with a tight-fitting cover.

(24) Playpens and play yards shall:
(a) Meet the federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;
(b) Be manufactured for commercial use; and
(c) Not be used for sleeping or napping.

Section 12. Care Requirements for a Provider. (1) A provider shall ensure the health, safety, and comfort of each child.

(2)(a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health
professional.

(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

(3) Television or video viewing by a child shall be limited to:

(a) Two (2) hours daily;
(b) The planned program activities; and
(c) Developmentally appropriate child-related content, as designated by standardized content guidelines.

(4) A child shall wash hands with liquid soap and warm running water:

(a) Before and after eating or handling food;
(b) After toileting or diaper change;
(c) After handling animals;
(d) After wiping or blowing nose;
(e) After touching items soiled with body fluids or waste; and
(f) After outdoor and indoor play time.

(5) A provider and an assistant shall:

(a) Wash hands with liquid soap and warm running water:
1. Before and after diapering a child;
2. Before and after feeding a child;
3. After toileting or assisting a child with toileting;
4. After handling animals;
5. Before dispensing medication;
6. After caring for a sick child; and
7. After wiping or blowing a child’s or own nose; and
(b) Assure that a child does not share:
1. Cups;
2. Eating utensils;
3. Wash cloths;
4. Towels; and
5. Toiletty items.

(6) An infant shall sleep and nap on the infant’s back unless the infant’s health professional signs a waiver that states the infant requires an alternate sleeping position.

(7) Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.

(8) Rest time shall include adequate space specified by the child’s age as follows:

(a) For an infant:
1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;
2. A firm crib mattress in good repair with a clean tight-fitted sheet that is changed:
   a. Weekly; or
   b. Immediately if it is soiled or wet;
3. No positioning device or monitor unless the device or monitor is required by the infant’s health professional;
4. No loose bedding, and
5. No toys or other items except for the infant’s pacifier; or
(b) For a toddler or preschool-age child:
1. An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and
2. Bedding that is in good repair and is changed:
   a. Weekly; or
   b. Immediately if it is soiled or wet.

(9) Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending nontraditional hours or is sick.

(10) A child who does not sleep shall be permitted to play quietly and be visually supervised.

(11) If overnight care is provided, a provider or an assistant shall:

(a) Remain awake until every child in care is asleep; and
(b) Sleep on the same floor level of the home as an infant or toddler.

(12) A certified family child care home shall provide a daily planned program:

(a) Posted in writing in a conspicuous location;
(b) Of activities that are individualized and developmentally appropriate for each child served;
(c) That provides experience to promote the individual child’s physical, emotional, social, and intellectual growth and well-being; and
(d) That offers a variety of creative activities including:
1. Art;
2. Music;
3. Dramatic play;
4. Stories and books;
5. Science;
6. Block building;
7. Tactile activity;
8. Culture;
9. Indoor or outdoor play in which a child makes use of both small and large muscles;
10. A balance of active and quiet play, including group and individual activity; and
11. An opportunity for a child to:
   a. Have some free choice of activities;
   b. If desired, play apart from the group at times; and
   c. Practice developmentally appropriate self-help procedures in respect to:
      (i) Clothing;
      (ii) Toileting;
      (iii) Hand-washing; and
      (iv) Eating.
(13) Except for a school-aged child whose parent has given written permission and whose whereabouts are known, a child shall not be permitted off the premises of a family child-care home without a caregiver.

(14) Use of corporal physical discipline shall be prohibited pursuant to KRS 199.896(18).

(15) A child shall be released from a family child-care home to:

(a) The child’s custodial parent;
(b) The person designated in writing by the parent to receive the child; or
(c) In an emergency, a person designated over the telephone by the parent.

Section 13. Toilet and Diapering Requirements. (1) A toilet room shall:

(a) Have an adequate supply of toilet paper; and
(b) Be cleaned and sanitized daily.

(2) A sink shall be:

(a) Located in or immediately adjacent to toilets;
(b) Equipped with hot and cold running water that allows for hand washing;
(c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;
(d) Equipped with liquid soap and single use, disposable hand drying material;
(e) Equipped with an easily cleanable, covered waste receptacle; and
(f) Immediately adjacent to a changing area used for infants and toddlers.

(3) Each toilet shall:

(a) Be kept in clean condition;
(b) Be kept in good repair;
(c) Be in a lighted room; and
(d) Have ventilation.

(4) Toilet training shall be coordinated with the child’s parent.

(5) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.

(6) If a toilet training chair is used, the chair shall be:

(a) Emptied promptly; and
(b) Sanitized after each use.

(7) Diapers or clothing shall be:

(a) Changed when soiled or wet; and
(b) Stored in a covered leak proof container temporarily; and
(c) Washed or disposed of at least once a day.

(8) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.

(9) If a child is being diapered, the child shall:

(a) Not be left unattended; and
(b) Be placed on a surface that is:
1. Clean;
2. Padded;
3. Free of holes, rips, tears, or other damage;
4. Nonabsorbent;
5. Easily cleaned; and
6. Free of items not used for diaper changing.

(10) Unless prescribed by a physician, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.

(11) A provider or an assistant shall disinfect the diapering surface after each child is diapered.

(12) If a provider or an assistant wear disposable gloves, the gloves shall be changed and disposed of after each child is diapered.

Section 14. Food Requirements. (1) A provider and an assistant shall:
(a) Use sanitary procedures when preparing and serving food;
(b) Refrigerate perishable food and beverages; and
(c) Serve:
1. Breast milk or iron-fortified formula to a child age birth to twelve (12) months;
2. Pasteurized whole milk to a child age twelve (12) months to twenty-four (24) months; or
3. Pasteurized skim or low fat one (1%) percent milk to a child age twenty-four (24) months to school-age.

(2) Water shall be:
(a) Available to a child in care; and
(b) Served in addition to meal requirements if a child requests throughout the day.

(3) A certified family child-care home shall offer each child the same food items unless the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child.

(4) Second servings shall be available to a child.

(5) Food shall not be:
(a) Used for:
1. Reward; or
2. Punishment; or
(b) Withheld until all other food items are consumed.

(6) Meals shall:
(a) Be served in an amount appropriate to the age of the child;
(b) Include appropriate types of food according to the age of the child; and
(c) Not be served during television or video viewing.

(7) Breakfast shall include:
(a) Milk;
(b) Whole grain or enriched grain bread; and
(c) Fruit, vegetable, or 100 percent juice.

(8) A snack shall include two (2) of the following:
(a) Milk;
(b) Protein source;
(c) Fruit, vegetable, or 100 percent juice; or
(d) Whole grain or enriched grain bread.

(9) Lunch and dinner shall include:
(a) Milk;
(b) Protein source;
(c1) Two (2) vegetables;
(c2) Two (2) fruits; or
3. One (1) fruit and one (1) vegetable; and
(d) Whole grain or enriched grain bread.

(10) A weekly menu shall be:
(a) Prepared;
(b) Dated;
(c) Posted in a conspicuous place; and
(d) Kept on file for thirty (30) calendar days.

(11) Substitutions to a posted weekly menu shall be noted on the day the meal is served.

(12) Unless provided as part of the fee for child care or the provider is a participant in the food program, an infant's formula shall be prepared, labeled, and provided by the parent.

(13) Each child's bottle shall be:
(a) Labeled;
(b) Covered; and
(c) Refrigerated.

(14) The refrigerator shall:
(a) Be in working order; and
(b) Maintain a product temperature at or below forty-five (45) degrees Fahrenheit.

(15) Except if thawed for preparation or use, frozen food shall be kept at a temperature of zero degrees Fahrenheit as verified by a thermometer in the freezer.

(16) While bottle-feeding an infant, the:
(a) Child shall be held; and
(b) Bottle shall not be:
1. Propped;
2. Left in the mouth of a sleeping infant; or
3. Heated in a microwave.

Section 15. Medication and First Aid. (1) Medication, including medicine that requires refrigeration, shall be stored in a locked container or area with a lock.

(2) Prescription and nonprescription medication shall be administered to a child in care with a daily written request of the child's parent.

(3) Prescription and nonprescription medications shall be:
(a) Labeled; and
(b) Administered according to directions or instructions on the label.

(4) A provider shall:
(a) Maintain first aid supplies that are easily accessible for use in an emergency, and these supplies shall be inaccessible to the children in care; and
(b) Wash superficial wounds with soap and water before bandaging.

(5) First aid supplies shall include a fully-equipped first aid kit containing the following non-expired items:
(a) Liquid soap;
(b) Adhesive bandages;
(c) Sterile gauze;
(d) Medical tape;
(e) Scissors;
(f) Thermometer;
(g) Flashlight;
(h) Cold pack;
(i) First-aid book;
(j) Disposable gloves; and
(k) CPR mouthpiece.

(6) A provider shall provide immediate notification of a medical emergency to a child's:
(a) Parent; or
(b) Family physician, if the parent is unavailable.

(7) A quiet, separate area that is easily supervised shall be provided for a child too sick to remain with other children.

(8) A provider and an assistant shall:
(a) Be able to recognize symptoms of childhood illnesses;
(b) Be able to provide basic first aid; and
(c) Maintain a child care program that assures affirmative steps are taken to protect children from abuse or neglect pursuant to KRS 600.020(1).

Section 16. Animals. (1) An animal shall not be allowed in the presence of a child in care:
(a) Unless:
1. The animal is under the supervision and control of an adult;
2. Written parental consent has been obtained; and
3. The animal is certified as vaccinated against rabies; or
(b) Except in accordance with subsection (3) of this section.

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a certified family child-care home unless the animal is:
(a) A part of a planned program activity led by an animal specialist affiliated with a zoo or nature conservatory; and
(b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.
Section 18. Records. (1) A provider shall maintain:
(a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;
(b) A written record for each child relating to:
1. Completed and signed by the child's parent;
2. Retained on file on the first day the child attends the family child-care home; and
3. To contain:
   a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;
   b. Contact information to enable the provider to contact the child's:
      (i) Parent at the parent's home or place of employment;
      (ii) Family physician; and
      (iii) Preferred hospital;
   c. The name of each person who is designated in writing to pick-up the child;
   d. The child's general health status and medical history including, if applicable:
      (i) Allergies;
      (ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and
      (iii) Permission from the parent for third-party professional services in the family child-care home;
   e. The name and phone number of each person to be contacted in an emergency situation involving or impacting the child;
   f. Authorization by the parent for the provider to seek emergency medical care for the child in the parent's absence; and
   g. A permission form for each trip away from the family child-care home signed by the child's parent in accordance with Section 17(1) of this administrative regulation; and
   (c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with KRS 216.090.

Section 19. Certified Family Child-Care Home Program. The certified family child-care home provider shall:
(1) Develop written information that specifies the:
(a) Rate for child care;
(b) Expected frequency of payment for the program;
(c) Hours of operation; and
(d) Policy regarding:
1. Developing a written information that specifies the:
2. Policy regarding:
3. Rate for child care;
4. Hours of operation;
5. Expected frequency of payment for the program; and
6. Fee and payment plan.

2. Transports more passengers than the vehicle's seating capacity and safety restraints can accommodate.
3. Is a registered family child-care home provider pursuant to KRS 199.896;
4. Is optional for an applicant or a family child-care home provider;
5. Is available to an applicant or a family child-care home provider;
6. Is available to an applicant or a family child-care home provider;
7. Is available to an applicant or a family child-care home provider;
8. Is available to an applicant or a family child-care home provider;
9. Is available to an applicant or a family child-care home provider;
10. Is available to an applicant or a family child-care home provider;
11. Is available to an applicant or a family child-care home provider;
12. Is available to an applicant or a family child-care home provider;
13. Is available to an applicant or a family child-care home provider;
14. Is available to an applicant or a family child-care home provider;
15. Is available to an applicant or a family child-care home provider;
16. Is available to an applicant or a family child-care home provider;
17. Is available to an applicant or a family child-care home provider;
18. Is available to an applicant or a family child-care home provider;
(5) Allow a parent[and] the cabinet, the cabinet[s]or its designee, or another agency with regulatory authority, access to the family child-care home at any time a child is in care;
(6) Communicate with each child's parent about the child's:
(a) Development;
(b) Activities;
(c) Likes; and
(d) Dislikes;
(7) Post in a prominent area in the home:
(a) The staff to child ratios described in Section 10 of this administrative regulation;
(b) The planned program of activities;
(c) Each statement of deficiency issued by the cabinet during the current certification period;
(d) Each plan of correction submitted by the certified family child-care home to the cabinet during the current certification period; and
(e) Daily schedule including any trips outside the family child-care home;
(8) Coordinate at least one (1) annual activity involving parental or family participation;
(9) Maintain a written child care agreement with each child's parent, including the name of each person designated by the parent to pick up the child; and
(10) Report:
(a) The following to the cabinet within twenty-four (24) hours from the time of discovery:
   1. A communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;
   2. An accident or injury to a child that requires medical care;
   3. An incident that results in legal action by or against the family child-care home that:
      (a) Affects:
         (i) A child in care;
         (ii) The provider;
         (iii) An assistant; or
         (iv) A member of the provider's household; or
      (b) Includes the provider's discontinuation or disqualification from a governmental assistance program due to fraud or abuse of that program;
   4. An incident involving fire or other emergency, including a vehicular accident when the provider is transporting a child receiving child care services; or
   5. A report of child abuse or neglect that:
      (a) Has been accepted by the cabinet in accordance with KAR 1:330; and
      (b) Names the alleged perpetrator as the:
         (i) Provider;
         (ii) Provider's assistant; or
         (iii) Member of the provider's household;
      (b) The death of a child to the cabinet within one (1) hour; or
      (c) Temporary or permanent closure as soon as practicable to the cabinet and the parent of a child in the family child-care home.
Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "DCC-157, Certified Family Child-Care Home Central Registry Check", edition 4/13;
(b) "OIG-DRCC-03, Certification Application for Family Child-Care Home", edition 4/2013 8/3/12;
(c) "OIG-DRCC-04, Certified Family Child-Care Home Central Registry Check", edition 8/3/12; and
(c) "OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal", edition 8/3/12.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: March 19, 2013
FILED WITH LRC: March 27, 2013 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor; 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until May 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Tricia Orme, 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: Justin Dearinger
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes standards for a certified family child-care home.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish minimum standards for certified family child-care homes.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of standards for certification as a family child-care home.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a certified family child-care home.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies the cabinet can continue to pursue adverse action even if a certified family child-care home voluntarily relinquishes its certification. The amendment adds conditions that can result in revocation or denial of a family child-care home’s certification to include refusal of access by a parent, the cabinet, or another agency with regulatory authority; having more than two intermediate sanctions in a three year period; and being discontinued or disqualified from the Child Care Assistance Program (CCAP) or another governmental assistance program due to fraud or abuse. The amendment further specifies reporting and transportation requirements for a certified family child-care home, and appeals of an emergency suspension. The amendment also makes technical corrections in accordance with KRS Chapter 13A, including correspondence updates and technical corrections to incorporated material.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to deter fraud, abuse, or repeat deficient operations by certified providers; and to effectively enforce transportation safety standards for the provider, provider’s assistants, and children served by the provider.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by clarifying and enhancing minimum requirements to foster provider integrity and to protect the health, safety, and welfare of children cared for by certified family child-care home providers.
(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will assist in the effective administration of the statutes by pre-
serving and enhancing the quality of certified family child-care home standards in a manner congruent with recognized practice and other provider types’ standards, and supportive of integrity in the child care community. 

(2) List the estimated number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for a certified family child-care home or an existing provider will be impacted by this administrative regulation. As of December 31, 2012, there were 573 Kentucky certified family child-care homes. 

(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: Certified providers that transport children in their care will be required to submit drivers to annual checks of the drivers’ license history record. Other provisions within this administrative regulation should not impact the vast majority of providers, because they either are clarifying in nature or specify powers of the cabinet to take adverse action against a provider that has repeatedly violated a standard over time, refuses access, or has committed fraud or abuse. 

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): For those certified providers that transport children in their care, drivers will be required to submit to annual checks of the drivers’ license history record, which costs $5, a service charge established by KRS 186.018 and the Kentucky Transportation Cabinet. Other provisions within this administrative regulation should not impact the vast majority of providers, because they either are clarifying in nature or specify powers of the cabinet to take adverse action against a provider that has repeatedly violated a standard over time, refuses access, or has committed fraud or abuse. 

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified family child-care homes will benefit from greater provider integrity and the records checks of their drivers’ license history record. Such checks will reinforce transportation standards and conditions of certification, precautionary measures to prevent accident or liabilities, and the safety and security of children in their care during transport. 

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body. 

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body. 

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the direct implementation of this administrative regulation. 

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide. 

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.2, 49 C.F.R. 571.213, 42 U.S.C. 7181-7184 

2. State compliance standards. KRS 194A.050(1), 199.8982(1)(f) 

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate. 

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

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 Community Based Services is 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. 45 C.F.R. 98.2, 49 C.F.R. 571.213, 42 U.S.C. 7181-7184, KRS 194A.050(1), 199.8982(1)(f) 

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to administer this program 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: 

CABINET FOR HEALTH AND FAMILY SERVICES 

Department for Community Based Services 

Division of Child Care 

(Amendment) 

922 KAR 2:110. Child-care center provider requirements. 


STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2) 

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care centers. This adminis-
trative regulation establishes standards for child-care centers.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.

(2) "Cabinet" is defined by KRS 199.011(2).

(3) "Child care" means care of a child in a center or home which regularly provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

(4) "Child-care center" is defined by KRS 199.894(3).

(5) "Director" means an individual who meets the education and training requirements as specified in Section 4 of this administrative regulation.

(6) "Health professional" means a person actively licensed as a:

(a) Physician;
(b) Physician's assistant;
(c) Advanced registered nurse practitioner; or
(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(7) "Infant" means a child who is less than twelve (12) months of age.

(8) "Licensee" means the owner and operator of a child-care center to include:

(a) Sole proprietor;
(b) Corporation;
(c) Limited liability company;
(d) Partnership;
(e) Association; or
(f) Organization, such as:
1. Board of education;
2. Private school;
3. Faith based organization;
4. Government agency; or
5. Institution.

(9) "Parent" is defined by 45 C.F.R. 98.2.

(10) "Parental or family participation" means a child-care center's provision of information or inclusion of a child's parent in the child-care center's activities such as:

(a) Distribution of a newsletter;
(b) Distribution of a program calendar;
(c) A conference between the provider and a parent; or
(d) Other activity designed to engage a parent in the program's activities.

(11) "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(12) "Premises" means the building and contiguous property in which child care is licensed.

(13) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(14) "Qualified substitute" means a person who meets the requirements of a staff person as described in Section 5 of this administrative regulation.

(15) "School-age" means a child attending kindergarten, elementary, or secondary education.

(16) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(17) "Toddler" means a child between the age of twelve (12) months and twenty-four (24) months.

(18) "Type I child-care center" means a child-care center licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or
(b) Thirteen (13) or more children in a residential setting with designated space separate from the primary residence of a licensee.

(19) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. General. (1) A licensee shall be responsible for the operation of the child-care center pursuant to this administrative regulation, 922 KAR 2:090, and 922 KAR 2:120.

(2) Child-care center staff shall be:

(a) Instructed by the child-care center's director regarding requirements for operation; and
(b) Provided with a copy of this administrative regulation, 922 KAR 2:090, and 922 KAR 2:120.

(3) Information concerning a child or the child's parent shall be kept in strict confidence by child-care center staff, except as otherwise required by law.

(4) A volunteer or board member shall comply with the policies and procedures of the child-care center.

(5) Program policies and procedures shall:

(a) Be in writing; and
(b) Include:
1. Staff policies;
2. Job descriptions;
3. An organization chart;
4. Chain of command; and
5. Other procedures necessary to ensure implementation of:
   a. KRS 199.898. Rights for children in child-care programs and their parents, custodians, or guardians - posting and distribution requirements;
   b. 922 KAR 2:090, Child-care center licensure;
   c. 922 KAR 2:120, Child-care center health and safety standards;
   d. This administrative regulation.

(6) A plan of correction submitted by the child-care center to the cabinet during the current licensure year.

(7) In addition to the posting requirement of KRS 199.898(3), a child-care center shall post the following in a conspicuous place and make available for public inspection:

(a) Each statement of deficiency and civil penalty notice issued by the cabinet during the current licensure year;
(b) Each plan of correction submitted by the child-care center to the cabinet during the current licensure year;
(c) Information on the Kentucky Consumer Product Safety Program and the program's Web site as specified in KRS 199.897;
(d) A description of services provided by the child-care center, including:
1. Current rates for child care;
2. Each service charged separately and in addition to the basic rate for child care;
3. Minimum staff-to-child ratios and group size established in 922 KAR 2:120; and
4. Daily schedule.

(8) If a director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with a child in care is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the family-in-need-of-services assessment or investigation; and
(b) Pending completion of the administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

Section 3. Records. (1) A child-care center shall maintain:

(a) A current immunization certificate for each child in care within thirty (30) days of the child’s enrollment, unless an attending physician at check; if the child’s name, address, and date of birth; and
b. Contact information to enable a person in charge to contact the child’s:
   i. Parent at the parent's home or place of employment;
   ii. Family physician; and
   iii. Preferred hospital;
   c. The name of each person who is designated in writing to
pick-up the child;

d. The child's general health status and medical history including, if applicable:
   (i) Allergies;
   (ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and
   (iii) Permission from the parent for third-party professional services in the child-care center;

e. The name and phone number of each person to be contacted in an emergency situation involving or impacting the child;

f. Authorization by the parent for the child-care center to seek emergency medical care for the child in the parent's absence;

g. A permission form for each trip off the premises signed by the child’s parent in accordance with 922 KAR 2:120, Section 12;

(c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:120, Section 13, if a child receives services from the child-care center through the Child Care Assistance Program;

(d) A written schedule of staff working hours;

(e) A current personnel file for each child-care center staff person to include:
   1. Name, address, date of birth, and date of employment;
   2. Proof of educational qualifications;
   3. Record of annual performance evaluation;
   4. Written record of training participation to include:
      a. The training source;
      b. Location;
      c. Date; and
   d. Number of clock hours completed;

   5. Every two (2) years, a:
      a. Statement from a health professional that the individual is free of active tuberculosis; or
      b. Copy of negative tuberculin results; and
   6. For a director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with, a child in care, the results of a:
      a. Child abuse or neglect check using the central registry in accordance with 922 KAR 1:470;
      b. Criminal records check required by KRS 199.896(19);
      c. Criminal records check from any previous state of residence completed once if:
         i. The individual resided outside the state of Kentucky in the last five (5) years; and
         ii. No criminal records check has been completed for the individual's previous state of residence; and
      d. An address check of the Sex Offender Registry;
      (f) A written annual plan for child-care staff professional development;
      (g) A written evacuation plan in accordance with 922 KAR 2:090, Section 5, and KRS 199.885;
      (h) A written record of quarterly practiced fire drills and tornado drills detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;
      (i) A written record of practiced fire drills conducted monthly detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;
      (j) A written plan and diagram outlining the course of action in the event of a natural or manmade disaster, posted in a prominent place;
      (k) A written record of reports to the cabinet required in Section 6 of this administrative regulation; and
      (l) A written record of transportation services provided in accordance with 922 KAR 2:120, Section 12.

   (2) A child-care center shall:
      (a) Maintain the confidentiality of a child’s record;
      (b) Maintain all records for five (5) years; and
      (c) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030(4).

Section 4. Director Requirements and Responsibilities. (1) Effective with the adoption of this administrative regulation, a director shall:

   (a) Be twenty-one (21) years of age;

   (b) Have a high school diploma, a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity;

   (c) Not be employed in a position other than an on-site child care director, or director of multiple facilities, during the hours the child-care center is in operation; and

   (d) Ensure:
      1. Compliance with 922 KAR 2:090, 922 KAR 2:120, and this administrative regulation; and

      2. The designation of one (1) adult staff person in charge to carry out the director's duties if the director is not present in the child-care center during operating hours;

      (e) Manage the staff in their individual job descriptions;

      (f) Develop child-care center plans, policies, and procedures;

      (g) Supervise staff conduct to ensure implementation of program policies and procedures;

      (h) Post a schedule of daily activities, to include dates and times of activities to be conducted with the children in each classroom;

      (i) Conduct, manage, and document in writing staff meetings;

      (j) Assess each staff person's interaction with children in care and classroom performance through an annual written performance evaluation;

      (k) Ensure that additional staff are available during cooking and cleaning hours, if necessary, to maintain staff-to-child ratios pursuant to 922 KAR 2:120;

      (l) Provide for the health, safety, and comfort of each child;

      (m) Notify the parent immediately of an accident or incident requiring medical treatment of a child;

      (n) Assure that a person acting as a caregiver of a child in care shall not be left alone with a child, if the licensee has not received the results of the background checks as described in Section 3(1)(6) of this administrative regulation;

      (o) Assure each mandatory record specified in Section 3 of this administrative regulation has not been altered or falsified; and

      (p) Coordinate at least one (1) annual activity involving parental or family participation.

   (2) The director of a Type I child-care center shall meet one (1) of the following educational requirements:

      (a) Master's degree in Early Childhood Education and Development;

      (b) Bachelor's degree in Early Childhood Education and Development;

      (c) Master's degree or a bachelor's degree in a field other than Early Childhood Education and Development, including a degree in pastoral care and counseling, plus twelve (12) clock hours of child development training;

      (d) Associate degree in Early Childhood Education and Development;

      (e) Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, and two (2) years of verifiable full-time paid experience working directly with children in;

      (f) A Director’s Credential in Early Childhood Development and one (1) year of verifiable full-time paid experience working directly with children in:
         1. A school-based program following Department of Education guidelines;

         2. An early childhood development program, such as Head Start; or

         3. A licensed or certified child care program;

         (g) Child development associate plus one (1) year of verifiable paid experience working directly with children in:

            1. A school-based program following Department of Education guidelines;

            2. An early childhood development program (head start); or

            3. A licensed or certified child-care program; or

            (h) Three (3) years of verifiable full-time paid experience working directly with children in:

            1. A school-based program following Department of Education guidelines;

            2. An early childhood development program, such as Head Start; or

            3. A licensed or certified child-care program.
(3) The director of a Type II child-care center shall:
   (a) Meet the requirements in subsection (2) of this section; or
   (b) Meet two (2) of the following:
      1. Have twelve (12) hours of orientation and child development training;
      2. Have one (1) year of verifiable full-time paid experience working directly with children in:
         a. A school-based program following Department of Education guidelines;
         b. An early childhood development program, such as Head Start;
         c. A licensed or certified child-care program; or
      3. Obtain six (6) additional hours of training in child day care program administration.

Section 5. Staff Requirements. (1) Child-care center staff:
   (a) Hired after January 1, 2009, who have supervisory power over a minor and are not enrolled in secondary education, shall have:
      1. High school diploma;
      2. GED or qualifying documentation from a comparable educational entity; or
      3. Commonwealth Child Care Credential as described in 922 KAR 2:250; and
   (b) Shall provide, prior to employment and every two (2) years thereafter:
      1. A statement from a health professional that the individual is free of active tuberculosis; or
      2. A copy of negative tuberculosis results.
   (2) A child-care center shall not employ a person:
      (a) Convicted of, or who entered an Alford or guilty plea to, a crime pursuant to 922 KAR 2:090, Section 6(5) [KRS 17.165];
      (b) Found by the cabinet to have abused or neglected a child pursuant to 922 KAR 1.470; or
      (c) Convicted of a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole; or
   (d) Placed on the Sex Offender Registry; or
   (e) Determined by a physician to have a health condition that renders the person unable to care for children.
   (3) For a child-care center licensed for infant, toddler, or preschool-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:
      (a) Infant and child cardiopulmonary resuscitation; and
      (b) Infant and child first aid.
   (4) For a child-care center licensed for school-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:
      (a) Adult cardiopulmonary resuscitation; and
      (b) First aid.
   (5) Cardiopulmonary resuscitation (CPR) and first aid training shall be in addition to the fifteen (15) clock hours requirement in subsection (14) of this section.
   (6) Child-care centers shall have available in case of need:
      (a) One (1) qualified substitute staff person for a Type II child-care center; or
      (b) Two (2) qualified substitute staff persons for a Type I child-care center.
   (7) Each qualified substitute staff person shall:
      (a) Meet the staff requirements of this administrative regulation; and
      (b) Provide the required documentation to verify compliance with this administrative regulation.
   (8) A qualified substitute who works in more than one (1) licensed child-care center shall provide the required documentation to verify compliance with this administrative regulation at the time of employment with each child-care center.
   (9) If the operator of a Type II child-care center is unable to provide care in accordance with this administrative regulation, 922 KAR 2:090, or 922 KAR 2:120, the Type II child-care center shall close temporarily until the operator is able to resume compliance.
   (10) The minimum number of adult workers in a child-care center shall be sufficient to ensure that:
      (a) Minimum staff-to-child ratios in accordance with 922 KAR 2:120 are followed;
      (b) Each staff person under eighteen (18) years of age and each student trainee are under the direct supervision of a qualified staff person who meets the requirements of this section; and
      (c) Unless providing care with a qualified staff person, a person under the age of eighteen (18) shall not be counted as staff for the staff-to-child ratio.
   (11) Except for medication as prescribed by a physician, a controlled substance or alcohol use shall not be permitted on the premises during hours of operation.
   (12) Each staff person shall remain awake while on duty except as specified in 922 KAR 2:120, Section 2(11)(f).
   (13)(a) For each adult residing at a Type II child-care center, the results of the following shall be maintained on file at the center:
      1. Criminal records check indicating that the adult has not been convicted of, or entered an Alford or guilty plea to, a:
         a. Crime pursuant to KRS 17.165; or
         b. Drug-related felony, and five (5) years have not lapsed since the person was fully discharged from imprisonment, probation, or parole;
      2. Child abuse and neglect check using the central registry in accordance with 922 KAR 1.470, indicating that the adult has not been found by the cabinet to have abused or neglected a child;
      3. A criminal records check for any previous state of residence completed once if:
         a. The adult resided outside the state of Kentucky in the last five (5) years; and
         b. No criminal records check has been completed for the adult’s previous state of residence; and
      4. A copy of negative tuberculin results or a health professional’s statement documenting that the adult is free of tuberculosis.
      Every two (2) years, the adult shall provide negative tuberculin results or health professional’s statement documenting that the adult is free of tuberculosis.
   (b) An address check of the Sex Offender Registry conducted on behalf of the applicant for a Type II child-care center and supporting documentation shall indicate that no individual residing in the household is a registered sex offender.
   (14) In accordance with KRS 198.996(15) and (16), a staff person with supervisory authority over a child shall complete the following:
      (a) Six (6) hours of cabinet-approved orientation within the first three (3) months of employment;
      (b) Nine (9) hours of cabinet-approved early care and education training within the first year of employment, including one and one-half (1 1/2) hours of pediatric abusive head trauma training; and
      (c) Fifteen (15) hours of cabinet-approved early care and education training during each subsequent year of employment, including one and one-half (1 1/2) hours of pediatric abusive head trauma training completed once every five (5) years.
   (15) A staff person’s compliance with the requirement for pediatric abusive head trauma training specified in subsection (14) or other training requirements of this section may be verified through the cabinet-designated database maintained pursuant to 922 KAR 2:240.

Section 6. Reports. (1) The following shall be reported to the cabinet or designee and other agencies specified in this section within twenty-four (24) hours from the time of discovery:
   (a) Communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;
   (b) An accident or injury to a child that requires medical care;
   (c) An incident that results in legal action by or against the child-care center that:
      1. Affects a child or staff person; or
      2. Includes the center’s discontinuation or disqualification from a governmental assistance program due to fraud or abuse;
   (d) An incident involving fire or other emergency, including a vehicular accident when the center is transporting a child receiving child care services; or
   (e) A report of child abuse or neglect that:
1. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and
2. Names a director, employee, volunteer, or person with supervisory or disciplinary control over, or having unsupervised contact with a child as the alleged perpetrator.

(2) An incident of child abuse or neglect shall be reported to the cabinet pursuant to KRS 620.030.

(3) A licensee shall report to the cabinet within one (1) week:
   (a) Any resignation, termination, or change of director; and
   (b) The name of the acting director who satisfies the requirement of Section (4) of this administrative regulation.

(4) Written notification of the following shall be made to the cabinet to allow for approval before implementation:
   (a) Change of ownership;
   (b) Change of location;
   (c) Increase in capacity;
   (d) Change in hours of operation;
   (e) Change of services in the following categories:
      1. Feeding;
      2. Toddler;
      3. Preschool-age;
      4. School-age;
      5. Nontraditional hours; or
      6. Transportation; or
   (f) Addition to the square footage a child-care center’s premises.

(5) The death of a child in care shall be reported to the cabinet within one (1) hour.

(6) The cabinet and the parent of a child enrolled in a child-care center shall receive notice as soon as practicable, and prior to, a child-care center’s temporary or permanent closure.

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: March 19, 2013

FILED WITH LRC: March 27, 2013 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be maintained for a period of one year after the hearing date. 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 May 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, 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: Justin Dearinger

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes standards for caregivers in licensed child-care centers.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for a caregiver in a licensed child-care center.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing standards for caregivers in a licensed child-care center.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards for a caregiver in a licensed child-care center.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation further specifies reporting requirements for licensed child-care providers to include accidents when the provider is transporting children in care and the provider’s disqualification from a governmental assistance program due to fraud and abuse of the program. The amendment also makes technical corrections for congruence with other concurrent amendments, reinforcement of provider qualifications, and in accordance with KRS Chapter 13A.
   (b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary for alignment of caregiver standards for licensed child-care providers with other governing administrative regulations for the same and other provider types. In addition, the amendment will promote the health, safety, and wellness of children in care and foster program integrity and quality assurance in the child care community.
   (c) How the amendment conforms to the content of the authorizing statutes: The amendments to this administrative regulation conform to the content of the authorizing statutes through its updates and clarification of caregiver requirements for licensed child-care centers.
   (d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will assist in the effective administration of the statutes by preserving and enhancing the quality of licensed child-care centers’ caregiver standards in conformity with state law and expert recommendations.
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for child-care center licensure or an existing licensed child-care center will be impacted by this administrative regulation. As of December 31, 2012, there were 2,297 Kentucky licensed child-care centers, both Type I and Type II.

(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: List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A licensed child-care provider will be required to report an accident when the provider is transporting a child in care and disqualification from a governmental assistance program due to fraud and abuse of that program. These reporting requirements have been largely specified. Other provisions of this amendment are technical and conforming in nature.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will entail no new costs for caregivers in licensed child-care centers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and licensed child-care centers and the children in their care will benefit from clarified compliance expectations, greater consistency in standards across child-care provider types, and improved program integrity and quality assurance in the child care community.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
   (a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.
   (b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: There is no increase in fees or funding required as a result of this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.2
2. State compliance standards. KRS 194A.050(1), 199.896(2)
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.
4. Will the administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

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 Community Based Services is 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. 45 C.F.R. 98.2, KRS 194A.050(1), 199.896(2)

(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 in effect. There will be no additional costs to administer this program in the first year. There will be no additional costs to administer this program in subsequent years.

(4) "Government agency; or

(5) "Institution.

(6) "Infant" means a child who is less than 12 months of age.

(7) "Licensee" means the owner and operator of a child-care center to include:

(a) Sole proprietor;
(b) Corporation;
(c) Limited liability company;
(d) Partnership;
(e) Association; or
(f) Organization, such as:
   1. Board of education;
   2. Private school;
   3. Faith-based organization;
   4. Government agency; or
   5. Institution.

(8) "Nontraditional hours" means the hours of:
(a) 7 p.m. through 5 a.m. Monday through Friday; or
(b) 7 p.m. on Friday until 5 a.m. on Monday.

(9) "Parent" is defined in 45 C.F.R. 98.2.

(10) "Premises" means the building and contiguous property in which child care is licensed provided

(11) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(12) "Protective surface" means loose surfacing material not installed over concrete which includes the following:
(a) Wood mulch;
(b) Double shredded bark mulch;
Section 2. Child Care Services. (1) Services described in this administrative regulation shall be maintained during all hours of operation that child care is provided.

(2) Minimum staff-to-child ratios and group size for an operating child-care center shall be maintained as follows:

<table>
<thead>
<tr>
<th>Age of Children</th>
<th>Ratio</th>
<th>Maximum Group Size*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infant</td>
<td>1 staff for 5 children</td>
<td>10</td>
</tr>
<tr>
<td>Toddler</td>
<td>1 staff for 6 children</td>
<td>12</td>
</tr>
<tr>
<td>Preschool-age 2 to 3 years</td>
<td>1 staff for 10 children</td>
<td>20</td>
</tr>
<tr>
<td>Preschool-age 3 to 4 years</td>
<td>1 staff for 12 children</td>
<td>24</td>
</tr>
<tr>
<td>Preschool-age 4 to 5 years</td>
<td>1 staff for 14 children</td>
<td>28</td>
</tr>
<tr>
<td>School-age 5 to 7 years</td>
<td>1 staff for 15 children</td>
<td>30</td>
</tr>
<tr>
<td>School-age 7 and older</td>
<td>1 staff for 25 children (for before and after school)</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>1 staff for 20 children (full day of care)</td>
<td>30</td>
</tr>
</tbody>
</table>

*Maximum Group Size shall be applicable only to Type I child-care centers.

(a) In a Type I child-care center, a group size shall:
1. Be separately maintained in a defined area unique to the group; and
2. Have specific staff assigned to, and responsible for, the group.

(b) The age of the youngest child in the group shall determine:
1. Staff-to-child ratio; and
2. Maximum group size.

(c) This subsection and subsection (9) of this section shall not apply during normal school hours to a center.

1. Providing early childhood education to mixed-age groups of children whose ages range from two and one-half (2 1/2) years to six (6) years; and
2. Accredited by or affiliated with a nationally-recognized education association that has criteria for group size and staff-to-child ratios contrary to the requirements of this subsection.

If a child related to the director, employee, or person under the supervision of the licensee is receiving care in the center, the child shall be included in the staff-to-child ratio.

(3)(a) Each center shall maintain a child-care program that assures each child will be:
1. Provided with adequate supervision at all times by a qualified staff person who ensures the child is:
   a. Within scope of vision and range of voice; or
   b. For a school-age child, within scope of vision or range of voice; and
2. Protected from abuse or neglect.
   (b) The program shall include:
   1. A procedure to inform child care staff of the laws of the Commonwealth pertaining to child abuse or neglect set forth in KRS 620.030; and
2. Written policy that specifies that the procedures that were taught at the orientation training shall be implemented by each child-care center staff member.

(4) The child-care center shall provide a daily planned program:
   (a) Posted in writing in a conspicuous location with each age group and followed;
   (b) Of activities that are individualized and developmentally appropriate for each child served;
   (c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and
   (d) That offers a variety of creative activities including the following:
      1. Art;
      2. Music;
      3. Dramatic play;
      4. Stories and books;
      5. Science;
      6. Block building;
      7. Tactile activity;
      8. Culture;
      9. Indoor or outdoor play in which a child makes use of both small and large muscles;
      10. A balance of active and quiet play, including group and individual activity;
      11. An opportunity for a child to:
          a. Have some free choice of activities;
          b. If desired, play apart from the group at times; and
          c. Practice developmentally appropriate self-help procedures in respect to:
             (i) Clothing;
             (ii) Toileting;
             (iii) Hand-washing; and
             (iv) Eating; and
      12. Use of electronic viewing and listening devices if the:
          a. Material is appropriate to the child using the equipment;
          b. Material does not include any violence, adult content viewing, or inappropriate language;
          c. Viewing or individual listening is limited to two (2) hours per day;
          d. Viewing or listening is discussed with parents prior to viewing or listening; and
          e. Viewing or listening is designed as an educational tool.
   (5) A child who does not wish to use the electronic devices during the planned program shall be offered other appropriate activities.

(6) Regularity of routines shall be implemented to afford the child familiarity with the daily schedule of activity.
(7) Sufficient time shall be allowed for an activity so that a child may progress at their own developmental rate.
(8) A child shall not be required to stand or sit for a prolonged period of time:
   (a) During an activity;
   (b) While waiting for an activity to start; or
(c) As punishment.
(9) If school-age care is provided:
(a) A separate area or room shall be provided in a Type I child-
care center; and
(b) Each child shall be provided a snack after school.
(10) A child shall not be subjected to:
(a) Corporal physical discipline pursuant to KRS 199.896(18);
(b) Loud, profane, threatening, frightening, or abusive lan-
guage; or
(c) Discipline that is associated with:
1. Rest;
2. Toileting; or
3. Food.
(11) If nontraditional hours of care are provided:
(a) Including time spent in school, a child shall not be permitted
to spend more than sixteen (16) hours in the child-care center
during one (1) twenty-four (24) hour period;
(b) At least one (1) staff member shall be assigned responsi-

Section 3. General Requirements. (1) Electronic viewing and
listening devices shall only be used in the center as a part of the
child's planned program of activity described in Section 2(4) of this
administrative regulation.
(2) Activity areas, equipment, and materials shall be arranged
so that the child's activity can be given adequate supervision by
staff.
(3) Computer equipment shall be equipped with a monitoring
device which limits access by a child to items inappropriate for a
child to view or hear.
(4) A child shall:
(a) Be helped with personal care and cleanliness based upon
their developmental skills; and
(b) Wash his or her hands with liquid soap and warm running
water:
1. a. Upon arrival at the center; or
b. Within thirty (30) minutes of arrival for school-age children;
2. Before and after eating or handling food;
3. After toiletting or diaper change;
4. After handling animals;
5. After wiping or blowing nose;
6. After touching items soiled with body fluids or wastes; and
7. After outdoor or indoor play time.
(5) Staff shall:
(a) Maintain personal cleanliness;
(b) Conform to hygienic practices while on duty; and
(c) Wash their hands with liquid soap and running water:
1. Upon arrival at the center;
2. After toiletting or assisting a child in toiletting;
3. Before and after diapering each child;
4. After wiping or blowing a child's or own nose;
5. After handling animals;
6. After caring for a sick child;
7. Before and after feeding a child or eating;
8. Before dispensing medication; and
9. If possible, before administering first aid.
(6) A staff person suspected of being infected with a commu-
nicable disease shall:
(a) Not perform duties that may allow for the transmission of
the disease until the infectious condition can no longer be transmit-
ted; and
(b) Provide a statement from a health professional, if re-
quested.
(7) Except in accordance with subsection (8) of this section,
the following shall be inaccessible to a child in care:
(a) Toxic cleaning supplies, poisons, and insecticides;
(b) Knives and sharp objects;
(c) Matches, cigarettes, lighters, and flammable liquids;
(d) Plastic bags;
(e) Litter and rubbish;
(f) Bar soap; and
(g) Personal belongings and medications of staff.
(8) The following shall be inaccessible to a child in care unless
under direct supervision and part of planned program of instruction:
(a) Knives and sharp objects;
(b) Litter and rubbish; and
(c) Plastic bags not used for personal belongings.
(9) In accordance with KRS 527.070(1), firearms and ammuni-
tion shall be stored separately in a locked area outside of the des-
ignated child care area.
(10) Smoking shall:
(a) Be permitted in accordance with local ordinances;
(b) Be allowed only in outside designated areas; and
(c) Not be permitted in the presence of a child.
(11) While bottle feeding an infant, the:
(a) Child shall be held; and
(b) Bottle shall not be:
1. Propped;
2. Left in the mouth of a sleeping infant; or
3. Heated in a microwave.
(12) A fire drill shall be:
(a) Conducted during hours of operation at least monthly; and
(b) Documented.
(13) An earthquake drill and a tornado drill shall be:
(a) Conducted during hours of operation at least quarterly; and
(b) Documented.

Section 4. Premises Requirements. (1) The premises shall be:
(a) Suitable for the purpose intended;
(b) Kept clean and in good repair; and
(c) Equipped with a working land-line telephone accessible to a
room used by a child.
(2) A child-care center shall be in compliance with the State
Fire Marshal and the local zoning laws.
(3) Fire and emergency exits shall be kept clear of debris.
(4) A working carbon monoxide detector shall be required in a
licensed child-care center that is in a home if the home:
(a) Uses fuel burning appliances; or
(b) Has an attached garage.
(5) The building shall be constructed to ensure the:
(a) Building is:
1. Dry;
2. Adequately heated;
3. Ventilated; and
4. Well lit, including clean light fixtures that are:

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(b) Flies;
(c) Roaches; and
(d) Other vermin.
(8) An opening to the outside shall be effectively protected against the entrance of vermin by:
(a) Self-closing doors;
(b) Closed windows;
(c) Screening;
(d) Controlled air current; or
(e) Other effective means.
(9) Floors, walls, and ceilings shall be smooth, in good repair, and constructed to be easily cleaned.
(10) The water supply shall be:
(a) Potable;
(b) Protected from contamination;
(c) Adequate in quality and volume;
(d) Under sufficient pressure to permit unrestricted use; and
(e) Obtained from an approved public water supply or a source approved by the local health department.
(11) Groundwater supplies for a child-care center caring for:
(a) More than twenty-five (25) children shall meet the specifications of the Cabinet for Environmental and Public Protection Division of Water, established in KRS Chapter 151; or
(b) Twenty-five (25) children or less shall secure approval from:
1. Cabinet for Environmental and Public Protection; or
2. Local health department.
(12) Sewage shall be properly disposed by a method approved by the:
(a) Cabinet for Environmental and Public Protection; or
(b) Cabinet.
(13) All plumbing shall comply with the State Plumbing Code established in KRS Chapter 318.
(14) Solid waste shall be kept in a suitable receptacle in accordance with local, county and state law, as governed by KRS 211.350 to 211.380.
(15) If a portion of the building is used for a purpose other than child care:
[a] Necessary provisions shall be made to avoid interference with the child-care program; and
[b] One separate room shall be provided for use only by those using the building for its child care purpose.
(16) The temperature of the inside area of the premises shall be:
(a) Sixty-five (65) to seventy-five (75) degrees Fahrenheit during the winter; or
(b) Sixty-eight (68) to eighty-two (82) degrees Fahrenheit during the summer months.
(17) Outdoor activity shall be restricted based upon:
(a) Temperature;
(b) Weather conditions; or
(c) Weather alerts, advisories, and warnings issued by the National Weather Service.
(18) A kitchen shall not be required if:
(a) The only food served is an afternoon snack to school-age children; and
(b) Adequate refrigeration is maintained.
(19) The Department of Housing, Buildings and Construction, State Fire Marshal's Office, and cabinet shall be contacted concerning a planned new building, addition, or major renovation prior to construction.
(20) An outdoor play area shall be:
(a) Except for an after-school child-care program, located on the premises of a public or state-accredited nonprofit public school and fenced for the safety of the children;
(b) A minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;
(c) Free from:
1. Litter;
2. Glass;
3. Rubbish; and
4. Flammable materials;
(d) Safe from foreseeable hazard;
(e) Well drained;
(f) Well maintained;
(g) In good repair; and
(h) Visible to staff at all times.
(21) A protective surface shall:
(a) Be provided for outdoor play equipment used to:
1. Climb;
2. Swing; and
3. Slide; and
(b) Have a fall zone equal to the height of the equipment.
(22) If a child-care center does not have access to an outdoor play area, an indoor space shall:
(a) Be used as a play area;
(b) Have a minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;
(c) Include equipment for gross motor skills;
(d) Be well-ventilated;
(e) Be heated; and
(f) Have a protective surface of at least two (2) inches thick around equipment intended for climbing.
(23) Fences shall be:
(a) Constructed of safe material;
(b) Stable; and
(c) In good condition.
(24) Supports for climbing apparatus and large equipment shall be securely fastened to the ground.
(25) Crawl spaces, such as tunnels, shall be short and wide enough to permit access by adults.
(26) A sandbox shall be:
(a) Constructed to allow for drainage;
(b) Covered when not in use; and
(c) Checked for vermin prior to use.
(27) Bodies of water that shall not be utilized include:
(a) Portable wading pools;
(b) Natural bodies of water; and
(c) Unfiltered, non-disinfected containers.
(28) A child-care center shall have enough toys, play apparatus, and developmentally appropriate materials to provide each child with a variety of activities during the day, as specified in Section 2 of this administrative regulation.
(29) Storage space shall be provided:
(a) In the form of:
1. Shelves; or
2. Other storage device accessible to the children; and
(b) In sufficient quantity for each child's personal belongings.
(30) Supplies shall be stored so that the adult can reach them without leaving a child unattended.

Section 5. Infant and Toddler Play Requirements. (1) Infant and toddler inside areas shall be:
(a) Be separate from an area used by an older child;
(b) Not be an exit or entrance; and
(c) Have adequate crawling space for an infant or toddler away from general traffic patterns of the center.
(2) Except in accordance with subsection (3) of this section, an infant or toddler shall not participate in an activity with an older child for more than one (1) hour per day.
(3) A toddler may participate in an activity with an older child for more than one (1) hour per day if:
(a) The toddler is in transition to the pre-school age group;
(b) The toddler is twenty-one (21) months or older;
(c) Space for the toddler is available in the preschool-age group;
(d) The staff-to-child ratios and group sizes are maintained based on the age of the youngest child;
(e) The center has a procedure for listing a transitioning toddler on attendance records, including a specific day and time the toddler is with either age group; and
(f) The child care center has obtained the signature and approval of the toddler's parent on the toddler's transition plan.
(4) If a child-care center provides an outdoor play area for an infant or toddler, the outdoor area shall be:
(a) Shaded; and
(b) A separate area or scheduled at a different time than an older child.
(5) Playpens and play yards shall:
(a) Meet federal standards as issued by the Consumer Product
Safety Commission, including 16 C.F.R. 1221;
(b) Be manufactured for commercial use; and
(c) Not be used for sleeping or napping.

Section 6. Sleeping and Napping Requirements. (1) An infant shall sleep or nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.
(2) Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.
(3) Rest time shall include adequate space specified by the child's age as follows:
(a) For an infant:
1. An individual non-tiered crib that meets Consumer Product
Safety Commission standards established in 16 C.F.R. 1219-1220;
2. A firm crib mattress in good repair with a clean tight-fitted sheet that shall be changed:
   a. Weekly; or
   b. Immediately if it is soiled or wet;
3. No positioning device or monitor unless the device or monitor is required by the infant's parent or health professional;
4. No loose bedding;
5. No toys or other items except the infant's pacifier; or
(b) For a toddler or preschool-age child:
1. An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and
2. Bedding that is in good repair and is changed:
   a. Weekly; or
   b. Immediately if it is soiled or wet;
3. No positioning device or monitor unless the device or monitor is required by the infant's parent or health professional;
4. No loose bedding; and
5. No toys or other items except the infant's pacifier.
(2) A child showing signs of an illness or condition that may be communicable shall not be admitted to the regular child-care pro-gram.
(3) If a child becomes ill while at the child-care center:
(a) The child shall be placed in a supervised area isolated from
the rest of the children;
(b) The parent shall be contacted immediately; and
(c) Arrangements shall be made to remove the child from the
child-care center as soon as practicable.
(4) Prescription and nonprescription medication shall be admi-
nistered to a child in care:
(a) With a daily written request of the child's parent; and
(b) According to the directions or instructions on the medica-
tion's label.
(5) The child-care center shall keep a written record of the
administration of medication, including:
(a) Time of each dosage;
(b) Date;
(c) Amount;
(d) Name of staff person giving the medication;
(e) Name of the child; and
(f) Name of the medication.
(6) Medication, including refrigerated medication, shall be:
(a) Stored in a separate and locked place, out of the reach of a
child;
(b) Kept in the original bottle; and
(c) Properly labeled.
(7) Medication shall not be given to a child if the expiration date
on the bottle has passed.

Section 8. Kitchen Requirements. (1) The kitchen shall:
(a) Be clean;
(b) Be equipped for proper food:
1. Preservation;
2. Storage;
3. Preparation; and
4. Service;
(b) Be equipped for proper food:
2. Storage;
3. Preparation; and
4. Service;
(c) Be adequately ventilated to the outside air; and
(d) Except in a Type II child-care center when a meal is not
being prepared, not be used for the activity of a child.
(2) A child-care center required to have a food service permit
shall be in compliance with 902 KAR 45:005 and this administrative
regulation.
(3) Convenient and suitable sanitized utensils shall be:
(a) Provided; and
(b) Used to minimize handling of food during preparation.
(4) A cold-storage facility used for storage of perishable food in
a nonfrozen state shall:
(a) Have an indicating thermometer or other appropriate tem-
perature measuring device;
(b) Be in a safe environment for preservation; and
(c) Be forty (40) degrees Fahrenheit or below.
(5) Frozen food shall be:
(a) Kept at a temperature of zero degrees Fahrenheit or below;
(b) Thawed:
1. At refrigerator temperatures;
2. Under cool, potable running water;
3. As part of the cooking process; or
4. By another method in accordance with the Department of
Public Health's food safety standards and permits, established in
KRS Chapter 217.
(a) Smooth;
(b) Free of breaks, open seams, cracks, and chips;
(c) Accessible for cleaning; and
(d) Nontoxic.
(7) The following shall be clean and sanitary:
(a) Eating and drinking utensils;
(b) Kitchenware;
(c) Food contact surfaces of equipment;
(d) Food storage utensils;
(e) Food storage containers;
(f) Cooking surfaces of equipment; and
(g) Nonfood contact surfaces of equipment.
(8) A single-service item shall be:
(a) Stored;
(b) Handled and dispensed in a sanitary manner; and
(c) Used only once.
(9) Bottles shall be:
(a) Individually labeled;
(b) Promptly refrigerated;
(c) Covered when not in use; and
(d) Consumed within one (1) hour of being heated or removed from the refrigerator.

Section 9. Food and Meal Requirements. (1) Food shall be:
(a) Clean;
(b) Free from:
1. Spoilage; and
2. Adulteration; and
3. Misbranding;
(c) Safe for human consumption;
(d) Withheld from service or discarded if the food is hermetically sealed, nonacidic, or low-acidic food that has been processed in a place other than a commercial food-processing establishment;
(e) Obtained from a source that is in compliance with the Department of Public Health's food safety standards and permits, established in KRS Chapter 217;
(f) Acceptable if from an established commercial food store;
(g) Served in a quantity that is developmentally appropriate for the child with additional portions provided upon request of the child; and
(h) Protected against contamination from:
1. Dust;
2. Flies;
3. Rodents and other vermin;
4. Unclean utensils and work surfaces;
5. Unnecessary handling;
6. Coughs and sneezes;
7. Cuts in skin;
8. Communicable disease;
9. Flooding;
10. Drainage; and
11. Overhead leakage.
(2) Food shall not be:
(a) Used for discipline;
(b) Used for reward;
(c) Withheld until all other foods are consumed; or
(d) Served while viewing electronic devices.
(3) A serving of milk shall consist of:
(a) Breast milk or iron-fortified formula for a child age birth to twelve (12) months;
(b) Pasteurized whole milk for children ages twelve (12) to twenty-four (24) months; or
(c) Pasteurized low fat one (1) percent or fat-free skim milk for children ages twenty-four (24) months to school-age (twenty-five (25) months to twelve (12) years of age).
(4) Formula or breast milk provided by the parent shall be prepared and[,] labeled[,] and provided by the parent.
(5) A child-care center may participate in the Child and Adult Care Food Program (CACFP).
(6) A serving of bread shall only consist of whole or enriched grain.
(7) Drinking water shall be freely available to a child throughout the day.
(8) Food shall be stored on:
(a) Clean racks;
(b) Clean shelves;
(c) Other clean surfaces; or
(d) If maintained in a sanitary condition, in nonabsorbent labeled containers a minimum of six (6) inches off the floor.
(9) Fruits and vegetables shall be washed before cooking or serving.
(10) Meat salads, poultry salads, and cream-filled pastries shall be:
(a) Prepared with utensils that are clean; and
(b) Refrigerated unless served immediately.
(11) An individual portion of food served to a child or adult shall not be served again.
(12) Wrapped food that is still wholesome and has not been unwrapped may be reserved.
(13) Meals shall be:
(a) Served every two (2) to three (3) hours; and
(b) Served to a child:
1. Seated with sufficient room to manage food and tableware; and
2. Supplied with individual eating utensils designed for use by a child.
(14) All children shall be offered the same food items unless the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child.
(15) A child-care center shall serve:
(a)1. Breakfast; or
2. A mid-morning snack;
(b)1. Lunch; or
2. A mid-afternoon snack; and
(c) If appropriate, dinner.
(16) A weekly menu shall be:
(a) Prepared;
(b) Dated;
(c) Posted in advance in a conspicuous place; and
(d) Kept on file for thirty (30) days; and
(e) Amended in writing with any substitutions on the day the meal is served.
(17) Breakfast shall include:
(a) Milk;
(b) Bread; and
(c)1. Fruit;
2. Vegetable; or
3. 100 percent juice.
(18) A snack shall include two (2) of the following:
(a) Milk;
(b) Protein;
(c) Bread; or
(d)1. Fruit;
2. Vegetable; or
3. 100 percent juice.
(19) Lunch and dinner shall include:
(a) Milk;
(b) Protein;
(c) Bread; and
(d)1. Two (2) vegetables;
2. Two (2) fruits; or
3. One (1) fruit and one (1) vegetable.

Section 10. Toilet, Diapering, and Toiletry Requirements. (1) A child-care center shall have a minimum of one (1) toilet and one (1) lavatory for each twenty (20) children. Urinals may be substituted for up to one-half (1/2) of the number of toilets required for a male toilet room.
(2) A toilet room shall:
(a)1. Be provided for each gender; or
2. A plan shall be implemented to use the same toilet room at separate times;
(b) Have a supply of toilet paper; and
(c) Be cleaned and sanitized daily.
(3) A sink shall be:
(a) Located in or immediately adjacent to toilet rooms;
(b) Equipped with hot and cold running water that allows for hand washing;
(c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;
(d) Equipped with liquid soap;
(e) Equipped with hand-drying blower or single use disposable hand drying material;
(f) Equipped with an easily cleanable waste receptacle; and
(g) Immediately adjacent to a changing area used for infants and toddlers.
(4) Each toilet shall:
(a) Be kept in clean condition;
(b) Be kept in good repair; and
(c) Be in a lighted room; and
Section 11. Toys and Furnishings. (1) All toys, equipment, and furniture contacted by a child shall be:

(a) Kept clean and in good repair; and
(b) Free of peeling, flaking, or chalking paint.

(2) Indoor and outdoor equipment shall:

(a) Be clean, safe, and in good repair; and
(b) Meet the physical, developmental needs, and interests of children of different age groups;

(c) Be free from sharp points or corners, splinters, protruding nails or bolts, loose or rusty parts, hazardous small parts, lead-based paint, poisonous material, and flaking or chalking paint; and

(d) Be designed to guard against entrapment or situations that may cause strangulation.

(3) Toys shall be:

(a) Used according to the manufacturer’s safety specifications;
(b) Durable; and
(c) Without sharp points or edges.

(4) Toys and other items that are considered mouth contact surfaces by a child not toilet trained shall be sanitized daily by:

(a) Scrubbing in warm, soapy water using a brush to reach into crevices;

(b) Rinsing in clean water;

(c) Submerging in a sanitizing solution for at least two (2) minutes; and

(d) Air dried.

(5) Tables and chairs shall be of suitable size for children.

(6) Chairs appropriate for staff shall be provided to use when feeding, holding, or playing with a child.

Section 12. Transportation. (1) A center shall document compliance with KRS Chapter 186 and 603 KAR 5:072 pertaining to:

(a) Vehiclen;

(b) Drivers; and

(c) Insurance.

(2) A center providing or arranging transportation service shall:

(a) Be licensed and approved by the cabinet or its designee prior to transporting a child;

(b) Have a written plan that details the type of transportation, staff schedule, transportation schedule, and transportation route; and

(c) Have written policies and procedures, including emergency procedures practiced monthly by staff who transports children.

(3) Prior to transporting a child, a center providing transportation services of a child shall notify the cabinet or its designee in writing of:

(a) Type of transportation offered;

(b) Type of vehicle used for transportation;

(c) Plan for ensuring staff perform duties relating to transportation properly;

(d) Full insurance coverage for each vehicle;

(e) Agency policy and procedures relating to an emergency plan for evacuating the vehicle;

(f) Contracts, agreements, or documents detailing arrangements with any third party for services; and

(g) Safety procedures for:

1. Transporting a child;

2. Loading and unloading a child; and

3. Providing adequate supervision of a child.

(4) A vehicle used to transport children shall be equipped with:

(a) A fire extinguisher;

(b) First aid supplies as described in Section 7 of this administrative regulation;

(c) Emergency reflective triangles; and

(d) A device to cut the restraint system, if necessary.

(5) Transportation provided by licensed public transportation or a school bus shall comply with subsections (1) and (2) of this section.

(6) A vehicle used to transport children shall meet the following requirements:

(a) A twelve (12) or more passenger vehicle shall display a current certification of inspection from the Transportation Cabinet on the designated window.

(b) A vehicle that requires traffic to stop while loading and unloading a child shall be equipped with a system of:

1. Signal lamps;

2. Identifying colors; and

3. Cautionary words.

(c) A vehicle shall be equipped with seat belts for each occupant to be individually secured.

(d) A vehicle shall not transport children and hazardous materials at the same time.

(7) The appropriate car safety seat meeting federal and state motor vehicle safety standards in 49 C.F.R. 571.213 and KRS 189.125 shall be used for each child.

(8) A daily inspection of the vehicle shall be performed and documented for the following:

(a) Tires;

(b) Lights, signals, mirrors, gauges, and wiper blades;

(c) Safety restraints;

(d) Fuel; and

(e) Free of debris.

(9) The staff-to-child ratios set forth in Section 2(2) of this administrative regulation shall apply to vehicle transport, if not inconsistent with special requirements or exceptions in this section.

(b) An individual who is driving with a child in the vehicle shall supervise no more than four (4) children under the age of five (5).

(10) Each child shall:

(a) Have a seat;

(b) Be individually belted or harnessed in the seat; and

(c) Remain seated while the vehicle is in motion.

(11) A child shall not be left unattended:

(a)[Unattended] At the site of aftercare delivery; or

(b)[Unattended] In a vehicle.

(12) If the parent or designee is unavailable, a prearranged written plan shall be completed to designate where the child can be

(d) Have ventilation to outside air.

(5) Toilet training shall be coordinated with the child’s parent.

(6) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.

(7) If a toilet training chair is used, the chair shall be:

(a) Used over a surface that is impervious to moisture;

(b) Out of reach of other toilets or toilet training chairs;

(c) Emptied promptly; and

(d) Sanitized after each use.

(8) Diapers or clothing shall be:

(a) Changed when soiled or wet;

(b) Stored in a covered container temporarily; and

(c) Washed or disposed of at least once a day.

(9) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.

(10) When a child is diapered, the child shall:

(a) Not be left unattended; and

(b) Be placed on a surface that is:

1. Clean;

2. Padded;

3. Free of holes, rips, tears, or other damage;

4. Nonabsorbent;

5. Easily cleaned; and

6. Free of any items not used for diaper changing.

(11) Unless allergic, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.

(12) Staff shall disinfect the diapering surface after each child is diapered.

(13) If staff wear disposable gloves, the gloves shall be changed and disposed after each child is diapered.

(14) Combos, towels or washcloths, brushes, and toothbrushes used by a child shall be:

(a) Individually stored in separate containers; and

(b) Plainly labeled with the child’s name.

(15) Toothbrushes shall be:

(a) Individually identified;

(b) Allowed to air dry; and

(c) Protected from contamination.

(16) Toothpaste used by multiple children shall be dispensed onto an intermediate surface, such as waxed paper, to avoid cross contamination.

Section 13. In a vehicle. (1) In a vehicle.

(a) License plate; and

(b) Fuel; and

(c) Cautionary words.

(2) A vehicle shall be equipped with:

(a) A fire extinguisher;

(b) First aid supplies as described in Section 7 of this administrative regulation;

(c) Emergency reflective triangles; and

(d) A device to cut the restraint system, if necessary.

(3) Transportation provided by licensed public transportation or a school bus shall comply with subsections (1) and (2) of this section.

(4) A vehicle used to transport children shall be equipped with:

(a) A fire extinguisher;

(b) First aid supplies as described in Section 7 of this administrative regulation;

(c) Emergency reflective triangles; and

(d) A device to cut the restraint system, if necessary.

(5) Transportation provided by licensed public transportation or a school bus shall comply with subsections (1) and (2) of this section.

(6) A vehicle used to transport children shall meet the following requirements:

(a) A twelve (12) or more passenger vehicle shall display a current certification of inspection from the Transportation Cabinet on the designated window.

(b) A vehicle that requires traffic to stop while loading and unloading a child shall be equipped with a system of:

1. Signal lamps;

2. Identifying colors; and

3. Cautionary words.

(c) A vehicle shall be equipped with seat belts for each occupant to be individually secured.

(d) A vehicle shall not transport children and hazardous materials at the same time.

(7) The appropriate car safety seat meeting federal and state motor vehicle safety standards in 49 C.F.R. 571.213 and KRS 189.125 shall be used for each child.

(8) A daily inspection of the vehicle shall be performed and documented for the following:

(a) Tires;

(b) Lights, signals, mirrors, gauges, and wiper blades;

(c) Safety restraints;

(d) Fuel; and

(e) Free of debris.

(9) The staff-to-child ratios set forth in Section 2(2) of this administrative regulation shall apply to vehicle transport, if not inconsistent with special requirements or exceptions in this section.

(b) An individual who is driving with a child in the vehicle shall supervise no more than four (4) children under the age of five (5).

(10) Each child shall:

(a) Have a seat;

(b) Be individually belted or harnessed in the seat; and

(c) Remain seated while the vehicle is in motion.

(11) A child shall not be left unattended:

(a)[Unattended] At the site of aftercare delivery; or

(b)[Unattended] In a vehicle.

(12) If the parent or designee is unavailable, a prearranged written plan shall be completed to designate where the child can be
picked up.

(13) A child shall not be picked up or delivered to a location that requires crossing the street or highway unless accompanied by an adult.

(14) A vehicle transporting a child shall have the headlamps on.

(15) If a vehicle needs to be refueled, it shall be refueled when not being used to transport a child. If emergency refueling or repair is necessary during transporting, all children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.

(16) If the driver is not in the driver’s seat, the:
   (a) Engine shall be turned off;
   (b) Keys shall be removed; and
   (c) Emergency brake shall be set.

(17) Transportation services provided shall:
   (a) Be recorded in writing and include:
       1. The first and last name of the child transported; and
       2. The time each child gets on and the time each child gets off;
   (b) Be completed by a staff member other than the driver; and
   (c) Be kept for five (5) years.

(18) A driver of a vehicle transporting a child for a center shall:
   (a) Be at least twenty-one (21) years old;
   (b) Complete:
       1. The background checks as described in 922 KAR 2:110; and
       2. An annual check of the:
          a. Kentucky driver history records in accordance with KRS 186.018; or
          b. Driver history records through the state transportation agency that issued the driver’s license;
   (c) Hold a current driver’s license which has not been suspended or revoked during the last five (5) years; and
   (d) Not caused an accident which resulted in the death of a person.

(19) Firearms, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

(20)(a) Based on the harm, threat, or danger to a child’s health, safety, and welfare, the cabinet shall revoke a center’s privilege to transport a child or pursue an adverse action in accordance with Section 9, 10, 11, or 12 of 922 KAR 2:090:
   1. For a violation of this section; or
   2. If the center:
      a. Fails to report an accident in accordance with 922 KAR 2:110, Section 6; or
      b. Transports more passengers than the vehicle’s seating capacity and safety restraints can accommodate.

(b) Revocation of a center’s privilege to provide transportation services in accordance with paragraph (a) of this subsection shall:
   1. Apply to each site listed under the licensee; and
   2. Remain effective for no less than a twelve (12) month period.

(21) A parent may use the parent’s vehicle to transport the parent’s child during a field trip.

Section 13. Animals. (1) An animal shall not be allowed in the presence of a child in care:
   (a) Unless:
       1. The animal is under the supervision and control of an adult;
       2. Written parental consent has been obtained; and
       3. The animal is certified as vaccinated against rabies; or
   (b) Except in accordance with subsection (3) of this section.

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a child-care center unless the animal is:
   (a) A part of a planned program activity lead by an animal specialist affiliated with a zoo or nature conservatory; and
   (b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: March 19, 2013

VOLUME 39, NUMBER 11 – MAY 1, 2013

FILED WITH LRC: March 27, 2013 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until May 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation by May 21, 2013, at least 48 hours prior to the hearing.

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: Justin Dearinger, DCBS Regulation Coordinator

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes health and safety standards for child-care centers.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards regarding health and safety for child-care centers.

   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing minimum health and safety standards for child-care centers as condition of their licensure.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation adds an annual check of a driver’s license history records as a requirement for any driver transporting children on behalf of a licensed child care provider. The amendment specifies the cabinet’s authority to revoke a licensed provider’s transportation privileges for a violation of a transportation standard or take other adverse action on the center’s licensure based upon the negative impact to a child’s health, safety, and welfare. In addition, the administrative regulation makes technical corrections in accordance with KRS Chapter 13A and to align food, meal, sleeping, and napping requirements with other provisions contained in this administrative regulation and administrative regulations governing other provider types.

   (b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to make technical corrections and, more importantly, to effectively enforce transportation safety measures for the licensed provider, provider’s employees or assistants, and children served by the provider.

   (c) How the amendment conforms to the content of the authorizing statutes: The amendment conform to the authorized statutes by further clarifying and specifying health and safety standards for licensed child care providers.

(2) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its provision of enhanced health and safety measures for licensed child care providers in a manner responsive to recent context, congruent with recognized practice,
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 Community Based Services is 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. 16 C.F.R. 1219, 1220, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 42 U.S.C. 7181-7184, KRS 194A.050(1), 199.896(2)

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There are no additional costs to administer this program in subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to administer this program in subsequent years.

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

Contact: Justin Dearinger

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)

922 KAR 2:160. Child Care Assistance Program.


STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.894

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 601-619, and to provide for effective regulation of child care centers. KRS 199.894 requires the cabinet to administer all child care funds to the extent allowable

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under federal law or regulation and in a manner which is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that affects eligibility or benefit amounts and includes:
(a) Beginning or ending employment;
(b) Change in an employer or obtaining additional employment;
(c) Increase or decrease in the number of work hours;
(d) Increase or decrease in the rate of pay;
(e) Increase or decrease in family members;
(f) Change in self-employment activity;
(g) Change in scheduled hours care is needed;
(h) Beginning or ending an educational activity;
(i) Change in child care provider;
(j) Change in address or residence;
(k) Change in marital status; or
(l) Beginning or ending receipt of unearned income.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(5) "Child care and development fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined in 922 KAR 1:330, Section 1(3).

(9) "Child with a special need" means a child who has multiple or severe functional needs requiring a severe problem or multiple problems that require ongoing specialized care.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week.

(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.

(12) "Family child-care home":
(a) Is defined by KRS 199.894(5);
(b) Is described in KRS 199.8982; and
(c) Means a home certified in accordance with 922 KAR 2:100.

(13) "Finding of fraud" means a suspected intentional program violation referred in accordance with 922 KAR 2:020, Section 4(1)(a1), that is accepted for investigation and substantiated by the cabinet's Office of Inspector General.

(14) "Full day" means child care that is provided for five (5) or more hours per day.

(15) "Health professional" means a person actively licensed as a:
(a) Physician;
(b) Physician's assistant;
(c) Advanced registered nurse practitioner;
(d) Qualified mental health professional as defined by KRS 600.020(49); or
(e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(16) "In loco parentis" means a person acting in place of a parent, including:
(a) A legal guardian;
(b) An individual related by blood, marriage, or adoption to the child; or
(c) A nonrelative pursuing legal custody of the child within one year of application.

(17) "Infant" means a child who is less than one (1) year old.

[18][147] "Kentucky Transitional Assistance Program" or "KTAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

[19][148] "Nonurban" means a county without a first, second, or third class city as specified in KRS 81.010(1) through (3).

[20][149] "Parent" is defined by 45 C.F.R. 98.2.

[21][200] "Part day" means child care that is provided for less than five (5) hours per day.

[22][201] "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

[23][202] "Qualifying alien" means a child who meets the requirements of 921 KAR 2:006, Section 1(14)(455).

[24][203] "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

[25][204] "Related" means having one (1) of the following relationships with the provider:
(a) Child;
(b) Stepchild;
(c) Grandchild;
(d) Great-grandchild;
(e) Niece;
(f) Nephew;
(g) Sibling;
(h) Child in legal custody of the provider; or
(i) Child living with the provider acting in loco parentis.

[26][205] "Responsible adult" means a person other than the applicant who is in the child's household and who is:
(a) The natural parent, adoptive parent, or stepparent; or
(b) The spouse of an individual caring for a child in loco parentis.

[27][206] "School-age child" means a child who has reached the sixth birthday.

[28][207] "Teenage parent" means a parent who is nineteen years of age or younger.

[29][208] "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

[30][209] "Urban" means a county listed in KRS 81.010(1) through (3) as having a first, second, or third class city.

Section 2. Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:
1. A signed DCC-90, Application for Subsidized Child Care Assistance, or DCC-90.1, Intent to Apply for Child Care Assistance, is received at the cabinet or its designee office; or
2. The agency is contacted, if the person:
(a) Has a physical or mental disability; and
(b) Needs special accommodation due to the impairment.

(b) If the applicant is physically unable to come to the office to apply, the applicant may designate an authorized representative to make application.

(c) The applicant may be:
1. Assisted by another individual of choice in the application process; and
2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for persons who are:
1. Deaf; or
2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a
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family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, and 7 of this administrative regulation.

(a) The applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of:
   a. Income; and
   b. Technical eligibility; and
   c. Employment; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Send a DCC-105, Child Care Assistance Program Notice of Action, to the applicant in accordance with Section 11(5) of this administrative regulation to provide written notification of the decision within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section.

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient’s case record.

(7) A family shall not receive:

(a) Assistance until approval of the application for benefits; or

(b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:
   1. Resident of Kentucky; and
   2. U.S. citizen or qualified alien;

(b) Is under age:
   1. Thirteen (13); or
   2. Nineteen (19) and is:
      a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a health professional;
      b. Under court supervision; or
      c. Identified as a priority by federal statute, regulation, or funding source; and
      (c) Has a current immunization certificate showing that the child is immunized, unless:
         1. There is an exception pursuant to KRS 214.036; or
         2. The child is attending a:
            a. Licensed child care center;
            b. Certified child care home;
            c. Public school;
            d. Head Start; or
         e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;
(b) A legal guardian;
(c) A member of the K-TAP or food stamp assistance case in which the child in need of child care assistance is included;
(d) A person living in the same residence as the child in need of care;
(e) A provider not:
   1. Licensed according to 922 KAR 2:090, Child care center
   2. Certified according to 922 KAR 2:100, Certification of family child care homes; or
   3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;
(f) An alternative program such as Head Start, state preschool, or state kindergarten; or
(g) Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.

(5) A child in foster care shall not be eligible for CCAP.

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who has employment an average twenty (20) hours per week;
(b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;
(c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;
(d) An applicant who:
   1. Loses employment through no fault of their own up to four (4) weeks;
   2. Is on maternity leave for up to six (6) weeks; or
   3. Is on medical leave from employment due to a health condition verified by a health professional for up to six (6) weeks;
   (e) A relative caregiver pursuant to the conditions of a program established by KRS 605.120(5), who meets:
      1. All requirements in this section; and
      2. Income eligibility standards in Section 7(1); or
   (f) A teen parent attending high school or pursuing a general equivalency degree (GED);

(2) Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 7(1)(d) of this administrative regulation by minimum wage established in accordance with KRS 337.275.

(3) An applicant eligible in accordance with this section shall sign and return the DCC-91, Client Rights and Responsibilities Sheet, and the DCC-94, Child Care Service Agreement and Certificate.

Section 5. Requirements for Protection and Permanency Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child:

(a) Resides with an applicant who:
   1. Receives child protective or preventive services; or
   2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and
(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan in accordance with 922 KAR 1:430.

(3) A child who participates in the CCAP as a result of a child protective or preventive services authorization shall not be eligible for more than six (6) months without further authorization.

(4)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 10 of this administrative regulation for child who participates in CCAP as a result of child protective services authorization.

(b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child’s protective services case plan.

(5) An applicant eligible in accordance with this section shall sign and return the DCC-91.
Section 6. Kentucky Works Child Care Eligibility Determination.
(1) A child shall be eligible for CCAP if the child:
(a) Resides with an applicant who is participating in the Kentucky Works Program described in 921 KAR 2:370; and
(b) Meets the requirements listed in Section 3 of this administrative regulation.
(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application as an integral part of a Kentucky Works Program self-sufficiency[ self-sufficiency ] plan.
(3) An applicant eligible in accordance with this section shall sign and return the DCC-91.

Section 7. Income Eligibility. (1)(a) Prior to July 1, 2013, a child shall be eligible for the CCAP if the family’s income is less than or equal to:
1. 150 percent of the federal poverty level at the initial application; or
2. 165 percent of the federal poverty level at the redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.
(b) Effective July 1, 2013, a child shall be eligible for the CCAP if the family’s income is less than or equal to:
1. 100 percent of the federal poverty level at the initial application; or
2. 100 percent of the federal poverty level at the redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.
(2) A family that becomes ineligible for K-TAP shall remain eligible for CCAP for twelve (12) months from the date of the K-TAP discontinuance, if the family’s income remains less than or equal to:
(a) 165 percent of the federal poverty level prior to July 1, 2013; or
(b) 100 percent of the federal poverty level effective July 1, 2013.
(3) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family’s eligibility for the CCAP.
(4) A child that is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family’s income.
(5) Excluded income shall be:
(a) K-TAP child only payments, including back payment;
(b) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;
(c) Educational grant, loan, scholarship, and work study income;
(d) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;
(e) The value of United States Department of Agriculture program benefits including:
1. Donated food;
2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;
3. Special food service program for a child pursuant to 42 U.S.C. 1775;
4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and
5. The monthly allotment under the Supplemental Nutrition Assistance Program (formerly known as the Food Stamp Program);
(a) Defined by 7 U.S.C. 2012, as amended by P.L. 110-246; and
b. Governed by Title 921 KAR Chapter 3;
(f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;
(g) In-kind income;
(h) Reimbursement for transportation in performance of an employment duty, if identifiable;
(i) Nonemergency medical transportation payment;
(j) Highway relocation assistance;
(k) Urban renewal assistance;
(l) Federal disaster assistance and state disaster grant;
(m) Home produce utilized for household consumption;
(n) Housing subsidy received from federal, state, or local government;
(o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;
(p) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;
(q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:
1. Senior health aide; or
2. Member of the:
   a. Service Corps of Retired Executives; or
   b. Active Corps of Executives;
(r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5084 if less than the minimum wage under state or federal law, whichever is greater, including:
1. Volunteers in Service to America (VISTA);
2. Foster Grandparents;
3. Retired and Senior Volunteer Program; or
4. Senior Companion;
(s) Payment from the cabinet for:
1. Child foster care; or
2. Adult foster care;
(t) Energy assistance payment made under:
1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or
2. Other energy assistance payment made to an energy provider or provided in-kind;
(u) The principal of a verified loan;
(v) Up to $12,000 from a participant in a private retirement plan and $20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;
(w) The advance payment or refund of earned income tax credit;
(x) Payment made from the Agent Orange Settlement Fund;
(y) Payment made from the Radiation Exposure Compensation Trust Fund;
(z) Up to $2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;
(aa) Payment made to an individual because of the individual’s status as a victim of Nazi persecution;
(bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;
(cc) A payment received from the National Tobacco Growers Settlement Trust;
(dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;
(ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c); (ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran’s Administration, to children of female Vietnam veterans;
(gg) A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-31(g)(6) of the Social Security Act, 42 U.S.C. 601-619;
(hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.6(d); (ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5); or
(jj) Income or earnings from a program funded under the Work Investment Act (WIA) pursuant to 20 C.F.R. 652 and 660 to 671;
(kk) Deductions from gross income shall be:
1. Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family’s residence; and
2. Operating costs to determine adjusted gross income from self-employment[ self-employment ].
(7) Best estimate.
   (a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.
   (b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:
      1. Cents shall not be rounded at any step in the calculation;
      2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;
      3. A monthly amount shall be determined by:
         a. Adding gross income from each pay period;
         b. Dividing by the total number of pay periods considered; and
         c. Converting the pay period figure to a monthly figure by multiplying a:
            (i) Weekly amount by (4.334);
            (ii) Biweekly amount by \([2.667]([2.667])\); or
            (iii) Semimonthly amount by two (2); and
      4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the anticipated monthly income shall be computed by:
         a. Multiplying the:
            (i) Hourly rate by the estimated number of hours to be worked in a pay period; or
            (ii) Daily rate by the estimated number of days to be worked in the pay period; and
         b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c of this paragraph.
   (c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:
      1. Not rounding cents at any step in the calculation;
      2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and
      3. Averaging the amount of nonstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.
   (d) For a case with self-employment income, a monthly amount shall be determined as follows:
      1. Cents shall not be rounded at any step in the calculation;
      2. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);
      3. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and
      4. Profit shall be determined by:
         a. Dividing the allowable expenses permitted by the Internal Revenue Service except for depreciation by:
            (i) Twelve (12) if the enterprise has been in operation for at least a year; or
            (ii) The number of months the business has been operating if the business has been in existence for less than a year; and
         b. Subtracting the monthly expense from the monthly income.

Section 8. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be redetermined at least every:
   (a) Twelve (12) months; or
   (b) Six (6) months for a child eligible pursuant to requirements in Section 5 of this administrative regulation.
(2) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.
(3) A nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

Section 9. Payment Rates and Policy. (1) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rates Chart.
   (a) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.
   (b) The maximum payment rates shall include the following categories:
      1. Full day;
      2. Part day;
      3. Urban;
      4. Nonurban;
      5. Licensed;
      6. Certified;
      7. Registered;
      8. Infant/Toddler;
      9. Preschool child; and
      10. School-age child.
(2) To the extent funds are available, a licensed or certified provider shall receive:
   (a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:
      1. National Association for the Education for Young Children;
      2. National Early Childhood Program Accreditation;
      3. National Association for Family Child Care; [ac]
      4. Council on Accreditation; or
   (b) Other accrediting body approved by the Early Childhood Advisory Council[Development Authority] or the cabinet; or
   (c) Three (3) dollars per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:
      1. 7 p.m. to 5 a.m. daily; or
      2. Friday, 7 p.m. through Monday, 5 a.m.
(3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:
   (a) With a special need; or
   (b) Who is age thirteen (13), but under age nineteen (19), and is:
      1. Physically or mentally incapable of caring for himself as determined by a health professional; or
      2. Under court supervision.
   (4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.
(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:
   (a) Three (3) children receiving CCAP per day; or
   (b) Six (6) children receiving CCAP per day, if those children are:
      1. A part of a sibling group; and
      2. Related to the provider.
(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.
(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 10. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(4)(3)(b) of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.
   (2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.
   (3)(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:

<table>
<thead>
<tr>
<th>Income Range Monthly</th>
<th>Family Size 2 in Family Co-Pay With 1 Child</th>
<th>Family Size 3 Family Co-Pay With 1 Child 2 or more</th>
<th>Family Size 4 Family Co-Pay With 1 Child 2 or more</th>
<th>Family Size 5 or More Family Co-Pay With 1 Child 2 or more</th>
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<tr>
<td>0</td>
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</table>
(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

(a) If a provider notifies the cabinet or its designee that a family has failed to comply with a required copayment for two (2) weeks, the cabinet or its designee shall request that the provider develop a payment plan with the family.

(b) If a provider notifies the cabinet or its designee that a family fails to enter into a payment plan within ten (10) days from a provider's notification that a payment plan is necessary, or a family fails to make two (2) payments in accordance with the payment plan, the cabinet shall:

1. Not pay a subsequent provider until the family demonstrates compliance with the payment plan; and
2. Terminate CCAP for the family.

(3) The cabinet or its designee may grant an exception to paragraph (b) of this subsection due to:

1. A disaster verified by utility provider, local, state, or federal government;
2. The closure of a provider;
3. Family circumstances, such as relocation, illness, or death; or
4. A risk to the health, welfare, or safety of the child or parent.

Section 11. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

(a) Be offered choice of child care assistance subject to the availability of state and federal funds; and
(b) Receive a child care certificate, the DCC-94.

(3) An applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the DCC-91 and the DCC-94.

(4) An applicant approved in accordance with Section 5 or 6 of this administrative regulation shall sign and return the DCC-91.

(5) Notification of action.

(a) A DCC-105 shall serve many purposes in the administration of CCAP, including notice to an applicant or recipient of:

1. Changes in:
   a. Copayment;
   b. Certification period; or
   c. Household size;
   2. Approval of:
      a. Application; or
      b. Continued eligibility; or
   3. Adverse action, including:
      a. Denial of application;
      b. Reduction of CCAP benefits; or
      c. Termination of CCAP benefits.

(b) The DCC-105 providing notice of an adverse action shall include:

1. Reason for the adverse action;
2. Citation from an applicable state administrative regulation; and
3. Information regarding the:
   a. Informal dispute resolution process in accordance with Section 13(42) of this administrative regulation; and
   b. Opportunity to request an administrative hearing in accordance with Section 13(48) of this administrative regulation.

(c) The language on the DCC-105 shall differ according to the purpose of the notice described in paragraphs (a) and (b) of this subsection.

(6) An applicant may change the applicant's provider a maximum of three (3) times in a twelve (12) month period, unless an exception is authorized by the cabinet or its designee due to:

(a) A disaster verified by utility provider, local, state, or federal government;
(b) Closure of a provider;
(c) Family circumstances, such as relocation, illness, or death; or
(d) A risk to the health, welfare, or safety of the child or the applicant; or

(e) Failure of the provider to comply with Section 13(1) of this administrative regulation.

(7) A family that changes the child care provider more than three (3) times as described in subsection (6) of this section shall be discontinued from the CCAP and unable to participate until the end of the eligibility period in effect at the time of discontinuance.

(8) An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in circumstance within ten (10) calendar days of the day the change is known.

(9) Failure to report a change in circumstance may result in:

(a) Decrease or discontinuance of CCAP benefits based on the type of change; or
(b) Claim in accordance with 922 KAR 2:020.

(10) An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:

(a) Discontinued from CCAP benefits; and
(b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

(11) An applicant for a child served by CCAP shall report to the cabinet or its designee a provider whom the applicant suspects is not fulfilling requirements in accordance with Section 13(1)(c) of this administrative regulation.

Section 12. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and
(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:090, Child care center licensure;
(b) 922 KAR 2:100, Certification of family child care homes;
(c) 922 KAR 2:110, Child care facility provider requirements;
(d) 922 KAR 2:120, Child care facility health and safety standards.

(e) 922 KAR 2:180, Requirements for registered child care
providers in the Child Care Assistance Program;

(i) 922 KAR 2:020, Child Care Assistance Program (CCAP)

improper payments, claims, and penalties; and

(g) 922 KAR 2:190, Civil penalties.

(4) If CCAP benefits are reduced or terminated due to the
terminal condition of the applicant, the cabinet shall provide a minimum thirty (30)
calendar day notice to each family served by CCAP.

(5) If the daily maximum payment rate is reduced due to the
shortage of funding, the cabinet shall provide a minimum thirty (30)
calendar day notice to licensed, certified, or registered providers.

(6) The cabinet shall send required notices to all

(a) child care service providers in the Child Care Assistance Program;

(b) A licensed or certified provider in the Kentucky Works Pro-

gram, including the DCC-94E

(c) 922 KAR 2:180, Requirements for registered child care

providers in the Child Care Assistance Program;

(d) 922 KAR 2:200, Child Care Assistance Program (CCAP)

improper payments, claims, and penalties; and

(7) The cabinet shall prioritize child care assistance benefits as
determined by the available funds as follows:

(a) Child protective or preventive services authorization;

(b) A child with a special need;

(c) A licensed care provider participating in the Kentucky Works Pro-

gram established in 921 KAR 2:370;

(d) Teen parents attending high school or pursuing a general
equivalency degree (GED);

(e) A K-TAP recipient attempting to transition off assistance
through employment;

(1) A parent whose K-TAP case has been discontinued during the
previous twelve (12) months and who needs child care assistance
in order to accept or retain employment;

(g) A low income working parent; or

(h) A parent in education or training programs leading to self-
sufficiency.

Section 13. Provider Requirements. (1) A licensed, certified, or
registered child care provider that serves a child who participates
in the CCAP shall:

(a) Sign and submit the DCC-94 to the cabinet or its designee
prior to receiving payment from the CCAP;

(b) Report all absences on the DCC-97, Provider Billing Form,
submitted to the cabinet or its designee;

(c) 1. Maintain the DCC-94E, Child Care Daily Attendance
Record, in which the daily arrival and departure times of each child have been:

   a. Recorded legibly on a daily basis;
   b. Signed by the parent or applicant for the child served by
      CCAP; and

   2. Submit the DCC-94E, sign sheet, upon request of the
      cabinet or its designee; and

   (d) Comply with the applicable regulatory requirements purs-

uant to:

1. 922 KAR 2:090, Child care center licensure;
2. 922 KAR 2:100, Certification of family child care homes;
3. 922 KAR 2:110, Child care facility provider requirements;
4. 922 KAR 2:120, Child care facility health and safety standards;

5. 922 KAR 2:180, Requirements for registered child care pro-

viders in the Child Care Assistance Program;

6. 922 KAR 2:200, Child Care Assistance Program (CCAP)

improper payments, claims, and penalties; and

7. 922 KAR 2:190, Civil penalties.

(2) A licensed or certified child care provider shall complete the

DCC-94B, Licensed or Certified Provider Information Form, prior to

receiving payment from the CCAP.

(3) A licensed child care provider shall maintain written docu-

ments with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

Section 14. Other Services. To the extent state funds are
available, a child whose family’s income is over the income limits
for the CCAP described in Section 7 may be eligible for:

(1) Child care payments;

(2) Enrollment fees;

(3) Activity or day trip fees;

(4) Material fees;

(5) Transportation fees; or

(6) Other items relating to child care services with prior ap-

proval of the cabinet.

Section 15. An improper payment, claim, or penalty in CCAP
shall be in accordance with 922 KAR 2:020.

Section 16. Criteria for Nonpayment. (1) Payment under the

CCAP shall:

(a) Not be made to a licensed provider for more than five (5)

absences per child during a month if the provider fails to verify in

writing, and maintain attendance records verifying, that the addi-
tional absences were related to:

1. A death in the family;

2. An illness of the:

   a. Child; or
   b. Applicant; or

3. A Disaster verified by utility provider, local, state, or federal
government;

(b) Not be made to a certified provider for more than five (5)

absences per child during a month;

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in ac-

   cordance with Section 10(4) of this administrative regulation or 922
   KAR 2:020;

(f) Not be made if a family no longer meets the technical or

   financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90)

   days after the date of service, and

(h) Not be made to a licensed or certified provider for more

   than ten (10) holidays per calendar year;

(i) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet’s desig-

nee, or a representative of an agency with regulatory authority;

   a. Entry into the provider’s premises during operating hours; or
   b. Access to a child in care; or

2. The cabinet, the cabinet’s designee, or a representative of

   an agency with regulatory authority access to the provider’s
   records relevant to:

   a. Cabinet review, including CCAP quality control or case re-

   view; or
   b. Review by another agency with regulatory authority;

(j) Not be made to a provider if the provider’s DCC-94E in ac-

   cordance with Section 13(1)(c) of this administrative regulation
   does not support billing for a child reported as served for the same
   period of time on the DCC-97;

(k) Not be made if a licensed or certified provider cares for a

   child served by CCAP at a location not specified on the DCC-94;

(2) Subject to the availability of state or federal funds, the cabi-

net may suspend approval of initial application for benefits under

the CCAP following the priorities established in Section 12(8) of

this administrative regulation.

Section 17. Withholding of CCAP Payments. (1) The cabinet

shall withhold CCAP payment from a provider:

(a) If the provider is the subject of a finding of fraud; or

(b) Pending resolution of the provider’s administrative appeals

   process or legal proceedings related to denial, suspension, or re-

   vocation of the provider’s:

1. Registration pursuant to 922 KAR 2:180;
2. Certification pursuant to 922 KAR 2:100;
3. License pursuant to 922 KAR 2:300, 922 KAR 2:110, or
922 KAR 2:120;

(2) The cabinet shall withhold payments after notifying a pro-

vider of its intention to withhold CCAP payments.

(a) The cabinet shall withhold payments after notifying a pro-

vider of its intention to withhold CCAP payments.

(b) The notice shall:

1. Include the substantiated findings of fraud by the cabinet’s

   Office of Inspector General, if applicable; and

2. Advise the provider:

   a. That payments are being withheld in accordance with sub-

   b. That a provider’s last known mailing address by:

   1. Certified mail, return receipt requested; or
   2. Personal service delivery.

   (b) (1) Advise the provider:

   1. Include the substantiated findings of fraud by the cabinet’s

      Office of Inspector General, if applicable; and

   2. Advise the provider:

      a. That payments are being withheld in accordance with sub-

   (2) The cabinet shall not withhold payments if the

   provider’s last known mailing address by:

   1. Certified mail, return receipt requested; or
   2. Personal service delivery.

   (b) The notice shall:

   1. Include the substantiated findings of fraud by the cabinet’s

      Office of Inspector General, if applicable; and

   2. Advise the provider:

      a. That payments are being withheld in accordance with sub-

   (3) The cabinet shall not withhold payments if the

   provider’s last known mailing address by:

   1. Certified mail, return receipt requested; or
   2. Personal service delivery.

   (b) The notice shall:

   1. Include the substantiated findings of fraud by the cabinet’s

      Office of Inspector General, if applicable; and

   2. Advise the provider:

      a. That payments are being withheld in accordance with sub-

   (4) The cabinet shall not withhold payments if the

   provider’s last known mailing address by:

   1. Certified mail, return receipt requested; or
   2. Personal service delivery.

   (b) The notice shall:

   1. Include the substantiated findings of fraud by the cabinet’s

      Office of Inspector General, if applicable; and

   2. Advise the provider:

      a. That payments are being withheld in accordance with sub-
section (1) of this section:
  b. The date upon which the withholding will begin;
  c. That withholding shall be for a temporary period; and
  d. The circumstances under which withholding shall be discontinued.

(4) The withholding of CCAP payments under subsection (1) of this section shall:
  (a) Be temporary in nature; and
  (b) Not continue after:
    1.a. Legal proceedings related to the provider's finding of fraud or regulatory violation are:
      (i) Final; and
      (ii) Not subject to further appeal; and
    b. Court-ordered, deferred prosecution, or plea-bargained restitution has been paid; or
    2. The matter has been resolved between the cabinet and the provider through the administrative hearing process in accordance with Section 19 of this administrative regulation.

Section 18. Informal Dispute Resolution and Appeals. (1) An applicant for CCAP or a parent of a child receiving CCAP:
(a) May seek an informal dispute resolution if the applicant or parent is dissatisfied with an action by the cabinet or its designee concerning a denial, reduction, or termination of CCAP benefits;
(b) Shall request an informal dispute resolution with the cabinet or its designee within ten (10) days of the:
   1. Notice of denial for CCAP in accordance with Section 2(5) of this administrative regulation; or
   2. Date of the adverse action for which notice is provided in accordance with Section 2(6) of this administrative regulation; and
(c) Who is dissatisfied with the decision of the informal dispute resolution, may submit an administrative hearing request:
   1. In accordance with Section 19(18) of this administrative regulation; and
   2. Within thirty (30) calendar days of the date of the decision made by the cabinet or its designee in accordance with subsection (3) of this section.

(2) If the child's parent provides notice within ten (10) calendar days from the date of adverse action in accordance with 45 C.F.R. 205.10(a)(6), a child receiving CCAP may continue to receive CCAP during the informal dispute resolution or administrative hearing process pending the outcome of the informal dispute resolution or the administrative hearing.

(3) If an informal dispute resolution or administrative hearing process upholds the denial, reduction, or termination of CCAP benefits, the child's parent who continued to receive CCAP benefits during the informal dispute resolution or administrative hearing process shall repay the CCAP back to the effective date of the denial, reduction, or termination.

(3) Upon receipt of a request for the informal dispute resolution, the cabinet or its designee shall:
  (a) Review the request; and
  (b) Render a written decision on the issue raised within ten (10) days, unless:
   1. The commissioner or designee grants an extension to the timeframe specified in this paragraph due to extenuating circumstances that prolong the review of the request; and
   2. Notice of the extension is provided to the applicant or parent who made the request for informal dispute resolution.

(4) An applicant for CCAP or a parent of a child receiving CCAP may request an administrative hearing in accordance with Section 19(18) of this administrative regulation at any time during the informal dispute resolution process established in this section.

Section 19(18). Administrative Hearings. An administrative hearing may be requested in accordance with:
(1) 922 KAR 1:320; or
(2) 922 KAR 2:020.

Section 20. Records. Records of CCAP shall be maintained and disclosed in accordance with:
(1) KRS 194A.060;
(2) 45 C.F.R. 98.90(e); and
(3) 45 C.F.R. 205.50(a)(1)(i).

Section 21(14). Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "DCC-90, Application for Subsidized Child Care Assistance", edition 11/09;
(b) "DCC-91, Request to Pending for Child Care Assistance", edition 11/09;
(c) [incorporation by reference to "DCC-91, Client Rights and Responsibilities Sheet", edition 1/13];
(d) "DCC-94, Child Care Service Agreement and Certificate", edition 11/09;
(e) "DCC-94B, Licensed or Certified Provider Information Form", edition 4/13;[4409];
(f) "DCC-94E, Child Care Daily Attendance Records", edition 04/13;
(g) "DCC-97, Provider Billing Form", edition 04/13;[4409];
(h) "DCC-105, Child Care Assistance Program Notice of Action", edition 11/09; and
(i) [incorporation by reference to "DCC-300, Kentucky Child Care Maximum Payment Rates Chart", edition 11/09.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Cannabis Based Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Teresa C. James, Commissioner
Audrey Tayse Haynes, Secretary
Approved by agency: March 19, 2013
Filed with LRC: March 27, 2013 at 9 a.m.

Public hearing and public comment period:
A public hearing on this administrative regulation shall, if requested, be held on May 21, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation until May 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
Contact person: Justin Dearinger
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation enables the Cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishes procedures for the implementation of the CCAP.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This adminis-
regulatory will assist in the administration of the CCAP in a manner which is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the definition of "child with a special need" consistent with federal funder instruction; clarifies verification, reporting, and cooperation requirements for providers and applicants/recipients of CCAP; makes a child in foster care ineligible to receive CCAP due to the foster child's per diem, which includes care and support for the child; specifies work calculations for an applicant or a responsible adult for a child who is self-employed; adjusts the income eligibility criteria congruent with the announcement made by the cabinet in late January 2013; adds to criteria for non-payment, including noncooperation or mismatched attendance and billing forms; adds criteria for withholding payment to include a finding of fraud or the provider's pending denial, suspension, or revocation; includes applicable confidentiality provisions per state and federal laws; and makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure CCAP continues to serve needs of the children and families. Initially: There will be no new costs to the agency to implement this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in CCAP.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by administering child care funds as provided under federal law and regulation, existing federal and state appropriations, and state mandates; and in a manner that best considers the interest of clients to be served given contextual factors and programmatic budgetary constraints.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by ensuring CCAP programmatic costs are within the constraints of available state funding, additional fraud and abuse prevention and enforcement measures are in place in CCAP, benefit accuracy and program integrity are further supported in overarching policy and programmatic criteria; and CCAP’s responsibilities and requirements are further clarified.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: During State Fiscal Year 2012, CCAP served, on average, 44,000 children in 25,000 families per month. For State Fiscal Year 2013, the numbers for providers participating in CCAP are as follows: 1,675 licensed (Type I and Type II), 367 certified, and 770 registered. As a result of cost containment measures, including a freeze on one priority group’s intake and adjusting the income eligibility criteria for program participation, an average of 14,300 children per month in 8,700 families will be impacted. Revenue to approximately 2,400 providers will also be reduced.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will require providers to use a specified form to record a child’s sign-in (i.e., attendance), though the requirement for a sign-in is not new and has been in existence for numerous years. The specified form will support consistency across providers and facilitate quality assurance. Providers and recipients participating in CCAP will also be required to cooperate with cabinet reviews and provide verification or record upon request. Recipients in CCAP will be required to adhere to minimum wage laws in reporting self-employment and to report providers whom they suspect are out of compliance with requirements for documenting a child’s attendance as a means to identify potential fraud and abuse. Other new regulatory provisions are meant to deter fraud, abuse, and repeat and/or significant deficiencies on the part of recipients or providers within CCAP. The new provisions also assure the cabinet has appropriate means to respond in CCAP.

(b) The necessity of the amendment or regulation, how much will it cost each of the entities identified in question (3): This administrative regulation does not create direct costs to CCAP applicants, recipients, or providers. However, through cost containment measures included within this administrative regulation, a portion of current recipient households will no longer be eligible for their children to be served through CCAP. Those household will have to find other child care resources. Providers will also experience a reduction in the number of children whose care is supported through CCAP.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will allow CCAP to continue operating within existing resources and with greater program integrity. The amendment will assist efforts to avoid more dire impacts to the regulated entities, such as program shutdown.

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

(a) Initially: There will be no new costs to the agency to implement this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in CCAP.

(b) On a continuing basis: There will be no new costs to the agency to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administrative body implements this administrative regulation:

(a) How the amendment will change this existing administrative regulation or amendment: The amendment to this existing administrative regulation or amendment, provide a brief summary of:

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619, 45 C.F.R. 98

2. State compliance standards. KRS 194A.050, 199.892, 199.8994


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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.
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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.892, 199.8994


(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 Child Care Assistance Program (CCAP) has been operational for a number of years. It does not produce any revenue for the state. This administrative regulation will not generate any new revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no new costs to the agency to implement this administrative regulation for the first year. Without the amendment, an increase in funding would be required to sustain current and new enrollment in CCAP.

How much will it cost to administer this program for subsequent years? There will be no new costs to the agency to implement this administrative regulation for subsequent years. Without the amendment, an increase in funding would be required to sustain current and new enrollment in CCAP.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Child Care

(Amendment)

922 KAR 2:180. Requirements for registered child care providers in the Child Care Assistance Program.


STATUTORY AUTHORITY: KRS 194A.050(1), 199.8994(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199.8994(6) requires the cabinet to promulgate administrative regulations to establish minimum health and safety standards, limitations on the maximum number of children in care, training requirements for a child care provider that receives a child care subsidy administered by the cabinet, and criteria for the denial of subsidies if criminal records indicate convictions that impact the safety and security of children in care. This administrative regulation establishes requirements for providers to participate in the Child Care Assistance Program and the application procedures.

Section 1. Definitions. (1) “Address check” means a cabinet search of the Sex Offender Registry to determine if a person’s residence is a known address of a registered sex offender.

(2) “Cabinet” is defined by KRS 199.011(2).

(3) “Child” is defined by KRS 199.011(4).

(4) “Closed” means the provider is no longer a registered program provider.

(5) “Conditional Approval” means time-limited approval while completing required training.

(6) “Criminal offense” means an act punishable by incarceration in a correctional facility for one year or more.

(7) “Corporal physical discipline” is defined by KRS 199.896(18).

(8) “Denied” means the application for program registration is not approved and the applicant will be penalized.

(9) “Developmentally appropriate” means suitable for the specific age range and abilities of a child.

(10) “Health professional” means a person actively licensed in Kentucky as a:

(a) Physician;

(b) Physician’s assistant;

(c) Advanced registered nurse practitioner; or

(d) Registered nurse as defined in KRS 314.011(5) under the supervision of a physician.

(11) “Related” means having one (1) of the following relationships with the registered provider:

(a) Child;

(b) Grandchild;

(c) Niece;

(d) Nephew;

(e) Sibling;

(f) Step-child;

(g) Child in legal custody of the provider or

(h) Child living with the provider acting in loco parentis.

(12) “Pediatric abusive head trauma” is defined in KRS 620.020(8).

(13) “Revised” means the provider is no longer a registered program provider and the provider will be penalized.

(14) “Sex Offender Registry” means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(15) “Withdrown” means the application for program registration is removed from consideration without a penalty.

Section 2. Application Rights and Requirements for Child Care Provider Registration. (1) An individual shall notify the cabinet or its designee of the individual’s intent to apply for child care provider registration:

(a) Directly by:

1. Telephone; or

2. Written statement; or

(b) Indirectly by being designated as the choice for providing unregulated child care by an applicant for benefits under the Child Care Assistance Program (CCAP) in accordance with 922 KAR 2:160.

(2) An individual may apply or reapply for child care provider registration on the same day that the notice of intent to apply in accordance with subsection (1) of this section is made with the cabinet or its designee.

(3) An individual who intends and requests to apply for registration as a child care provider shall not be required to appear in person to complete an application and supporting documentation in accordance with subsections (4) and (5) of this section, but may receive all necessary forms and instructions by mail.

(4) To apply for child care provider registration in CCAP, an individual shall, within thirty (30) calendar days of giving notice of intent to apply pursuant to subsection (1) of this section:

(a) Submit:

1.a. A completed DCC-95, Application for Registered Child Care Provider in Provider’s Home; or

b. A completed DCC-96, Application for Registered Child Care Provider in Child’s Home;

2. Written verification from a health professional that the individual is:

a. Free of active tuberculosis; and
b. In good general health and able to care for children;
3. A completed DCC-94A, Registered Child Care Provider Information Form;
4. A completed IRS W-9, Request for Taxpayer Identification Number and Certification; and
5. A written evacuation plan in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to a child in care that includes:
   a. A designated relocation site;
   b. Evacuation routes;
   c. Measures for notifying parents of the relocation site and ensuring a child’s return to the child’s parent;
   d. Actions to address the needs of an individual child to include a child with a special need. The cabinet shall post an online template of an evacuation plan that fulfills requirements of this administrative regulation for an individual’s free and optional use;
   (b) Show proof by photo identification or birth certificate that the individual is eighteen (18) years or older;
   (c) Show verification of Social Security number; and
   (d) Meet the requirements of KRS 17.165(5), as shown by providing:
      1. A criminal records check conducted by the Kentucky State Police or the Administrative Office of the Courts within the previous twelve (12) months on the individual;
      2. A child abuse and neglect check using the central registry in accordance with 922 KAR 1:470 on the individual;
      3. A criminal records check for any previous state of residence completed once if:
         a. The applicant resided outside the state of Kentucky in the last five (5) years; and
         b. No criminal records check has been completed for the applicant’s previous state of residence and
      (5)(a) An applicant may receive conditional approval in accordance with Section 4(2) of this administrative regulation.
      (b) Within ninety (90) calendar days of giving notice of intent to apply for registration as a child care provider in CCAP pursuant to subsection (1) of this section, the applicant shall provide verification that the applicant has obtained six (6) or three (3) hours of training approved by the cabinet or its designee, in the areas of:
         a. Health and safety, and sanitation;
         b. Recognition of child abuse and neglect, which may include cabinet-approved pediatric abusive head trauma training in accordance with KRS 199.896(16); and
         3. Developmentally appropriate child care practices.
      (c) An applicant who fails to complete training in accordance with paragraph (b) of this subsection shall be referred to cabinet action in accordance with Section 4(4) of this administrative regulation.
Section 3. Additional Requirements for Registered Providers in Provider’s Home. (1) If a registered child care provider provides child care services in the provider’s home:
   (a) The provider shall:
      1. Submit written verification from a health professional that each member of the provider’s household age eighteen (18) or older is free from tuberculosis;
      2. Provide written verification that each member of the provider’s household who is age eighteen (18) or older meets the requirements in KRS 17.165 by the member’s provision of the following to the cabinet or its designee:
         a. Criminal records check conducted by the Kentucky State Police or the Administrative Office of the Courts;
         b. Criminal records check for any previous state of residence completed once if:
            (i) The household member resided outside the state of Kentucky in the last five (5) years; and
            (ii) No criminal records check has been completed for the household member’s previous state of residence; and
         c. Child abuse and neglect check using the central registry in accordance with 922 KAR 1:470.
      (b) An address check of the Sex Offender Registry and supporting documentation shall confirm that no individual residing in the provider’s household is a registered sex offender.
   (2) A registered child care provider shall certify that the provider’s home and each play area used for child care are safe and have adequate:
      (a) Heat;
      (b) Light; and
      (c) Ventilation.
   (3) Each floor of a registered child care provider’s home used for child care shall have at least one (1):
      (a) Unblocked exit to the outside;
      (b) Smoke detector;
      (c) Fire extinguisher; and
      (d) Carbon monoxide detector if the home: 1. Uses fuel burning appliances; or
         2. Has an attached garage.
   (4) A registered child care provider’s home and areas accessible to children in care shall be free of hazards, and the following items shall be inaccessible to a child in care:
      (a) Cleaning supplies, poisons, paints, and insecticides;
      (b) Knives, scissors, and other sharp objects;
      (c) Power tools, lawn mowers, hand tools, nails, and other like equipment;
      (d) Matches, cigarettes, lighters, combustibles, and flammable liquids;
      (e) Alcoholic beverages; and
      (f) Medications.
   (5) In accordance with KRS 527.070(1), firearms and ammunition shall be stored and locked in locations separate from each other and inaccessible to a child in care.
   (6) Electrical outlets not in use shall be covered.
   (7) An electric fan, floor furnace, freestanding heater, wood burning stove, or fireplace, shall:
      (a) Be out of the reach of a child; or
      (b) Have a safety guard to protect a child from injury.
   (8) A registered child care provider shall use protective gates to block all stairways if a child in care is under age three (3).
   (9) Stairs and steps shall:
      (a) Be in good repair; and
      (b) Include railing of comparable length to the stairs or steps.
   (10) A registered child care provider’s home shall have:
      (a) At least one (1) working telephone with a residential line or an active mobile service; and
      (b) An accessible list of emergency telephone numbers, including the numbers for the:
         1. Police;
         2. Fire station;
         3. Emergency medical care;
         4. Poison control center; and
         5. Reporting of child abuse and neglect.
   (11) A registered child care provider’s home shall have a:
      (a) Refrigerator in working order that maintains a temperature of forty-five (45) degrees Fahrenheit or below; and
      (b) Freezer that maintains a temperature of zero degrees Fahrenheit or below;
   (12) A registered child care provider shall maintain first aid supplies that include:
      (a) Liquid soap;
      (b) Band aids;
      (c) Sterile gauze; and
      (d) Adhesive tape.
   (13) A registered child care provider shall wash hands with liquid soap and running water:
      (a) Before and after diapering a child;
      (b) Before and after food preparation;
      (c) Before feeding a child; and
      (d) At other times when necessary to prevent the spread of disease.
   (14) In accordance with KRS 199.896(18), a registered child care provider shall not use corporal physical discipline on a child entrusted to the provider’s care.
   (15) Pets or livestock shall be vaccinated and not left alone with a child.
   (16) If transportation is provided by a registered child care provider, the provider shall:
(a) Have written permission from a parent or guardian to transport the child;
(b) Have a vehicle equipped with seat belts; and
(c) Comply with KRS 189.125 regarding child restraint and seating.

Section 4. Actions on Applications. (1) The cabinet or its designee shall approve, deny, or withdraw an individual’s application for registration within thirty (30) calendar days from the individual’s notice of intent to apply made in accordance with Section 2(1) of this administrative regulation.
(2) The cabinet or its designee may conditionally approve an individual who made a notice and application pursuant to Section 2(1) and (4) of this administrative regulation, to provide child care services to a child for ninety (90) calendar days, if the applicant meets the requirements of:
(a) Sections 2(4), 5, and 6 of this administrative regulation; and
(b) Section 3 of this administrative regulation, if child care is given in the home of the provider.
(3) The cabinet or its designee shall approve an individual who made a notice and application pursuant to Section 2(1) and (4) of this administrative regulation as a registered child care provider for one (1) year, if the applicant meets the requirements specified in:
(a) Sections 2(4) through (5), 5, and 6 of this administrative regulation; and
(b) Section 3 of this administrative regulation if child care is given in the home of the provider.
(4) If a conditionally approved provider, as specified in subsection (2) of this section, has not completed the training requirement within the ninety (90) day timeframe pursuant to Section 2(5) of this administrative regulation, the cabinet or its designee shall:
(a) Not approve an applicant for payment pursuant to 922 KAR 2:160 past the ninety (90) days of conditional approval; and
(b) Deny another:
1. Period of conditional approval for the same applicant; or
2. Application from the same applicant unless training has been completed in accordance with Section 2(5) of this administrative regulation.
(5) The cabinet may confirm training verification provided by an applicant, conditionally approved applicant, or registered child care provider through the cabinet-approved training database maintained in accordance with 922 KAR 2:240.

Section 5. General Requirements for Registered Child Care Providers. (1) A registered child care provider shall not:
(a) Live in the same residence as the child in care;
(b) Hold a license to provide child care in accordance with 922 KAR 2:200;
(c) Hold certification to provide child care in accordance with 922 KAR 2:100; or
(d) Provide care for more than three (3) children unrelated to the provider in accordance with KRS 199.8982(1)(a).
(2) A registered child care provider shall not provide other home based services, including services, such as:
(a) A personal care home in accordance with 902 KAR 20:036;
(b) A family care home in accordance with 902 KAR 20:041;
(c) An adult day care in accordance with 910 KAR 1:160; or
(d) Supports for community living in accordance with 907 KAR 1:145.
(3) A registered child care provider shall:
(a) Comply with the:
1. Provisions of KRS 199.898; and
2. Provider requirements in accordance with 922 KAR 2:160, Section 13;
(b) Allow the cabinet, the cabinet’s designee, another agency with regulatory authority, and a parent or guardian to enter the premises where a child receives care during the hours that the child care services are provided; and
(c) Report within ten (10) calendar days any change to the provider’s:
1. Address;
2. Name;
3. Telephone number;
4. Household members; or
5. Location where the child care is provided.
(4) A registered child care provider who gives care in the provider’s home shall comply with the requirements of Section 3(1) of this administrative regulation within ten (10) calendar days for a:
(a) New household member who is eighteen (18) years or older; or
(b) Household member who turns age eighteen (18).
(5)(a) A registered child care provider shall maintain an attendance report sheet in which the daily arrival and departure times of each child are recorded in accordance with 922 KAR 2:160, Section 13.
(b) A registered child care provider shall retain attendance report sheets completed in accordance with paragraph (a) of this subsection for five (5) years.
(6)(a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child’s health professional.
(b) A child may include a person eighteen (18) years of age if the provider has a special need for which care is required.
(7) While providing child care services, a registered provider and another person in the provider’s home shall:
(a) Be free of the influence of alcohol or a controlled substance, except for use of a controlled substance as prescribed by a physician; and
(b) Prohibit smoking in the presence of a child in care.
(8) A registered child care provider shall report to the cabinet or designee:
(a) Within twenty-four (24) hours from the time of discovery:
1. A communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;
2. An accident or injury to a child that requires medical care;
3. An incident that results in legal action by or against the registered child care provider that:
   a. Affects:
      (i) [a] A child in care;
      (ii) [b] The registered child care provider; or
   b. Includes the provider’s discontinuation or disqualification from a governmental assistance program due to fraud or abuse of that program;
4. An incident involving a fire or other emergency, including a vehicular accident when the provider is transporting a child receiving child care services; or
5. A report of child abuse or neglect that:
   a. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and
   b. Names:
      (i) The registered child care provider as the alleged perpetrator;
      (ii) A member of the registered child care provider’s household as alleged perpetrator if child care services are provided in the provider’s home;
      (iii) [c] An incident of child abuse or neglect pursuant to KRS 620.030;
6. The death of a child in care within one (1) hour; or
7. The provider’s temporary or permanent closure as soon as practicable, which shall also be given to the parent of a child in care.

Section 6. Child Ratios. During hours of operation, a registered child care provider shall not care for more than:
(1) Three (3) children receiving CCAP per day;
(2) Six (6) children receiving CCAP per day, if those children are:
(a) A part of a sibling group; and
(b) Related to the provider; or
(3) A total of eight (8) children inclusive of the provider’s own children.

Section 7. Renewal of Registration. (1) The cabinet or its designee shall send a reminder notice to a registered child care provider at least forty-five (45) calendar days prior to the expiration
date of the provider’s registration issued in accordance with Section 4(3) of this administrative regulation.
(2) To renew child care provider registration prior to the expiration of the registration, a registered child care provider shall:
(a) Meet the requirements specified in Sections 2(4), 5, and 6 of this administrative regulation;
(b) Complete, and provide verification of, three (3) hours of training in early care and education approved by the cabinet or its designee:
1. To include one and one-half (1 1/2) hours of pediatric abusive head trauma training;
2. Within first year of employment or operation as a child care provider; and
3. In each annual renewal, (1) of the following:
   a. Child growth and development;
   b. Learning environments and nutrition;
   c. Health, safety, and nutrition;
   d. Family and community partnerships;
   e. Child assessment;
   f. Professional development and professionalism; or
   g. Program management and evaluation;
   (c) Submit an updated version of the evacuation plan described in Section 2(4)(a)5 of this administrative regulation;
   (d) Retain a copy of the updated evacuation plan; and
   (e) Provide a copy of the updated evacuation plan to each parent of a child in care.
(3) In addition to the requirements of subsection (2) of this section, a registered provider who gives care in the provider’s home shall also meet the requirements of Section 3 of this administrative regulation.

Section 8. Negative Action for An Applicant or A Registered Child Care Provider. (1) If a registered child care provider or a member of the provider’s household is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:
(a) For the duration of the family-in-need-of-services assessment and investigation; and
(b) Pending completion of an administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.
(2) The cabinet or its designee shall send written notice of negative action to:
(a) An applicant for registration, if the application is:
1. Withdrawn; or
2. Denied; or
(b) A registered child care provider, if the provider’s registration is:
1. Closed; or
2. Revoked.
(3) The notice of negative action shall include the:
(a) Reason for the negative action; and
(b) Effective date.
(4) An application for registration shall be denied or a registered provider’s registration shall be revoked if:
(a) Written verification from a health professional confirms a diagnosis of tuberculosis;
(b) A background check pursuant to KRS 17.165(5) reveals:
1. Substantiated incident of child abuse or neglect in accordance with 922 KAR 1:470; or
2. Conviction of, or an Alford or guilty plea to, a:
   a. Violent crime; or
   b. Sex crime;
(c) A history of behavior exists that may impact the safety or security of a child in care including:
1. A conviction, an Alford plea, or a guilty plea related to the abuse or neglect of an adult;
2. A conviction for, or an Alford or guilty plea to, a drug-related felony unless five (5) years have elapsed since the person was fully discharged from imprisonment, probation, or parole;
3. A confirmation through an address check and supporting documentation that a:
   a. Provider is a registered sex offender; or
   b. Member of the provider’s household is a registered sex offender, if the provider provides child care services in the provider’s home; or
   4. Other behavior or condition indicating inability to provide reliable care to a child;
(d) The provider uses or allows the use of any form of corporal physical discipline on a child entrusted to the provider’s care; [as amended by 922 KAR 2:020(a)];
(e) The cabinet has probable cause to believe there is an immediate threat to the health, safety, or welfare of a child;
(f) The applicant or provider has been discontinued or disqualified from participation in:
1. CCAP, including an intentional program violation in accordance with 922 KAR 2:020; or
2. Another governmental assistance program due to fraud or abuse of that program;
(g) The applicant or provider knowingly misrepresents or submit false information on a form required by the cabinet; or
(h) During the hours that child care services are provided, the provider refuses access by:
1. A parent of a child in care, the cabinet’s designee, or another agency with regulatory authority to:
   a. A child in care; or
   b. The location of the child care; or
   c. The cabinet, the cabinet’s designee, or another agency with regulatory authority to the provider’s records.
(5) If an applicant has had a previous ownership interest in a child care provider which had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or a pending adverse action in accordance with or registered child care provider whose application has been denied or whose registration has been revoked by the cabinet or its designee as a result of a negative action stemming from the requirements specified in 922 KAR 2:090, 2:100, 2:110, 2:120, or this administrative regulation, the cabinet shall grant the applicant registration if:
(a) A seven (7) year period has expired from the:
1. Date of the prior denial, suspension, or revocation;
2. Date the certification, license, registration, or permit was voluntarily relinquished as a result of an investigation or a pending adverse action;
3. Last day of legal remedies being exhausted; or
4. Date of the final order from an administrative hearing; and
(b) The applicant shall be eligible to apply, operate, or reapply for registration with CCAP for a penalty period of one (1) year from the date of denial, suspension, or revocation. After completion of the one (1) year penalty period from the date of prior denial, suspension, or revocation, an individual may be approved if the individual:
1. Completed, and provides verification of, an additional twelve (12) hours of training approved by the cabinet or its designee in early care and education;
2. The applicant has not had an application, certificate, license, or registration, or permit to operate as a child care provider denied, revoked, or voluntarily relinquished for:
1. Conviction of, or an Alford plea to, a sex crime or violent crime in accordance with KRS 17.165;
2. Abuse or neglect of a child according to a child abuse and neglect check of the central registry in accordance with 922 KAR 1:470;
3. Placement on the Sex Offender Registry;
4. Conviction of, or an Alford plea to, a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole; or
5. Discontinuance or disqualification from participation in:
   a. CCAP, including an intentional program violation in accordance with 922 KAR 2:020; or
   b. Another governmental assistance program due to fraud or abuse of that program as specified in KRS 17.165; and
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(d) Completes any disqualification period imposed from a previous denial, suspension, or revocation of providing child care services.

(6) An application may be withdrawn:
(a) If all required documentation for the application process is not received within thirty (30) calendar days in accordance with Section 2(4) of this administrative regulation; or
(b) At the request of the applicant.

(7) A registered child care provider’s status may be closed:
(a) At the request of the provider; or
(b) If the provider fails to comply with requirements in Section 3, 5, 6, or 7(2).

(8) The voluntary withdrawal, closure, or relinquishment of a provider’s registration shall not preclude the cabinet’s pursuit of adverse action.

Section 9. Appeal of Negative Action. If the cabinet or its designee denies or withdraws an application for registration, revokes a provider’s registration, or closes a provider, the applicant or provider may request an appeal in accordance with 922 KAR 1:320.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) “DCC-94A Registered Child Care Provider Information Form”, edition 7/12;
(b) “DCC-95 Application for Registered Child Care Provider in Provider’s Home”, edition 7/12;
(c) “DCC-96, Application for Registered Child Care Provider in Child’s Home”, edition 7/12; and
(d) “IRS W-9, Request for Taxpayer Identification Number and Certification”, edition 10/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY March 19, 2013
FILED WITH LRC: March 27, 2013 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until May 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, 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: Justin Dearinger
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for child care providers to participate in the Child Care Assistance Program (CCAP).
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for child care providers to participate in CCAP.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of requirements for a child care provider to participate in CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a child-care provider to participate in CCAP.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies reporting requirements and adds conditions that would subject an applicant or a registered provider to denial or revocation, including an intentional program violation in CCAP, fraud or abuse in another government program, misrepresentation or falsification of a form required by the cabinet; or refusing access to the cabinet, the cabinet designee, another agency with regulatory authority, or a parent of a child in care during operating hours. The amendment increases a disqualification period for child care provider registration, from one to seven years, due to voluntarily relinquishment of license, certification, or registration as a result of an investigation or pending adverse action or prior denial, suspension, or revocation. The amendment increases the initial, orientation training hours for a registered provider from three to six hours. Both increases provide consistency with the disqualification for other child care provider types and the initial, orientation training currently offered to all other child care providers. The amendment makes technical corrections in accordance with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to foster provider integrity in CCAP and to ensure the cabinet is capable of appropriately responding to deficiently operating providers. The amendment also makes initial, orientation training for child care providers the same.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes through its update and clarification of the requirements for a child-care provider to participate in CCAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by preserving and enhancing the quality of standards for registered child care providers to participate in CCAP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicant and existing registered child care provid- ers will be impacted by this administrative regulation. As of December 31, 2012, there were 191 Kentucky registered child-care providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will require a registered provider to report a vehicular accident when the provider is transporting a child in care and a disqualification or discontinuance from a governmental assistance program due to fraud and abuse. The amendment also aligns initial, orientation training requirements for registered providers with other child care provider types. Other provisions within this administrative regulation should not impact the vast majority of providers, because they either are clarifying in nature or specify powers of the cabinet to take adverse action against a provider that refuses access, has been dishonest to or uncooperative towards the cabinet, or has committed fraud or abuse.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will entail no or minimal new costs to new applicants or existing registered providers. Registered providers will be required to obtain more initial, orientation training hours; however, this training is available
online or in person for costs consistent with or less than costs the registered providers are paying now for the initial, orientation training.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Applicants and registered child-care-providers and the children in their care will benefit from training consistent with other child care provider types and greater provider integrity.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.
(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort funds for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 601-619, 9858, 42 U.S.C. 7181-7184
2. State compliance standards. KRS 194A.050(1), 199.8994(6)
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

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 Community Based Services is 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. 45 C.F.R. 98, 601-619, 9858, 42 U.S.C. 7181-7184, KRS 194A.050(1), 199.8994(6)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will generate no revenue in the first year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will generate no revenue in the subsequent years.
(c) How much will it cost to administer this program for the first year? There will be no additional costs to administer this program in the first year.
(d) How much will it cost to administer this program for subsequent years? There are no additional costs to administer this program 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:
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Provider Operations
(New Administrative Regulation)


RELATES TO: KRS 205.520, 205.560
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the policies and requirements regarding Medicaid program supplemental payments for certain primary care services and vaccines in accordance with Title V, Subtitle F, Section 5501 of the Affordable Care Act (42 U.S.C. 1395i and 42 U.S.C. 1395w-4(c)(2)(B)), 42 C.F.R. 447.405, 42 C.F.R. 447.410, and 42 C.F.R. 447.415.

Section 1. Definitions. (1) "Advanced practice registered nurse" is defined by KRS 314.0117.
(2) "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.
(3) "Department" means the Department for Medicaid Services or its designee.
(4) "Eligible evaluation and management service" means a service:
(a) Which qualifies for supplemental reimbursement in accordance with Section 3(1)(a), (b), and (c)(1). of this administrative regulation; and
(b) For which there is a corresponding paid claim.
(5) "Eligible provider" means a provider who qualifies for supplemental reimbursement in accordance with Section 2 of this administrative regulation.
(6) "Eligible vaccine" means a vaccine:
(a) Which qualifies for supplemental reimbursement in accordance with Section 3(1)(a), (b), and (c)(2) of this administrative regulation; and
(b) For which there is a corresponding paid claim.
(7) "Federal financial participation" is defined by 42 C.F.R. 400.203.
(8) "Managed care organization" or "MCO" 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.
(9) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.
(10) "Medicaid program" means Kentucky’s program of services and benefits covered by the Department for Medicaid Services or managed care organizations.
(11) "Personal supervision" means being professionally responsible for the services rendered by an advanced practice registered nurse or a physician assistant.
(12) "Physician" is defined by KRS 311.550(12).
(13) "Physician assistant" is defined by KRS 311.840(3).
(14) "Provider" is defined by KRS 205.8451(7).
(15) "Recipient" is defined in KRS 205.8451(9).

Section 2. Conditions to Qualify for Supplemental Reimbursement for Primary Care Services and Vaccines. (1) To qualify for a supplemental payment, a provider shall:

(a) Be currently enrolled with the Medicaid program in accordance with 907 KAR 1:672;
(b)1. Be currently participating in the Medicaid program in accordance with 907 KAR 1:671; and
2. Comply with 907 KAR 1:671;
(c) Be a primary care physician practicing in one (1) of the following areas:
1. Family medicine;
2. General internal medicine; or
3. Pediatric medicine; and
(d) Attest to being a primary care physician and to one (1) of the following:
1. Currently having board certification as a primary care physician by:
   a. American Board of Medical Specialties;
   b. American Board of Physician Specialties; or
   c. American Osteopathic Association;
2. Unless a newly eligible physician or physician without a prior billing history, having provided the following evaluation and management services or vaccines in an amount that equals at least sixty (60) percent of Medicaid codes billed to the Medicaid program during the most recently completed calendar year:
   a. Evaluation and management CPT codes:
      (i) Within the range of 99201 through 99499; and
      (ii) That are covered by the department in accordance with 907 KAR 3:010 or;
   b. Vaccine codes which are covered by the department in accordance with 907 KAR 1:680 (regardless of the age of the recipient) or 907 KAR 3:010;
3. If a newly eligible physician, having provided the services or vaccines referenced in subparagraph 2a or 2b of this paragraph in an amount that equals at least sixty (60) percent of Medicaid codes billed to the Medicaid program during the prior month; or
4. Being an eligible primary care physician:
   a. Without a billing history; and
   b. For whom sixty (60) percent of total Medicaid billings shall be of codes referenced in subparagraph 2a or 2b of this paragraph.
(2) Services or vaccines which meet the qualifying criteria in Section 3 of this administrative regulation and which are provided by a physician assistant or advanced practice registered nurse working under the personal supervision of a qualifying primary care physician shall qualify for the supplemental reimbursement.

Section 3. Supplemental Reimbursement for Primary Care Services and Vaccines. (1) Supplemental reimbursement shall be made, as established in subsections (2) and (3) of this section, for providing a service or vaccine:
(a) Provided on a day or on or after January 1, 2013 until midnight December 31, 2014:
1. To a recipient; and
2. By a:
   a. Provider who qualifies for the supplemental reimbursement pursuant to Section 2 of this administrative regulation; or
   b. An APRN or a physician assistant working under the personal supervision of a primary care physician who qualifies for the supplemental reimbursement pursuant to Section 2 of this administrative regulation;
(b) That is medically necessary for the given recipient; and
(c) That is:
   a. An evaluation and management service which:
      (i) Corresponds to a CPT code within the range of 99201 through 99499; and
      (ii) Is currently covered by the department in accordance with 907 KAR 3:010; or
   b. Billed using a vaccine code which is covered by the department in accordance with 907 KAR 1:680 (regardless of the age of the recipient) or 907 KAR 3:010.
(2)(a) For a given quarter of paid claims associated with eligible evaluation and management services provided by an eligible provider to recipients who were not enrolled in a managed care organization and for which:
1. DMS had an established rate as of July 1, 2009, the department shall make a lump sum payment that represents the difference between:
   a. The DMS established rates as of July 1, 2009 for the claims in aggregate for the quarter; and
   b. What the provider would have received for the same paid claims in aggregate for the same quarter if the provider's reimbursement for the claims had been the amount established in 42 C.F.R. 447.405(a); or
2. DMS did not have an established rate as of July 1, 2009, but established a rate prior to January 1, 2013, the department shall make a lump sum payment that represents the difference between:
   a. The DMS established rates as of December 31, 2012 for the claims in aggregate for the quarter; and
   b. What the provider would have received for the same paid claims in aggregate for the same quarter if the provider's reimbursement for the claims had been the amount established in 42 C.F.R. 447.405(a).

3. For a given quarter of paid claims associated with eligible vaccines provided by an eligible provider to recipients who were not enrolled in a managed care organization and for which:
   1. DMS had an established rate as of July 1, 2009, the department shall make a lump sum payment that represents the difference between:
      a. The DMS established rates as of July 1, 2009 for the claims in aggregate for the quarter; and
      b. What the provider would have received for the same paid claims in aggregate for the same quarter if the provider's reimbursement for the claims had been the amount established in 42 C.F.R. 447.405(b); or
   2. DMS did not have an established rate as of July 1, 2009, but established a rate prior to January 1, 2013, the department shall make a lump sum payment that represents the difference between:
      a. The DMS established rates as of December 31, 2012 for the claims in aggregate for the quarter; and
      b. What the provider would have received for the same paid claims in aggregate for the same quarter if the provider's reimbursement for the claims had been the amount established in 42 C.F.R. 447.405(b).


(2) Any policy or requirement regarding payments for physician or primary care services or vaccines established in any other administrative regulation within Title 907 of the Kentucky Administrative Regulations shall not apply to the supplemental payments referenced in subsection (1) of this section.

Section 5. Auditing. (1) A provider shall be subject to departmental review or audit.

(2) The department shall be authorized to take action regarding fraud or abuse in accordance with:
   (a) 907 KAR 1:671; or
   (b) KRS 205.8453.

Section 6. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies or does not provide federal financial participation for the policy; or
(2) Disapproves the policy.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: April 2, 2013
FILED WITH LRC: April 3, 2013 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. In the absence of requests for a hearing, thePolicy shall notify this agency in writing by May 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business May 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-E, 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 policies and requirements regarding supplemental Medicaid program payments for certain primary care evaluation and management services and vaccines. To qualify for the supplemental payments, providers must attest to being board certified as primary care physicians, having provided a certain volume [at least sixty (60) percent of Medicaid codes billed to the department] of evaluation and management services or vaccines to Medicaid recipients during the most recently completed calendar year, or for newly eligible physicians attest to the sixty (60) percent threshold for services provided in the prior month, or (for those with no prior Medicaid billing history) attest to providing (in the future) a volume of evaluation and management services or vaccines that will equal at least sixty (60) percent of their Medicaid billing.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with a federal mandate.
(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 complying with a Medicaid program federal mandate.
(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 complying with a Medicaid program federal mandate.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation will affect Medicaid primary care physicians who qualify for the supplemental payments. DMS has identified 3,363 primary care physicians who meet the criteria to qualify for the supplemental reimbursement.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will have to attest to meeting the qualifications for the supplemental payments. The Department for Medicaid Services (DMS) has created an option for providers to submit the attestation online.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Providers would experience administrative costs associated with the attestation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Providers who qualify will benefit by receiving supplemental reimbursement for providing the designated primary care services and vaccines during the enhancement period (January 1, 2013 through December 31, 2014).

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

(a) Initially: The Department for Medicaid Services (DMS) estimates that supplemental payments may cost $64.7 million (100 percent federal funds) for calendar year 2013.

(b) On a continuing basis: DMS estimates that supplemental payments may cost $64.7 million (100 percent federal funds) for calendar year 2014.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are entirely federal funds authorized under the Social Security Act, Title XIX.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. The federal mandate regarding primary care services is for Medicaid programs to reimburse qualifying primary care physicians for qualifying primary care services based on the lesser of the Medicare Part B fee schedule rate or the primary care physician's actual billed charge for the services. The federal mandate regarding vaccine administration is for Medicaid programs to reimburse qualifying primary care physicians for the qualifying vaccine administration services at the lesser of the Medicare fee schedule rate or the regional maximum administration fee.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not 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. This amendment is authorized by 42 C.F.R. 447.405, 42 C.F.R. 447.410, 42 C.F.R. 447.415 and this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

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

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) estimates that supplemental payments may cost $64.7 million (100 percent federal funds) for calendar year 2013.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that supplemental payments may cost $64.7 million (100 percent federal funds) for calendar year 2014.

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: No additional expenditures are necessary to implement this amendment.
Call to Order and Roll Call
The April 2013 meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, April 9, 2013, at 1:00 p.m., in Room 154 of the Capitol Annex. Representative Johnny Bell, Co-chair, called the meeting to order, the roll call was taken. The minutes of the March 2013 meeting were approved.

Present were:
Members: Senators Joe Bowen, Sara Beth Gregory, Ernie Harris, and Perry B. Clark, and Representatives Johnny Bell, Robert Damron, Tommy Turner, and Jimmie Lee.

LRC Staff: Dave Nicholas, Donna Little, Emily Caudill, Sarah Amburgey, Emily Harkenrider, Karen Howard, Betsy Cupp, and Laura Napier.

Guests: Katie Stine, Alice Forg Kerr, Senators; Jim Gooch, Arnold Simpson, Representatives; Beau Barnes, Kentucky Teachers’ Retirement System; David Gordon, Mark Johnson, Kendy Parks, Melissa Russell, Department of Revenue; Mark Brengelman, Board of Physical Therapy; Ryan Halloran, Cheryl Turner, Board of Licensure for Massage Therapy; Shelli Deskins, Ryan Halloran, Applied Behavior Analysis Board; Misty Dugger Judy, Deborah Van Horn, Kentucky Historical Society; Ron Brooks, Margaret Everson, and Benjy Kimman, Kentucky Fish and Wildlife Resources; Bruce Scott, Randy Payne, Department for Environmental Protection; Amy Baker, Department of Corrections; LaDonna Koebel, LaShana Harris, Department of Juvenile Justice; Catherine Burgin, Ann D’Angelo, Rick Taylor, Transportation Cabinet; Susan Barkley, Kevin Brown, Amy Peabody, Department of Education; Dawn Bellis, Ann Ramser, Department of Housing, Buildings and Construction; Eric Friedlander, Dionna Mullins, Cabinet for Health and Family Services; Teri Blanton, Carey Henson, Jim Porter, Kentuckians for the Commonwealth; Lane Boudman, Robert Long, Baptist Life Commission; Saint Joseph East; Gary Moore, Boone County; and Steve Pendrey, Campbell County.

The Administrative Regulation Review Subcommittee met on Tuesday, April 9, 2013, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Kentucky Teachers’ Retirement System: General Rules
102 KAR 1:070. Application for retirement. Beau Barnes, deputy executive secretary and general counsel, represented the system.
A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; as required by KRS 13A.220; and (2) to amend Sections 1, 2, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1:320. Qualified domestic relations orders. 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 to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend the STATUTORY AUTHORITY paragraph and Sections 3, 5, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1:350. Full actuarial cost purchase. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph for consistency with formatting among administrative regulations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

Department of Revenue: Forms
103 KAR 3:010. General Administrative Forms Manual. David Gordon, executive director, property taxes; Mark Johnson, tax policy consultant, corporate taxes; and Kendy Parks, internal policy analyst, represented the department.

103 KAR 3:030. Property and Severance Forms Manual. A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to insert two (2) tax forms that were inadvertently omitted. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Physical Therapy: Board
201 KAR 22:020. Eligibility and credentialing procedure. Mark Brengelman, board counsel, represented the board.
A motion was made and seconded to approve the following amendment: to amend Section 7(5) to specify the type of information that is required. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 22:035. A credential holder's change of name, employment, or address. A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to clearly reflect the content of the administrative regulation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Massage Therapy: Board
201 KAR 42:020. Fees. Ryan Halloran, assistant attorney general, and Cheryl Turner, vice chair, represented the board.
A motion was made and seconded to approve the following amendments: to amend Section 5 and the material incorporated by reference to correct citations. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:035. Application process, exam, and curriculum requirements. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; (2) to amend Section 3. (a) for clarity; (b) to delete provisions that repeated the statute in violation of KRS 13A.120(2); and (c) to delete a provision that could have allowed additional examinations to be approved by the board outside the regulatory review process in violation of KRS 13A.130(1); and (3) to amend Section 5 and the material incorporated by reference to correct citations. Without objection, and with agreement of the agency, the amendments were approved.

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201 KAR 42:040. Renewal.
In response to a question by Senator Harris, Ms. Turner stated that this administrative regulation was amended to clarify that the ethics credits were a required part of the continuing education requirements.

201 KAR 42:070. Endorsement.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a typographical error; and (2) to amend Section 2 for clarity. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:080. Programs of massage therapy instruction.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to include an additional relevant citation; (2) to amend Sections 1, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend the material incorporated by reference to conform to the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Applied Behavior Analysis Licensing Board: Board
201 KAR 43:030. Fees. Drs. Shelli Deskins, psychologist and chair, and Ryan Halloran, assistant attorney general, represented the board.

201 KAR 43:060. Complaint and disciplinary process.

201 KAR 43:070. Supervisees.
A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 43:080. Renewals.
A motion was made and seconded to approve the following amendments: (1) to amend the material incorporated by reference to provide for licensure reinstatement; and (2) to amend Sections 1, 4, and 5 to correct form titles and an edition date. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Kentucky Historical Society: Society
300 KAR 5:010. Museum unclaimed property. Misty Dugger Judy, staff attorney, and Deborah Van Horn, registrar, represented the Kentucky Historical Society.

Department of Fish and Wildlife Resources: Fish
301 KAR 1:410. Taking of fish by nontraditional fishing methods. Ron Brooks, fisheries director; Margaret Everson, assistant attorney general; and Benji Kinman, deputy commissioner, represented the department.

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. Randy Payne, water quality branch, and Bruce Scott, commissioner, represented the division. Representative Jim Gooch, Jr. appeared as a legislative quest regarding this administrative regulation. Rusty Cress, Kentucky League of Cities and Kentucky Association of Manufacturers, and Chad Harpole, vice president, Kentucky Chamber of Commerce, appeared in support of this administrative regulation. Lane Boldman, Sierra Club; Cara Cooper, state organizer, Kentucky Student Environmental Coalition; Carey Henson, Kentuckians for the Commonwealth; Amelia Kirby, citizen; Jim Porter, Kentuckians for the Commonwealth; Tarence Ray, citizen; and Ted Withrow, citizen and member of Kentuckians for the Commonwealth, appeared in opposition to this administrative regulation.

In response to a question by Representative Scott, Mr. Scott stated that all concerns regarding public comments and adequate public consideration of the agency amendment to this administrative regulation had been addressed. The division issued public notice, received comments, conducted two (2) meetings with stakeholders, prepared an additional Statement of Consideration pursuant to comments received, amended the division’s technical document defending the proposed selenium limits, deferred this administrative regulation an additional month to provide more time for meetings, and discussed the issues with U.S. EPA. Mr. Scott stated that the division would not allow a pollutant standard that did not adequately protect water quality.

In response to questions by Representative Damron, Mr. Scott stated that there were numerous sources of selenium pollution beyond coal mining activities. The division did not expect rock removal from waterways for agricultural or noncommercial purposes on private property to be a source of selenium contamination.

Representative Damron stated that the cabinet seemed to be relaxing requirements for commercial rock quarries while at the same time becoming more stringent toward farmers, who were not harming downstream waterways.

Representative Gooch stated that Kentucky was a diverse state ecologically, and that diversity should be taken into consideration for the purposes of establishing environmental policy. In response, Mr. Scott stated that the Clean Water Act required each state to establish water quality standards and U.S. EPA exercised oversight of each state’s established standards. Kentucky used U.S. EPA’s guidance documents and oversight as part of its determination of standards. The division was not relaxing the selenium standard, but was establishing a different method for testing for selenium and establishing a standard related to that method. U.S. EPA still had to approve or disapprove Kentucky’s selenium standard after the administrative regulation became effective. Taking into consideration discussions with U.S. EPA, the division had reason to believe that the standard proposed by the division in the agency amendment would be accepted by U.S. EPA.

Mr. Harpole stated that the Kentucky Chamber of Commerce supported this administrative regulation and the proposed agency amendment thereto.

Mr. Cress stated that the Kentucky League of Cities and the Kentucky Association of Manufacturers supported a standard based on sound science and economic feasibility. The proposed standard used state-specific data, which was key because Kentucky’s needs differ from other states.

In response to a question by Senator Clark, Mr. Scott stated that some research studies were from 2004. The selenium standard in place prior to this proposed administrative regulation was based on research studies from 1990, which study results had been vacated by the federal courts. During the KRS Chapter 13A-required public hearing and public comment period, the only concerns expressed regarding the division’s initial proposal to delete the acute selenium limit completely came from U.S. EPA, not from commenters opposed to the agency amendment.

In response to questions by Co-Chair Bell, Mr. Cress stated that he was not a scientist or biologist, but the Kentucky League of Cities did have specialists who studied the scientific research regarding the selenium limit. The method of testing was what was different, and comparing the limits was not equivalent because of the method differences. Mr. Harpole stated that the Ohio River Valley Water Sanitation Commission, ORSANCO, had deleted the acute selenium limit altogether, and there did not seem to be a selenium problem in the Ohio River basin since that standard was deleted.

Senator Bowen noted that Kentucky was authorized by the Clean Water Act to establish state-specific standards, with oversight from the ultimate approval by U.S. EPA.

Representative Turner stated that the science was very complicated and independent, up-to-date studies were necessary to make the selenium determination.

Mr. Withrow stated that there were trend stations for water quality throughout Kentucky. Peter’s Creek in Pike County was a dead water-
way, devoid of aquatic life, and trend reports indicated there had been exceedences of selenium limits. The proposed selenium limit in the agency amendment was unenforceable. If a fish could be found to test, and results showed the selenium limit had been violated, who would be cited as responsible because there were numerous coal activities from different companies in that area?

Ms. Henson, field biologist and ecologist for Kentuckians for the Commonwealth, stated that attendees of the public meetings that took place after the initial deferral of this administrative regulation at the February Subcommittee meeting were told that the meeting was for select stakeholders only. A member of the press was told at that meeting that the meeting was not open to the public; however, after the meeting the division characterized the meeting as a public meeting. The selenium standards would relax water quality standards in Kentucky. The division’s defense of the standards was based on research that the division skewed in order to support the proposal in the agency amendment. Other portions of the research that did not support the agency proposal were dismissed by the division as unsound science. Testing concentrations of selenium are not as protective as testing fish tissue. The safety of those eating fish and recreating in Kentucky’s waterways was of prime importance.

Mr. Porter stated that Kentuckians for the Commonwealth did not support the agency amendment, which would weaken the selenium limit. The limit was based on unsound science and was pracitcally unenforceable.

Mr. Ray stated that his question regarding where the waterways referenced by the division were located was not addressed by the division in its response to comments. Mr. Ray was employed by a nonprofit watershed protection group. It was expensive to treat water that was contaminated with selenium. It was bad economic policy and would affect public safety and tourism. In response to Mr. Ray’s question, Mr. Scott stated that the division did not find any selenium violations to exceed the limit. Mr. Scott stated that this administrative regulation did not relate to health risks from selenium, which were addressed in drinking water and fish consumption administrative regulations, but this administrative regulation addressed aquatic sustainability. The division believed that this administrative regulation was protective of the aquatic environment.

Ms. Boldman stated that the division did not fully respond to Sierra Club’s concerns regarding the proposed selenium method and limit. The division “cherry picked” research studies that supported the proposed agency amendment. Public involvement was truncated, and the proposed selenium method and limit were not protective of water quality. Selenium is a long-term problem because it bioaccumulated in aquatic species. Deferral to the May meeting of the Subcommittee was requested. The division was encouraged to drop the proposal and return to the selenium method and limit that was in place prior to the initial amendment to this administrative regulation. Coal companies were responsible to meet the obligations of the Clean Water Act.

Ms. Kirby stated that her family was dependent on the coal industry; however, she was also concerned about water quality. The selenium limit was unsafe and unenforceable. It was unnecessary to risk the health of those who live along affected waterways.

Ms. Cooper stated that the Kentucky Student Environmental Coalition was concerned that weakening of the selenium limit was a risk to future Kentuckians. Kentucky was establishing a state-specific standard, but did that mean that Kentucky was somehow better able to address the problem of selenium than other states?

In response to a question by Senator Bowen, Mr. Withrow stated that U.S. EPA was not directly establishing this standard; this standard was being proposed by the division. Ultimately, U.S. EPA had final approval or disapproval of the limit; however, Mr. Withrow had been in litigation with U.S. EPA for the past two (2) years. U.S. EPA had received petitions to remove the division’s authority to enforce the Clean Water Act. Ms. Henson stated that the division was the proponent of the agency amendment, and U.S. EPA’s oversight was somewhat ancillary.

Mr. Withrow encouraged U.S. EPA disapproval of the selenium standard because the supporting research was “cherry picked.”

Representative Gooch stated that the discussion thus far seemed to focus on coal activities, but there were other dischargers of selenium. The discussion kept referencing health implications, but other administrative regulations were in place to protect drinking water, fish consumption, and recreational use of water from selenium contamination.

Ms. Boldman stated that the division’s research studies on selenium were not as scientifically sound as those recommended by the Sierra Club. The more protective standard should be maintained until U.S. EPA promulgates new guidance regarding selenium limits. The division should at least aim to do no harm until the guidance was available. In response to Ms. Boldman, Mr. Payne stated that the portions of research studies that were excluded by the division were dismissed for sound scientific reasons.

In response to a question by Representative Turner, Mr. Scott stated that most streams that were identified as “dead streams” were impaired because of sediment or nutrient overload. It was not possible to make the determination for certain without research; however, it was unlikely that selenium was the cause of the impairment.

Representative Turner made a motion to defer consideration of this administrative regulation until independent, scientific data was provided. Co-Chair Bell asked if the division would agree to defer. The division declined the request to defer. The Subcommittee did not have the authority to defer consideration of the administrative regulation without the division’s agreement; therefore, the motion did not proceed. Representative Turner stated that he was disappointed that the division would not agree to defer such a crucial issue.

In response to a question from Representative Damon, subcommittee staff explained the contents of the agency amendment.

Representative Lee stated that the subcommittee’s main concern was if this administrative regulation conformed to the authorizing statute and KRS Chapter 13A. It was inappropriate for this subcommittee to vote on the selenium limit itself. If the division was reluctant to establish selenium limits without action of the General Assembly, the division should get a legislative sponsor to propose the limits during the 2014 Regular Session of the General Assembly.

A motion was made and seconded to approve the following amendments: to amend limits related to selenium. A roll call vote was taken. With five (5) yes votes, one (1) no vote, and two (2) members passing, the amendments were approved.

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. Amy Barker, assistant general counsel, represented the department.

Department of Juvenile Justice: Child Welfare

505 KAR 1:160. Department of Juvenile Justice Policies and Procedures: treatment program for juvenile sexual offenders. LaShana Harris, assistant director, and LaDonna Koebel, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to clarify provisions and to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Motor Vehicle Tax

601 KAR 9:135. Apportioned registration. Catherine Burgin, administrative section supervisor; Ann D’Angelo, assistant general counsel; and Rick Taylor, deputy commissioner, represented the department.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: School Administration and Finance

702 KAR 3:130. Internal accounting. Susan Barkley, assistant director; Kevin Brown, general counsel; and Amy Peabody, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to specify that the August 2007 edition of the Redbook shall be used until June 30, 2013 and
the March 2013 edition shall be used beginning July 1, 2013; (2) to amend Section 3 to require that: (a) a report be made to the district board of education following the annual audit by a CPA of the activity funds internal accounts; and (b) a copy of the school audit report shall be available in both the school principal’s office and the superintendent’s office; (3) to amend Section 4 to change the edition date of the material incorporated by reference; and (4) to amend the material incorporated by reference and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A and for clarity. 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 Enforcement: Elevator Safety

815 KAR 4:027. Reporting incidents involving personal injury or death. Dawn M. Bellis, general counsel, and Ann Ramser, staff attorney, represented the division.

Chair Harris, Mr. Friedlander stated that proposed committee amendment #3 was not initiated by the agency, but by specific interested stakeholders. Litigation about the matter was ongoing, and, while the matter lost on appeal, it may go to the Kentucky Supreme Court for further consideration. The proposed committee amendment was adverse to Campbell County because it weakened the county’s only hospital. The mayor of Alexandria, the Fiscal Court members, and Baptist Life Communities, appeared in opposition to proposed committee amendment #3. Mariam Hayden, attorney, Carespring Healthcare; Garry Moore, Boone County Judge Executive; John Muller, vice president of operations, Carespring Healthcare; Steve Pendrey, Campbell County Judge Executive; and Representative Arnold Simpson appeared in support of proposed committee amendment #3.

Senator Stine stated that proposed committee amendment #3 was not initiated by the agency, but by specific interested stakeholders. Litigation about the matter was ongoing, and, while the matter lost on appeal, it may go to the Kentucky Supreme Court for further consideration. The proposed committee amendment was adverse to Campbell County because it weakened the county’s only hospital. The mayor of Alexandria, the Fiscal Court members, and Baptist Life Communities, appeared in opposition to proposed committee amendment #3. Mariam Hayden, attorney, Carespring Healthcare; Garry Moore, Boone County Judge Executive; John Muller, vice president of operations, Carespring Healthcare; Steve Pendrey, Campbell County Judge Executive; and Representative Arnold Simpson appeared in support of proposed committee amendment #3.

Mr. Muller stated that proposed committee amendment #3 should be passed because Northern Kentucky Area Development District would still be subject to the CON process. Proposed committee amendment #3 just allowed the district to pursue the CON process.

In response to a question by Co-Chair Bell, Ms. Hayden stated that, even if the proposed committee amendment was approved, there would still have to be a public hearing, which would last several days, before the bed transfer could actually take place. Proposed committee amendment #3 did not extend or expand the number of beds; it moved existing beds from Campbell County to Boone County.

Mr. Long stated that he was opposed to proposed committee amendment #3. The construction had already begun. Mr. Friedlander stated that, under the State Health Plan, Boone County would not currently demonstrate a need for the beds; however, that would be true for all of Kentucky. Mr. Muller noted that the beds already existed and had not been used since the 2006 decertification of another facility. Other counties had filed CON requests to transfer beds. Carespring did not intend to sell the beds it had acquired, which would mean 286 potential beds for Northern Kentucky.

Judge Executive Moore stated that transferring the existing beds to a new facility would be more efficient because the new facility would have superior technology. Even with the additional beds, Boone County would still show a need once population growth continued as expected. Carespring did not receive any government financial support.

In response to a question by Co-Chair Harris, Mr. Friedlander stated that the current State Health Plan was based on county, rather than area development district, boundaries. The proposed committee amendment #3 would change those boundary restrictions and the two (2) area nursing facilities with more than 250 hospital beds: northern Kentucky and Jefferson County.

In response to questions by Senator Bowen, Mr. Muller stated that these were existing beds, and Carespring would not be circumventing the CON process. Other transfers of beds had been allowed.

In response to a question by Co-Chair Bell, Mr. Muller stated that the intention was to spend $50 million to build two (2) needed care facilities.

In response to questions by Senator Kerr, Judge Executive Moore stated that care facilities needed to be located conveniently for families. Judge Executive Pendrey stated that Campbell County would not be left disadvantaged if the beds were moved to Boone County.

Senator Kerr stated that approving proposed committee amendment #3 would set a terrible precedent in attempts to transfer other beds across counties.

Representative Lee stated that the purpose of the CON process was to ensure adequate care facilities in all areas of the state. If proposed committee amendment #3 passed, similar transfers all across the state would be expected.

In response to a question by Representative Damron, Mr. Friedlander stated that the cabinet did not officially support or oppose proposed committee amendment #3. The cabinet was neutral because litigation about the matter was still ongoing. If it was the will of the Subcommittee to pass proposed committee amendment #3, then the cabinet would not oppose it. Senator Stine stated that it was inappropriate to intervene in litigation and make special exceptions in administrative regulations. Ms. Hayden stated that approving proposed committee amendment #3 was not a solution to the ongoing litigation. Even if proposed committee amendment #3 passed, there would be other legal problems with transferring beds from Campbell to Boone County. This was not a subversion of the CON process, and in fact put the matter back under full review.

In response to a question by Co-Chair Bell, Ms. Hayden stated that, even if the proposed committee amendment was approved, there would still have to be a public hearing, which would last several days, before the bed transfer could actually take place. Proposed committee amendment #3 did not extend or expand the number of beds; it moved existing beds from Campbell to Boone County.

Representative Lee stated that proposed committee amendment #3 was strategically crafted to avoid competition against Carespring.

Ms. Hayden stated that the proposed committee amendment #3 addressed large care facilities of at least 250 beds. Carespring had made a business decision to buy beds that were for sale from a decertified facility.

Representative Lee stated that Carespring did make a business decision to buy beds in Campbell County, despite the moratorium on building new beds. The process would allow Carespring to correct a bad business decision. If an exception was made, it should be available to all interested facilities, not just Carespring. Mr. Muller stated that there was no good mechanism currently for transferring beds across counties.

Mr. Long stated that he was opposed to proposed committee amendment #3.
amendment #3 because the exception would be unfair to other facilities. If Carespring had applied for a CON in Boone County, the facility would not have been approved for the 143 beds. The proposed committee amendment #3 gave unfair advantage to Carespring. Feasibility studies were needed. Quality of care as well as licensing quantity should be addressed. The CON process is complicated, but it has worked for Kentucky. An exemption now would create turmoil in future CON processes.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to change the edition date of the material incorporated by reference; and (2) to amend the State Health Plan incorporated by reference to: (a) comply with the drafting and formatting requirements of KRS Chapter 13A; (b) use terms consistently throughout the document; (c) amend provisions relating to special care neonatal beds to provide that applications proposing to convert up to fifty (50) percent of existing Level II special neonatal beds to Level III special neonatal beds shall be consistent with the state health plan if the hospital: (a) is licensed for a minimum of sixteen (16) neonatal Level II beds; (b) has a minimum of 1,500 Medicaid neonatal Level II patient days per year; (c) has a gestational age lower limit of twenty-seven (27) weeks; and (d) has a full-time perinatologist on staff; and (d)1. to change the hospital reporting requirements to require a review of the hospital’s data as part of the annual joint review of patient outcomes in collaboration with the hospital’s affiliated provider of Level IV services, rather than an agreement to submit a data report from the Vermont Oxford Network on Level II and Level III outcomes; 2. require a hospital to participate in the Vermont Oxford Network, including the Kentucky State VON Report; and 3. establish requirements that apply after the two (2) year trial for hospitals proposing to provide comprehensive cardiac catheterization services. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendment: (1) to amend Section 2 to change the edition date of the material incorporated by reference; and (2) to amend the State Health Plan incorporated by reference to amend provisions relating to nursing facility beds to provide that notwithstanding the established criteria, an application submitted to transfer or relocate existing certificate of need approved nursing facility beds shall be consistent with the state health plan if the: (a) selling or transferring entity has a certificate of need or licensed nursing facility bed inventory of at least 250 beds; (b) proposed relocation is within the same area development district; and (c) selling or transferring entity does not propose to sell or transfer more than fifty (50) percent of its certificate of need approved or licensed nursing facility beds. A roll call vote was taken. With three (3) yes votes, three (3) no votes, and one (1) member passing, the amendments were not approved. Representative Damron stated that he had originally intended to vote for proposed committee amendment #3; however, the cabinet did not seem actively supportive and Representative Damron trusted Representative Lee’s position on such matters. Therefore, he was abstaining from the vote on proposed committee amendment #3.

The following administrative regulations were deferred to the May 14, 2013, meeting of the Subcommittee:

**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.

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

**JUSTICE AND PUBLIC SAFETY CABINET:** Department of Corrections: Office of the Secretary

**PUBLIC PROTECTION CABINET:** Department of Alcoholic Beverage Control: Quotas
804 KAR 9:050. Retail liquor drink license quota.

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

**CABINET FOR HEALTH AND FAMILY SERVICES:** 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:** Senator Bowen made a motion, seconded by Senator Gregory, to nominate Senator Harris as Senate Co-Chair and to cease nominations. Senator Harris was elected Senate Co-Chair by unanimous voice acclamation.

Representative Damron made a motion, seconded by Representative Lee, to nominate Representative Bell as House Co-Chair and to cease nominations. Representative Bell was elected House Co-Chair by unanimous voice acclamation.

The Subcommittee had received a letter regarding the Kentucky State Fair Board administrative regulation, 303 KAR 1:041, which prohibits concealed deadly weapons in buildings owned by the Kentucky State Fair Board. A motion was made and seconded to call 303 KAR 1:041 for consideration at the May 14, 2013 meeting of the Subcommittee. Without objection, the motion was approved.

The Subcommittee adjourned at 4:30 p.m. until May 14, 2013 at 1 p.m.
COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

NONE
Locator Index - Effective Dates

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

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

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

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.
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.

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**EMERGENCY ADMINISTRATIVE REGULATIONS:**
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

| 103 KAR 31:170E | 1934 | Amended 1977 | (See 39 Ky.R.) | 5-11-12 |
| 405 KAR 10:011E(r) | 1935 | Replaced | (See 39 Ky.R.) | 5-4-12 |
| 405 KAR 10:015E(r) | 1937 | Replaced | (See 39 Ky.R.) | 5-4-12 |
| 921 KAR 2:015E | 1949 | Replaced | 6-20-12 |

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**ORDINARY ADMINISTRATIVE REGULATIONS:**

11 KAR 3:100
- Amended 1977 | (See 39 Ky.R.) |
- Amended 1977 | (See 39 Ky.R.) |
- Amended 1977 | (See 39 Ky.R.) |
- Amended 1977 | (See 39 Ky.R.) |

101 KAR 2:102
- Amended 1971 | 7-6-12 |
- Amended 1971 | 7-6-12 |
- Amended 1971 | 7-6-12 |
- Amended 1971 | 7-6-12 |

101 KAR 2:140
- Amended 1976 | 6-20-12 |
- Amended 1976 | 6-20-12 |
- Amended 1976 | 6-20-12 |
- Amended 1976 | 6-20-12 |

101 KAR 3:015
- Amended 1978 | 6-30-12 |
- Amended 1978 | 6-30-12 |
- Amended 1978 | 6-30-12 |
- Amended 1978 | 6-30-12 |

103 KAR 8:010
- Amended 1973 | 6-6-12 |
- Amended 1973 | 6-6-12 |
- Amended 1973 | 6-6-12 |
- Amended 1973 | 6-6-12 |

201 KAR 8:562
- Amended 1970 | (See 39 Ky.R.) |
- Amended 1970 | (See 39 Ky.R.) |
- Amended 1970 | (See 39 Ky.R.) |
- Amended 1970 | (See 39 Ky.R.) |

201 KAR 13:040
- Amended 1975 | (See 39 Ky.R.) |
- Amended 1975 | (See 39 Ky.R.) |
- Amended 1975 | (See 39 Ky.R.) |
- Amended 1975 | (See 39 Ky.R.) |

201 KAR 18:220
- Amended 1991 | 7-12-12 |
- Amended 1991 | 7-12-12 |
- Amended 1991 | 7-12-12 |
- Amended 1991 | 7-12-12 |

201 KAR 20:450
- Amended 1994 | (See 39 Ky.R.) |
- Amended 1994 | (See 39 Ky.R.) |
- Amended 1994 | (See 39 Ky.R.) |
- Amended 1994 | (See 39 Ky.R.) |

201 KAR 20:490
- Amended 1976 | (See 39 Ky.R.) |
- Amended 1976 | (See 39 Ky.R.) |
- Amended 1976 | (See 39 Ky.R.) |
- Amended 1976 | (See 39 Ky.R.) |

201 KAR 20:510
- Amended 1997 | 6-30-12 |
- Amended 1997 | 6-30-12 |
- Amended 1997 | 6-30-12 |
- Amended 1997 | 6-30-12 |

201 KAR 23:015
- Amended 1976 | (See 39 Ky.R.) |
- Amended 1976 | (See 39 Ky.R.) |
- Amended 1976 | (See 39 Ky.R.) |
- Amended 1976 | (See 39 Ky.R.) |

201 KAR 30:050
- Amended 1976 | (See 39 Ky.R.) |
- Amended 1976 | (See 39 Ky.R.) |
- Amended 1976 | (See 39 Ky.R.) |
- Amended 1976 | (See 39 Ky.R.) |

201 KAR 32:035
- Amended 1977 | 6-30-12 |
- Amended 1977 | 6-30-12 |
- Amended 1977 | 6-30-12 |
- Amended 1977 | 6-30-12 |

202 KAR 7:601
- Amended 1974 | (See 39 Ky.R.) |
- Amended 1974 | (See 39 Ky.R.) |
- Amended 1974 | (See 39 Ky.R.) |
- Amended 1974 | (See 39 Ky.R.) |

301 KAR 2:041
- Amended 1974 | (See 39 Ky.R.) |
- Amended 1974 | (See 39 Ky.R.) |
- Amended 1974 | (See 39 Ky.R.) |
- Amended 1974 | (See 39 Ky.R.) |
### VOLUME 39

**EMERGENCY ADMINISTRATIVE REGULATIONS:**
(Not: 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.)

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**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

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**ORDINARY ADMINISTRATIVE REGULATIONS:**

| 11 KAR 3:100      | (See 38 Ky.R.)    | As Amended     | 187               | 8-31-12          | 105 KAR 1:430 |
| 11 KAR 4:080E     | Amended           | 1748           | As Amended        | 74               |               |
| 11 KAR 8:030      | 106 KAR 2:030     | Amended        | 1271              | 199               | 8-21-12       |
| 13 KAR 1:200      | 200 KAR 14:011    | Amended        | 1043              | 814               | 1-4-13        |
| 16 KAR 2:120      | 200 KAR 14:081    | 1365           | 2-1-13            | 817               |               |
| 16 KAR 3:010      | Amended           | 497            | 9-10-12           | 200 KAR 14:091   |               |
| 16 KAR 6:010      | Amended           | 944            | 11-19-12          | 201 KAR 2:020     |               |
| 16 KAR 6:030      | Amended           | 1274           | 3-8-13            | 501               | 2-1-13        |
| 16 KAR 6:030      | As Amended        | 1646           | 2-1-13            | 502               |               |
| 16 KAR 6:030      | Amended           | 499            | 3-8-13            | As Amended        | 1371          | 2-1-13        |
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SYMBOL KEY:
* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.
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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2012 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will **NOT** be published in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at [http://www.lrc.ky.gov/home.htm](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).

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