The submission deadline for this edition of the Administrative Register of Kentucky was noon, October 15, 2013.
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**ADMINISTRATIVE REGISTER OF KENTUCKY**  
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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
201 KAR 30:315E

This emergency administrative regulation establishes the renewal process for registration as an Appraisal Management Company by the Kentucky Real Estate Appraisers Board. This emergency administrative regulation must be placed into effect immediately in order to ensure that the public is protected through the renewal of Appraisal Management Companies' registration by the Board. No renewals can be issued until the administrative regulation is promulgated. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
HAROLD BRANTLEY, Chair

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(New Emergency Administrative Regulation)

201 KAR 30:315E. Renewal and reinstatement.

RELATES TO: KRS 324A.152(6), (7), 324A.155, 324A.163(4)
STATUTORY AUTHORITY: KRS 324A.152(8), 324A.155(2), 324A.163(4)

EFFECTIVE: October 10, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.152(6) requires the board to establish by administrative regulation the renewal process for appraisal management companies. KRS 324A.155 and KRS 324A.163 require the board to establish by administrative regulation the amount to be charged to registrants for the appraisal management company recovery fund. This administrative regulation establishes the application process for renewal of registration of appraisal management companies and the amount to be charged to registrants for the appraisal management company recovery fund.

Section 1. Registration Renewal. (1) The board shall send a renewal notice to the controlling person identified by the registrant by September 1 of each year.

(2)(a) The registrant shall apply for renewal in accordance with KRS 324A.152 by October 1 to ensure that all renewal requirements are satisfied before the expiration date of the registration.

(b) Failure to receive a renewal notice established in subsection (1) of this section from the board shall not relieve the registrant of the responsibility to timely apply for renewal.

(3) A Renewal Application for Appraisal Management Company Registration shall not be complete, and a renewal shall not be issued, until all requirements in this administrative regulation are satisfied.

(4) All registrations shall expire on October 31 of each year unless renewed before that time.

(5) A holder of an appraisal management company registration desiring the renewal of registration shall:

(a) Apply in writing on the Renewal Application for Appraisal Management Company Registration provided by the board;

(b) Submit the renewal fee required by 201 KAR 30:310, Section 1(2); and

(c) Submit the payment for the appraisal management recovery fund required by KRS 324A.155 in the amount of $300.

(6) None of the fees or payments for renewal or reinstatement shall be refundable.

Section 2. Reinstatement of an Expired Registration. (1) To reinstate an expired registration within six (6) months after expiration, a registrant shall:

(a) Apply in writing on the Renewal Application for Appraisal Management Company Registration provided by the board;

(b) Submit the reinstatement fee in the amount of $2,000 required by 201 KAR 30:310, Section 1(3);

(c) Submit payment of $300 to be deposited in the appraisal management recovery fund in accordance with KRS 324A.155; and

(d) Submit payment of the late filing fee of fifty (50) dollars for each month or part thereof since the registration expired as required by KRS 324A.152(7)(b).

(2) Failure to reinstate within six (6) months of expiration shall require the expired registrant to submit a new application for registration under 201 KAR 30:330 and meet all current requirements for registration.

(3) Reinstatement shall not apply retroactively to the activities of the registrant while the registration was expired.

(4) Failure to renew a registration prior to the expiration date shall result in a loss of authority to operate, in accordance with KRS 324A.155(7).


(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD BRANTLEY, Chair
APPROVED BY AGENCY: September 27, 2013
FILED WITH LRC: October 10, 2013 at 2 p.m.
CONTACT PERSON: Larry Disney, Executive Director,
Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry Disney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for registration renewal by an appraisal management company.

(b) The necessity of this administrative regulation: This administrative regulation informs the registrants of the requirements for registration.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.152(6) requires the board to establish by administrative regulation the renewal process for appraisal management companies. KRS 324A.155 and KRS 324A.163 require the board to establish by administrative regulation the renewal process for appraisal management companies. KRS 324A.155 and KRS 324A.163 result in a loss of authority to operate, in accordance with KRS 324A.155.

(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: This administrative regulation informs the registrants of the requirements for renewal from the board.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board has 120 registered appraisal management companies.

(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 administrative regulation requires applicants to file the completed application setting forth how the individual meets the qualifications for renewal.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees for applying will be established in a separate regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for renewal of the registration will have their applications reviewed by the board.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation, if new, or by the change if it is an amendment:
(a) Initially: Exact figures are difficult to estimate until the number of applicants is ascertained. However, the board anticipates that additional costs could be substantial in the implementation of the administrative regulations. Initial estimates exceed $200,000 per year.
(b) On a continuing basis: The board estimates that the costs identified in (5)(a) will continue as the board enforces and administers the requirements of KRS 324A.150 et seq.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by fees paid by the registrants and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation amendment does not directly establish or increase fees. It does establish the amount of the charge for funding the appraisal management company recovery fund under 324A.155 and 324A.163.

(9) TIERING: Is tiering applied? No, this administrative regulation does not utilize tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.152; KRS 324A.163.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect: None

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

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

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

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

STATEMENT OF EMERGENCY
505 KAR 1:170E

Congress mandated the establishment of national standards for the detection, prevention, reduction, and punishment of prison rape in the Prison Rape Elimination Act (PREA), 42 U.S.C. §15607. The Department of Justice established national standards for juvenile facilities in 28 C.F.R. §115, Subpart D. Congress tied grant funds to states to comply with the national standards. Failure to comply with the standards causes loss of federal grant funds for juvenile programs or restrictions on the use of a percentage of grant funds. This administrative regulation proposes fees to implement this regulation. This administrative regulation is authorized to be filed as an emergency administrative regulation pursuant to KRS 13A.190(1)(a)(2). An ordinary administrative regulation alone will not cause the required policies to be adopted by the federal deadline. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is being filed with the Regulations Compiler simultaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

HON. STEVEN L. BESHEAR, Governor
A. HASAN DAVIS, Commissioner

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(New Emergency Administrative Regulation)


RELATES TO: KRS 15A.065, 15A.067, Chapters 600-645
STATUTORY AUTHORITY: KRS 15A.065, 15A.067, 15A.160, 15A.210, 200.115, 605.100, 605.150, 635.095, 640.120, 645.250
EFFECTIVE: October 14, 2013
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.100, 605.150, 635.095, 640.120, and 645.250 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 decisions made by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policies and Procedures: Prison Rape Elimination Act of 2003 (PREA)”, October 14, 2013, is incorporated by reference and includes the following:

900 Definitions (October 14, 2013);
901 Zero Tolerance of Any Type of Sexual Misconduct (October 14, 2013);
902 Personnel Procedures (October 14, 2013);
903 Prohibited Contact of Staff, Interns, Volunteers, and Contractors (October 14, 2013);
904 Contracted Residential Entities (October 14, 2013);
905 Juvenile Vulnerability Assessment Procedure (October 14, 2013);
906 Reporting and Investigating PREA Violations (October 14, 2013);
A. HASAN DAVIS, Commissioner
APPROVED BY AGENCY: October 9, 2013
FILED WITH LRC: October 14, 2013 at 11 a.m.
CONTACT PERSON: LaDonna Koebel, Staff Attorney,
Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive,
Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: LaDonna Koebel
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Department of Juvenile Justice, including the rights and responsibilities of employees and the juvenile population.
(b) The necessity of this administrative regulation: To comply with the requirements of 28 C.F.R. §115, Subpart D.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Juvenile Justice.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation and material incorporated by reference establishes policies and procedures that govern the operations of the Kentucky Department of Juvenile Justice and its facilities. It provides direction and information to departmental employees and juveniles concerning the operations of the department.

(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 new administrative regulation will bring the Kentucky Department of Juvenile Justice into compliance with the federal requirements of the Prison Rape Elimination Act of 2003 (PREA) and updates current practices for the department, employees, and juveniles in the care and custody of the department.
(b) The necessity of the amendment to this administrative regulation: To comply with the requirements of 28 C.F.R. §115, Subpart D.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Juvenile Justice.
(d) How the amendment will assist in the effective administration of the statutes: This new administrative regulation and material incorporated by reference establishes policies and procedures that govern the operations of the Kentucky Department of Juvenile Justice and its facilities. It provides direction and information to departmental employees and juveniles concerning the operations of the department.

(3) List type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the Kentucky Department of Juvenile Justice, 1,400 employees, all juveniles committed to the care and custody of the department, visitors, volunteers, interns, and contractors.

(4) Provide analysis of how the entities identified in question (3) will be impacted by the implementation of this regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Staff, volunteers, interns, and contractors will be required to follow the incorporated policies and procedures. Juveniles in the care and custody of the Kentucky Department of Juvenile Justice will have the rights established by the policy.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this new administrative regulation will increase current costs significantly.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The impact of the policies and procedures will protect rights of juveniles in the care and custody of the dept, and further ensure safety and protection of youth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The department anticipates that any initial cost will be related to training staff, volunteers, interns, and contractors on the new policies and the requirements of PREA.
(b) On a continuing basis: The cost associated with complying with the stipulations and federal requirements will primarily come from mandatory audits of department programs. The U.S. Department of Justice has not yet identified cost associated with audits, but such audits are anticipated to be in line with ACA audits, approximately $25,000 per year.
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Juvenile Justice budgeted funds for the biennium.
(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 is anticipated; however it is anticipated that an increase in funding may be necessary to cover the costs of the federally required audits. The cost of the audits is currently unknown but is anticipated to be approximately $25,000 per year.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation does not establish additional fees or increase any existing fees.
(9) Tiering: Is tiering applied? No. Tiering is not appropriate in this new administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts operation of the Kentucky Department of Juvenile Justice and its facilities.
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.067, 15A.160, 15A.160, 200.115, 605.11, 605.150, 640.120, 645.450, 28 C.F.R. §115, Subpart D.
(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Not applicable.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Not applicable.
(c) How much will it cost to administer this program for the first year? The department anticipates that any initial cost will be
related to training staff, volunteers, interns, and contractors on the new policies and the requirements of PREA.

(d) How much will it cost to administer this program for subsequent years? The cost associated with complying with the stipulations and federal requirements will primarily come from mandatory audits of department programs. The U.S. Department of Justice has not yet identified cost associated with audits, but such audits are anticipated to be in line with ACA audits, approximately $25,000 per year.

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

Revenues (+/-): No revenue will be generated from this regulation.

Expenditures (+/-): Expenditures relate to training staff and auditing programs to ensure compliance.

Other Explanation:

STATEMENT OF EMERGENCY
907 KAR 20:001E

This is an emergency administrative regulation which establishes definitions for the new chapter of Kentucky Administrative Regulations which contain Medicaid eligibility administrative regulations. The Department for Medicaid Services is amending the Medicaid eligibility administrative regulations as well as creating a new eligibility administrative regulation to comply with a federal mandate. The federal mandate establishes a new eligibility standard – the modified adjusted gross income or MAGI – for certain categories of individuals and bars the application of existing or old Medicaid income and resource eligibility standards from being applied to the MAGI population. As Medicaid coverage under the MAGI standards is mandatory January 1, 2014 and eligibility determinations can begin October 1, 2013, this ordinance implements a Medicaid income limits by family size.

Section 2(1), establishing Medicaid income limits by family size.

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

(6) "Adverse action" means:
   (a) The denial or limited authorization of a requested service, including the type or level of service;
   (b) The reduction, suspension, or termination of a previously authorized service;
   (c) The denial, in whole or in part, of payment for a service;
   (d) The failure to provide services in a timely manner; or
   (e) The failure of a managed care organization to act within the timeframes provided in 42 C.F.R. 438.408(b).

(7) "AFDC-related cash" means a Medicaid-eligible, categorically-needy individual or group based upon AFDC Program requirements effective since July 16, 1996.

(8) "After the month of separation" means the first day of the month that follows the month in which an individual ceases living in the same household of a Medicaid eligible family.

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

(10) "Aid and Assistance" or "A & A" means a benefit to a United States veteran:
   (a) In addition to the individual's monthly pension; and
   (b) Paid by the United States Veterans Administration.

(11) "Aid to Families with Dependent Children" or "AFDC" means an assistance program:
   (a) In effect from 1935 to 1996;
   (b) For children whose families had low or no income; and
   (c) Administered by the United States Department of Health and Human Services.

(12) "Ambulatory prenatal care" means health-related care furnished to a presumed eligible pregnant woman provided in an outpatient setting.

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

(14) "Applicant" means an individual applying for Medicaid.

(15) "Authorized representative" means:
   (a) For a recipient or applicant who is authorized by Kentucky law to provide written consent, an individual or entity acting on behalf of, and with written consent from, the applicant or recipient; or
   (b) A legal guardian.

(16) "Baseline date" means the date the institutionalized individual was institutionalized and applied for Medicaid.

(17) "Basic maintenance" means the amount of income that may be retained by the applicant for living and personal expenses.

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

(19) "Blind work expense" or "BWE" means an SSI program.

(20) "Benefit of the doubt" means a Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(21) "Cabinet" is defined by KRS 194A.005(1).

(22) "Caregiver" means a person who is aged, blind, or disabled.

(23) "Carrier" means a Kentucky Medicaid program established pursuant to, and

RELATES TO: KRS 194A.025(3)
STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3). 42 U.S.C. 1396a
EFFECTIVE: September 30, 2013


1. Who is the caregiver of a child under the age of nineteen (19) years; or
2. On whose tax return the child under the age of nineteen (19) years is listed as a dependent; and
3. A grandparent;
4. A aunt;
5. A uncle;
6. An aunt;
7. A nephew;
8. A niece;
9. A first cousin;
10. A relative of the half-blood;
11. A preceding generation denoted by a prefix of:
   (a) Grand;
   (b) Great; or
c. Great-great; or
d. A stepfather, stepmother, stepbrother, or stepsister.
(23) "Categorically needy" means an individual with income below 300 percent of the supplemental security income (SSI) standard who has been receiving hospice or 1915(c) home and community based services for at least thirty (30) consecutive days.
(24) "CDC" means the federal Centers for Disease Control and Prevention.
(25) "Child" means a person who:
(a) Is under the age of eighteen (18) years;
(b) Is a full-time student in a secondary school or the equivalent level of vocational or technical training; and
(c) Is expected to complete the program before the age of nineteen (19) years;
3. Is not self-supporting;
4. Is not a participant in any of the United States Armed Forces; and
5. If previously emancipated by marriage, has returned to the home of his or her parents or to the home of another relative;
(b) Has not attained the age of nineteen (19) years in accordance with 42 U.S.C. 1396a(f)(1)(D); or
(c) Is under the age of nineteen (19) years if the person is a KCHIP recipient.
(26) "Community based services" means a combination of both.
(27) "Community based services waiver program" means a reimbursement model in which a Kentucky Transitional Assistance Program recipient is determined to be eligible for Medicaid based on deprivation and within the medically-need income level.
(28) "Community spouse" means the spouse of an institutionalized spouse who:
(a) Remains at home in the community; and
(b) Is not:
1. Living in a medical institution;
2. Living in a nursing facility; or
3. Participating in a 1915(c) home and community based services waiver program.
(29) "Community spouse maintenance standard" means the income standard to which a community spouse's otherwise available income is compared for purposes of determining the amount of the allowance used in the post-eligibility calculation.
(30) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home or both and may include thirty (30) consecutive days of receipt of a 1915(c) home and community based service or a combination of both.
(31) "Department" means the department for Medicaid Services or its designee.
(32) "Dependent child" means a couple's child, including a child gained through adoption, who:
(a) Lives with the community spouse; and
(b) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.
(33) "Dependent parent" means a parent:
(a) Of either member of a couple; and
(b) Who lives with the community spouse; and
(c) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.
(34) "Dependent sibling" means a brother or sister of either member of a couple, including a half-brother, half-sister, or sibling gained through adoption, who:
(a) Resides with the community spouse; and
(b) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.
(35) "Designated hearing agency" means the Department for Community Based Services.
(36) "Disabled" is defined by 42 U.S.C. 1382c(a)(3).
(37) "Dual eligible" means an individual eligible for Medicare and Medicaid benefits.
(38) "Early and periodic screening, diagnosis and treatment" or "EPSDT" is defined by 42 C.F.R. 440.40(b).
(39) "Emergency service" means "emergency services" as defined by 42 U.S.C. 1396u-2(b)(2)(B).
(40) "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or KCHIP covered services.
(41) "Evidence of identity" means:
(a) A current state driver's license or state identity document bearing the individual's picture;
(b) A Certificate of Degree of Indian Blood or other United States American Indian or Alaska Native tribal document; or
(c) For a child who is age sixteen (16) or younger:
1. A school identification card with a photograph;
2. A military dependent's identification card, if it contains a photograph;
3. A school record that shows the:
   a. Date and place of birth; and
   b. Parent or parents' name;
4. A clinic, doctor, or hospital record showing date of birth;
5. A daycare or nursery school record showing date and place of birth; or
6. An affidavit signed under penalty of perjury by a parent or guardian attesting to the child's identity.
(42) "Excess shelter allowance" means an amount equal to the difference between the community spouse's verified shelter expenses and the minimum shelter allowance.
(43) "Fair market value" means an estimate of the value of an asset if sold at the prevailing price at the time it was actually transferred based on:
(a) The gross tax assessed value of the property as stated by the local property valuation administrator; or
(b) An independent, licensed appraiser.
(44) "Family alternatives diversion payment" means a lump sum payment made to a Kentucky Transitional Assistance Program applicant:
(a) To meet short-term emergency needs; and
(b) Pursuant to 921 KAR 2:500.
(45) "Family-related case" or "family case" means a Medicaid-eligible, medically-need group based on deprivation and within the medically-need income level.
(46) "Federal financial participation" is defined in 42 C.F.R. 400.203.
(47) "Fee-for-service" means a reimbursement model in which a health insurer reimburses a provider for each service provided to a recipient.
(48) "First month of SSI payment" means the first month for which an SSI-related Medicaid recipient is determined to be eligible for SSI payments.
(49) "Foster care" is defined by KRS 620.020(5).
(50) "Gross income" means non-excluded income which would be used to determine eligibility prior to income disregards.
(51) "Homeless individual" means an individual who:
(a) Lacks a fixed, regular, or nighttime residence;
(b) Is at risk of becoming homeless in a rural or urban area because the residence is not safe, decent, sanitary, or secure; and
(c) Has a primary nighttime residence at a:
1. Publicly or privately operated shelter designed to provide temporary living accommodations; or
2. Public or private place not designed as regular sleeping accommodations; or
(d) Lacks access to normal accommodations due to violence or the threat of violence from a cohabitant.
(52) "Homestead" means property:
(a) In which an individual has an ownership interest; and
(b) Which an individual uses as the individual's principal place of residence.
(53) "ICF IID" means intermediate care facility for individuals with an intellectual disability.
(54) "Impairment related work expenses" or "IRWE" means an SSI program option in which the United States Social Security Administration deducts the cost of items or services an individual needs, due to an impairment, in order to work.
(55) "Incapacity" means a condition of mind or body making a parent physically or mentally unable to provide the necessities of life for a child.
(56) "Income" means money received from:
(a) Statutory benefits (for example, Social Security, Veterans
Administration pension, black lung benefits, or railroad retirement benefits;
(b) A pension plan;
(c) Rental property;
(d) An investment; or
(e) Wages for labor or services.

57) “Individual development account” means an account containing funds for the purpose of continuing education, purchasing a first home, business capitalization, or other purposes allowed by federal regulations or clarifications which meets the criteria established in 921 KAR 2:016.

58) “ Institutionalized” means:
(a) Residing in a nursing facility;
(b) Receiving hospice services; or
(c) Receiving 1915(c) home and community based services.

59) “Institutionalized individual” means an individual with respect to whom payment is based on a level of care provided in a nursing facility and who is:
(a) In an inpatient in:
   1. A nursing facility;
   2. An intermediate care facility for individuals with an intellectual disability; or
   3. A medical institution; or
   (b) Receiving 1915(c) home and community based services.

60) “Institutionalized spouse” means an institutionalized individual who:
(a) Is in a medical institution or nursing facility; or
2. Participates in a 1915(c) home and community based services waiver program;
(b) Has a spouse who is not an institutionalized individual; and
(c) Is likely to remain institutionalized for at least thirty (30) consecutive days while the community spouse remains out of a medical institution, nursing facility, or 1915(c) home and community based services waiver program.

61) “KCHIP” means the Kentucky Children’s Health Insurance Program administered in accordance with 42 U.S.C. 1397aa to jj.

62) “Kentucky Transitional Assistance Program” or “K-TAP” means:
(a) Kentucky’s version of TANF; and
(b) A money payment program for children who are deprived of parental support or care in accordance with 921 KAR 2:006.

63) “Kentucky Women’s Cancer Screening Program” means the program administered by the Department for Public Health:
(a) Which provides breast and cervical cancer screening and diagnostic services to low-income, uninsured, or underinsured women;
(b) Which uses:
   1. State funds; and
   2. Monies from the Centers for Disease Control and Prevention’s National Breast and Cervical Cancer Early Detection Program, including Title XV funds.

64) “Keogh plan” means a full-fledged pension plan for self-employed individuals in the United States of America.

65) “Long-term care partnership insurance” is defined by KRS 304.14-640(4).

66) “Long-term care partnership insurance policy” means a policy meeting the requirements established in KRS 304.14-642(2).

67) “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.

68) “Mandatory categorically needy eligibility groups” means:
(a) Transitional medical assistance;
(b) Extended Medicaid due to child or spousal support collections;
(c) Children with Title IV-E adoption assistance, foster care, or guardianship care;
(d) Qualified pregnant women and children;
(e) Mandatory poverty level related pregnant women;
(f) Mandatory poverty level related infants;
(g) Mandatory poverty level related children aged one (1) to five (5) years;
(h) Mandatory poverty level related children aged six (6) to eighteen (18) years;
(i) Deemed new borns;
(j) Individuals receiving supplemental security income benefits;
(k) Aged, blind, and disabled individuals in Social Security Act 209(b) states;
(l) Individuals receiving mandatory state supplement payments;
(m) Individuals who are essential spouses;
(n) Institutionalized individuals continuously eligible since 1973;
(o) Blind or disabled individuals eligible in 1973;
(p) Individuals who lost eligibility for supplemental security income benefits or state supplemental payments due to an increase in old age, survivors, and disability insurance benefits in 1972;
(q) Individuals who would be eligible for supplemental security income benefits or state supplement payments but for old age, survivors, and disability insurance benefits cost-of-living adjustment increases since April 1977;
(r) Disabled widows and widowers ineligible for supplemental security income benefits due to an increase in old age, survivors, and disability insurance benefits;
(s) Disabled widows and widowers ineligible for supplemental security income benefits due to early receipt of social security benefits;
(t) Working disabled under Social Security Act 1619(b);
(u) Disabled adult children;
(v) Qualified Medicare beneficiaries;
(w) Qualified disabled and working individuals;
(x) Specified low income Medicare beneficiaries; or
(y) Qualifying individuals.

69) “Mandatory state supplement” is defined by 42 C.F.R. 435.4.

70) “Maternity care” means prenatal, delivery, and postpartum care and includes care related to complications from delivery.

71) “Medicaid works individual” means an individual who:
(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving supplemental security income;
(b) Is a least sixteen (16), but less than sixty-five (65), years of age;
(c) Engaged in active employment verifiable with:
   1. Paycheck stubs;
   2. Tax returns;
   3. 1099 forms; or
   4. Proof of quarterly estimated tax;
(d) Meets the income standards established in this administrative regulation; and
(e) Meets the resource standards established in 907 KAR 20:025.

72) “Medical institution or nursing facility” means a hospital, nursing facility, or intermediate care facility for individuals with an intellectual disability.

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

74) “Medically necessary” means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

75) “Medically needy income level” or “MNIL” means the basic maintenance standard used in the determination of Medicaid eligibility for the medically needy.

76) “Medicare Part A” means federal health insurance that covers:
(a) Inpatient hospital or skilled nursing facility services, including blood;
(b) Hospice services; and
(c) Home health services.

77) “Medicare qualified individual group 1 (QI-1)” means an eligible category, in which pursuant to 42 U.S.C. 1396a(a)(10)(E)(iv), an individual who would be a qualified Medicaid beneficiary but for the fact that the individual’s income:
(a) Exceeds the income level established in accordance with 42 U.S.C. 1396d(p)(2); and
(b) Is at least 120 percent, but less than 135 percent, of the federal poverty level for a family of the size involved and who are
not otherwise eligible for Medicaid under the state plan. 

(78) "Minimum shelter allowance" means an amount that is thirty (30) percent of the standard maintenance amount. 

(79) "Minor" means the couple's minor child who: 
(a) Is under the age of twenty-one (21) years; 
(b) Lives with a community spouse; and 
(c) Is claimed as a dependent by either spouse under the Internal Revenue Service Code. 

(80) "Minor parent" means a parent under the age of twenty-one (21). 

(81) "Minor teenage parent" means an individual who: 
(a) Has not attained eighteen (18) years of age; 
(b) Is not married; and 
(c) Has a minor child in his or her care. 

(82) "Modified adjusted gross income" or "MAGI" is defined by 42 U.S.C. 1396a(e)(14)(G). 

(83) "Month of separation" means the month in which an individual ceases living in the same household of a Medicaid eligible family. 

(84) "Monthly income allowance" means an amount: 
(a) Deducted in the posteligibility calculation for maintenance needs of a community spouse or other family member; and 
(b) Equal to the difference between a spouse's and other family member's income and the appropriate maintenance needs standards. 

(85) "NF" means nursing facility. 

(86) "Non-filer" means an individual who: 
(a) Does not intend to file taxes for the benefit year; 
(b) Is a child living with both parents who do not expect to jointly file a tax return; 
(c) Expects to be claimed as a tax dependent by someone other than a spouse, parent, or stepparent; or 
(d) Is a child under nineteen (19) years of age who is claimed as a tax dependent by a non-custodial parent. 

(87) "Nonqualified alien" means a resident of the United States of America who does not meet the qualified alien requirements established in 907 KAR 20:005, Section 2. 

(88) "Non-recurring lump sum income" means money received at one (1) time which is normally considered as income, including: 
(a) Accumulated back payments from Social Security, unemployment insurance, or workers' compensation; 
(b) Back pay from employment; 
(c) Money received from an insurance settlement, gift, inheritance, or lottery winning; 
(d) Proceeds from a bankruptcy proceeding; or 
(e) Money withdrawn from an IRA by an individual prior to the individual reaching the age where no penalty is imposed for withdrawing the IRA, KeOGH plan, deferred compensation, tax deferred retirement plan, or other tax deferred asset. 

(89) "Nursing facility" means: 
(a) A facility: 
1. To which the state survey agency has granted a nursing facility license; 
2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and 
3. To which the department has granted certification for Medicaid participation; or 
(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395l and 1396l if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396l(b), (c), and (d) and 42 C.F.R. 447.280 and 482.66. 

(90) "Official poverty income guidelines" means the poverty income guidelines which are: 
(a) Updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 U.S.C. 9902(2); and 
(b) The latest poverty guidelines available as of March 1 of the particular state fiscal year. 

(91) "Old Age, Survivors, and Disability Insurance" or "OASDI" means the social insurance program: 
(a) More commonly known as "Social Security"; and 
(b) Into which participants make payroll contributions based on earnings. 

(92) "Optional state supplement" is defined by 42 C.F.R. 435.4. 

(93) "Other family member" means a relative of either member of a couple who is: 
(a) Minor or dependent child; 
(b) Dependent parent; or 
(c) Dependent sibling. 

(94) "Other family member's maintenance standard" means an amount equal to one-third (1/3) of the difference between the income of the other family member and the standard maintenance amount. 

(95) "Other unearned income" means: 
(a) Miner's benefits; 
(b) A pension; 
(c) An oil lease; 
(d) Mineral rights; 
(e) Trust income actually available other than from a Medicaid qualifying trust; 
(f) Job Training Partnership Act income, including Eastern Kentucky Concentrated Employment Program income, paid to a specified relative or second parent; 
(g) Income from income indemnity policies; 
(h) Income from an IRA that is: 
1. Not received as non-recurring lump sum income; and 
2. Prorated over the period of time the income covers (for example monthly, quarterly, or annually); 
(i) Any portion of military combat pay made available to a family Medicaid household if used to establish the household's eligibility for Medicaid benefits; or 
(j) Other income determined by the department to be other unearned income. 

(96) "Otherwise available income" means income to which the community spouse has access and control, including gross income that would be used to determine eligibility under Medicaid without benefit of disregards for federal, state, and local taxes; child support payments; or other court ordered obligation. 

(97) "Patient status criteria" means the patient status criteria established in 907 KAR 1:022. 

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

(99) "Plan to Achieve Self Support" or "PASS" means an SSI program option which enables a disabled individual receiving SSI benefits to: 
(a) Identify a work goal; 
(b) Identify training, items, or services needed to reach the work goal; and 
(c) Set aside money for installment payments or a down payment for items needed to reach the work goal. 

(100) "Poverty level guidelines" means the poverty income guidelines updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 U.S.C. 9902(2); 

(101) "Presumptive eligibility" means Medicaid eligibility determined: 
(a) By a provider authorized by 907 KAR 20:050 to make a presumptive eligibility determination; and 
(b) For a pregnant woman who qualifies for presumptive eligibility pursuant to 907 KAR 20:050. 

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

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

(104) "Qualified alien" means an alien who, at the time the alien applies for or receives Medicaid, meets the requirements established in 907 KAR 20:005, Section 5(12)(a)1b or c. 

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

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

(107) "Qualified provider" means a provider who: 
(a) Is currently enrolled with the department; 
(b) Has been trained and certified by the department to grant presumptive eligibility to pregnant women; and
(c) Provides services of the type described in 42 U.S.C. 1396d(a)(2)(A) or (B) or 42 U.S.C. 1396d(a)(3).(a).

(108) “Qualifying income trust” or “QIT” means an irrevocable trust established for the benefit of an identified individual in accordance with 42 U.S.C. 1396p(d)(4)(B).

(109) “Real property” means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.

(110) “Recipient” is defined in KRS 205.8451(9).

(111) “Resource assessment” means the assessment, at the beginning of the first continuous period of institutionalization of the institutionalized spouse upon request by either spouse, of the joint resources of a couple if a member of the couple enters a medical institution or nursing facility or becomes a participant in a 1915(c) home and community based services waiver program.

(112) “Resources” mean cash money and other personal property or real property that:

(a) An individual:
   1. Owns; and
   2. Has the right, authority, or power to convert to cash; and
   (b) Is not legally restricted for support and maintenance.

(113) “Retirement, Survivors, and Disability Insurance” or “RSDI” means an insurance benefit program:

(a) Managed by the United States Social Security Administration;

(b) Also known as Social Security Disability Insurance and Social Security Disability Insurance; and

(c) Which aims to provide monthly financial support to individuals who have lost income due to retirement, disability, or death of a family provider.

(114) “Rural health clinic” is defined by 42 C.F.R. 405.2401(b).

(115) “Satisfactory documentary evidence of citizenship or nationality” is defined by 42 U.S.C. 1396b(x)(3)(A).

(116) “Significant financial duress” means a member of a couple has established to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other support needs of the community spouse to permit the community spouse to remain in the community.

(117) “Social Security” means a social insurance program administered by the United States Social Security Administration.

(118) “Social Security number” means a number issued by the United States Social Security Administration to United States citizens, permanent residents, or temporary (working) residents pursuant to 42 U.S.C. 405(c)(2).

(119) “Special income level” means the amount which is 300 percent of the SSI standard.

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

(121) “Spend-down liability” means the amount of money in excess of the Medicaid income eligibility threshold to which incurred medical expenses are applied to result in an individual’s income being below the income eligibility threshold.

(122) “Spousal protected resource amount” means resources deducted from a couple’s combined resources for the community spouse in an eligibility determination for the institutionalized spouse.

(123) “Spousal share” means one-half (1/2) of the amount of a couple’s combined countable resources, up to a maximum of $60,000 to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g).

(124) “Spouse” means a person legally married to another under state law.

(125) “SSI benefit” is defined by 20 C.F.R. 416.2101.

(126) “SSI essential person, spouse, or nonspouse” means an individual necessary to an SSI recipient to enable the SSI recipient to be self-supporting.

(127) “SSI general exclusion” means the twenty (20) dollars disregard from income allowed by the Social Security Administration in an SSI determination.

(128) “SSI program” means the United States supplemental security income program.

(129) “SSI standard” means the amount designated by the Social Security Administration as the federal benefit rate.

(130) “Standard maintenance amount” means one-twelfth (1/12) of the federal poverty income guideline for a family unit of two (2) members, with revisions of the official income poverty guidelines applied for Medicaid provided during and after the second calendar quarter that begins after the date of publication of the revisions, multiplied by 150 percent.

(131) “State fair hearing” means an administrative hearing provided by the Cabinet for Health and Family Services pursuant to KRS Chapter 13B and 907 KAR 1:563.

(132) “State-funded assistance” is defined by KRS 199.555(2).

(133) “State plan” is defined by 42 C.F.R. 400.203.

(134) “State spousal resource standard” means the amount of a couple's combined countable resources determined necessary by the department for a community spouse to maintain himself or herself in the community.

(135) “Support right” means the right of an institutionalized spouse to receive support from a community spouse under state law.

(136) “Targeted low-income child” is defined by 42 C.F.R. 457.310(a).

(137) “Tax filer” means an individual who:

(a) Expects to file income tax for the benefit year either:
   1. Individually; or
   2. As a married individual filing jointly; or
   (b) Expects to be claimed as a dependent on another individual’s taxes during the benefit year.

(138) “Temporary Assistance for Needy Families” or “TANF” means a block grant program which:

(a) Succeeded AFDC; and

(b) Is designed to:
   1. Assist needy families so that children can be cared for in their own homes;
   2. Reduce the dependency of needy parents by promoting job preparation, work, and marriage;

(c) Prevent out-of-wedlock pregnancies;

(d) Encourage the formation and maintenance of two-parent families.

(139) “Third party liability resource” means a resource available to an enrollee for the payment of expenses:

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

(b) That does not include amounts exempt under Title XIX of the Social Security Act, 42 U.S.C. 1396 to 1396v.

(140) “Title IV-E benefits” means benefits received via Social Security Act Title IV, Part 3.

(141) “Tobacco Master Settlement Agreement” means an agreement entered into in November 1998 between certain tobacco companies and states’ attorneys general of forty-six (46) states:

(a) Which settled states’ lawsuits against the tobacco industry for recovery of tobacco-related health care costs;

(b) Which exempted the tobacco companies from private tort liability regarding harm caused by tobacco; and

(c) In which the tobacco companies agreed to make various annual payments to the states to compensate for some of the medical costs incurred in caring for individuals with smoking-related illnesses.

(142) “Transferred resource factor” means an amount that is:

(a) Equal to the average:
   1. Monthly cost of nursing facility services in the state at the time of application; and
   2. Of private pay rates for semi private rooms of all Medicaid participating facilities; and

(b) Adjusted annually.

(143) “Trust” means a legal instrument or agreement valid under Kentucky state law in which:

(a) A grantor transfers property to a trustee or trustees with the intention that it be held, managed, or administered by the trustee or trustees for the benefit of the grantor or certain designated
individuals or beneficiaries; and
(b) A trustee holds a fiduciary responsibility to manage the
trust's corpus and income for the benefit of the beneficiaries.

(144) "Trusted source" means a source recognized by the
federal government or department as a reliable source for verifying
an individual's information.

(145) "Uncompensated value" means the difference between
the:

(a) Fair market value at the time of transfer, less any
outstanding loans, mortgages, or other encumbrances on the asset;
and
(b) Amount received for the asset.

(146) "Undue hardship" means that:
(a) Medicaid eligibility of an institutionalized spouse cannot be
established on the basis of assigned support rights; and
(b) The spouse is subject to discharge from the medical
institution, nursing facility, or 1915(c) home and community based
services waiver program due to inability to pay.

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

(148) "Veteran" is defined in 38 U.S.C. 101(2).

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

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

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LEGISLATURE: September 30, 2013 at 4 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, email tricia.orne@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This
administrative regulation establishes the definitions for
administrative regulations located in Chapter 20 of Title 907 of the
Kentucky Administrative Regulations. Chapter 20 contains
Medicaid eligibility and eligibility-related administrative regulations.
(b) The necessity of this administrative regulation: This
administrative regulation is necessary to establish the definitions for
administrative regulations located in Chapter 20 of Title 907 of the
Kentucky Administrative Regulations. Chapter 20 contains
Medicaid eligibility and eligibility-related administrative regulations.
(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 definitions
for administrative regulations located in Chapter 20 of Title 907 of the
Kentucky Administrative Regulations. Chapter 20 contains
Medicaid eligibility and eligibility-related administrative regulations.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This
administrative regulation will assist in the effective administration of
the authorizing statutes by establishing the definitions for
administrative regulations located in Chapter 20 of Title 907 of the
Kentucky Administrative Regulations. Chapter 20 contains
Medicaid eligibility and eligibility-related administrative regulations.
(2) If this is an amendment to an existing administrative
regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative
regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the
authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective
administration of the statutes: This is a new administrative
regulation.

(3) List the type and number of individuals, businesses,
organizations, or state and local government affected by this
administrative regulation: Medicaid recipients and individuals
applying for Medicaid are affected by the administrative regulation.
Currently, over 800,000 individuals in Kentucky received Medicaid.

(4) Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this
administrative regulation, if new, or by the change, if it is an
amendment, including:
(a) List the actions that each of the regulated entities identified in
question (3) will have to take to comply with this administrative
regulation or amendment: No action is required.
(b) In complying with this administrative regulation or
amendment, how much will it cost each of the entities identified in
question (3): No cost is imposed.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): The administrative regulation
establishes definitions for managed care regulation. Individuals will
benefit due to the clarity of Medicaid eligibility terms being defined in
this administrative regulation.

(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: No cost is necessary to initially implement this
administrative regulation.
(b) On a continuing basis: No continuing cost is necessary 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 sources of revenue to be used for implementation and
enforcement of this administrative regulation are federal funds
authorized under Title XIX of the Social Security Act and state
matching funds comprised of general fund and restricted fund
appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is neither applied nor
necessary as the administrative regulation establishes definitions
for Medicaid eligibility administrative regulations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal
mandate. There is no federal mandate to define Medicaid terms in
an administrative regulation.

2. State compliance standards. KRS 194A.030(2) states, "The
Department for Medicaid Services shall serve as the single state
agency in the Commonwealth to administer Title XIX of the Federal
Social Security Act."

3. Minimum or uniform standards contained in the federal
mandate. There is no federal mandate to define Medicaid terms in
an administrative regulation.

4. Will this administrative regulation impose stricter
requirements, or additional or different responsibilities or
requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or
additional or different responsibilities or requirements. 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 and Department for Community Based Services
will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(a)(18), (r)(2), 1396b(I), 1396d(q)(2)(B), 1397aa

EFFECTIVE: September 30, 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 for the provision of medical assistance to Kentucky’s indigent citizenry. This administrative regulation establishes the technical eligibility requirements of the Medicaid program except for individuals whose Medicaid eligibility standard is a modified adjusted gross income or for former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. Individuals to whom the technical eligibility requirements in this administrative regulation apply include children in foster care; aged, blind, or disabled individuals; and individuals who receive supplemental security income benefits.

Section 1. Definitions. (1) “Cabinet” is defined by KRS 218A.010(3).

(2) “Child” means a person who:
(a) Is under the age of eighteen (18); or
(b) Is under age nineteen (19) if the person is:
(i) A full-time student in a secondary school or the equivalent level of vocational or technical training; and
(ii) Expected to complete the program before age nineteen (19);
2. Is not self-supporting;
3. Is not a member of the Armed Forces of the United States; and
4. If previously emancipated by marriage, has returned to the home of his parents or to the home of another relative, or
5. Has not attained age nineteen (19) years of age as specified in 42 U.S.C. 1396a(l)(1).
(3) “Evidence of identity” means:
(a) A current state driver’s license or state identification document bearing the individual’s picture;
(b) A certificate of Indian Blood or other United States American Indian or Alaska Native tribal document; or
c) For a child who is age sixteen (16) or younger:
1. A school identification card with a photograph;
2. A military dependent’s identification card, if it contains a photograph;
3. A school record that shows the:
 a. Date and place of birth; and
 b. Parent or parents’ name;
4. A clinician, doctor, of hospital record showing date of birth;
5. A daycare or nursery school record showing date and place of birth; or
6. An affidavit signed under penalty of perjury by a parent or guardian attesting to the child’s identity.
(4) “Kentucky Transitional Assistance Program” or “K.TAP” means Kentucky’s version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:
(a) Death;
(b) Continued voluntary or involuntary absence;
(c) Physical or mental incapacity of one (1) parent or step-parent if two (2) parents are in the home;
(d) Unemployment of one (1) parent if both parents are in the home;
(5) “Medicaid works individual” means an individual who:
(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving supplemental security income;
(b) Is at least sixteen (16), but less than sixty-five (65), years of age;
(c) Is engaged in active employment verifiable with:
1. Paycheck stubs;
2. Tax returns;
3. 1099 forms; or
4. Proof of quarterly estimated tax;
(d) Meets the income standards established in 907 KAR 1:640; and
(e) Meets the resource standards established in 907 KAR 1:645.

(5) “Minor teenage parent” means an individual who:
(a) Has not attained eighteen (18) years of age;
(b) Is not married; and
(c) Has a minor child in his care.

(7) “Satisfactory documentary evidence of citizenship” or
nationality” means:
(a) United States passport;
(b) A Certificate of Naturalization (DHS Form N-550 or N-570);
(c) A Certificate of United States Citizenship (DHS Form N-550 or N-561);
(d) One (1) of the following documents submitted with evidence
of identity if a document identified in paragraph, (a) through (c) of
this subsection is not available or cannot be obtained:
1. A United States birth certificate;
2. A Certification of Birth issued by the Department of State
(Form DS-1350);
3. A Report of Birth Abroad of a Citizen of the United States
(Form FS-240);
4. A Certification of Birth Abroad (FS-545);
5. A United States Citizen Identification Card (DHS Form L-197);
6. An American Indian Card (I-872);
7. A final adoption decree;
8. Evidence of civil service employment by the United States
government before June 1976; or
9. An official military record of service showing a United States
place of birth;
(a) One (1) of the following documents submitted with evidence
of identity if a document identified in paragraphs, (a) through (d) of
this subsection is not available or cannot be obtained;
1. An extract of a United States hospital record of birth that:
a. Was established at the time of a person’s birth;
b. Was created at least five (5) years before the initial
application date; and
c. Indicates a United States place of birth; or
2. A life, health, or other insurance record that;
a. Shows a United States place of birth; and
b. Was created at least five (5) years before the initial
application date; or
(f) One (1) of the following documents submitted with evidence
of identity if a document identified in paragraphs, (a) through (e) of
this subsection is not available or cannot be obtained, the applicant
alleges citizenship, and nothing exists to indicate the person is not
a citizen:
1. Federal or state census record showing:
a. United States citizenship;
2. Institutional admission papers that:
a. Are from a nursing facility, skilled nursing facility, or other
institution;
b. Were created at least five (5) years before the initial
application date; and
c. Indicates a United States place of birth;
3. Medical record that:
a. Was created at least five (5) years before the initial
application date, unless the application is for a child under age five
(5); and
b. Indicates a United States place of birth unless the
application is for a child under age five (5); or
4. Written affidavit by at least two (2) individuals:
a. Of whom one (1) is not related to the applicant;
b. Who have personal knowledge of the event establishing the
applicant’s claim of citizenship; and
(c) Who provide proof of their own citizenship and identity.

(8) “Qualified alien” means an alien who, at the time the alien
applies for, or receives, Medicaid, meets the requirements
established in Section 5(12) of this administrative regulation.

(9) “Veteran” is defined in 38 U.S.C. 101(2).

Section 2. The Categorically Needy. (1) An individual receiving
Title IV-E benefits, SSI benefits, or an optional or a mandatory
state supplement[Supplemental Security Income, or Optional or
Mandatory State Supplementation] shall be eligible for Medicaid as a
categorically needy individual.

(2) The following classifications of[needy persons shall be considered][included in the program as] categorically needy
and[thus] eligible for Medicaid participation as categorically needy:
(a) A child in a foster family care or private nonprofit child-
caring institution dependent on a governmental or private agency;
(b) A child in a psychiatric hospital, psychiatric residential
facilities or intermediate care facility for individuals with an
intellectual disability;
(c) A pregnant woman;
(d) A child of unemployed parents;
(e) A child in a subsidized adoption dependent on a
governmental agency;
(f) A child (but not his parents) who:
1. Would have been financially eligible for Aid to Families with
Dependent Children benefits using the AFDC methodologies in
effect on July 16, 1996; and
2. Meets the definition of Section 1(2) of this administrative
regulation;
(g) A qualified severely impaired individual as specified in 42
U.S.C. 1396a(a)(10)(A)(i)(III) and 1396d. [to the extent the
coverage is mandatory in this state][1];
(h) An individual who loses SSI benefit eligibility but would be
eligible for SSI benefits except for entitlement to or an increase
in his child’s insurance benefits based on disability as specified in
42 U.S.C. 1383c;
(i) An individual specified in 42 U.S.C. 1383c who:
1. Loses SSI benefits or state supplement[supplementation] payments as a result of receipt of benefits pursuant to 42 U.S.C.
402(e) or (f);
2. Would be eligible for SSI benefits or state supplement
payments[ssp] except for these benefits; and
3. Is not entitled to Medicare Part A benefits[hospital insurance
benefits under the Medicare program];
[2]
(j) An individual[disability widow, widower, or disabled surviving
divorced spouse, who would be eligible for SSI benefits except for
entitlement to an OASDI[benefits and specified state supplementation]
benefit resulting from a change in the definition of
disability;
(k) An individual with hemophilia who would be eligible for SSI
benefits[supplemental security income] on August 22, 1996; and
2. Except for the change in definition of childhood disability
would continue to receive SSI benefits[supplemental security
income]; or
(l) An individual[with hemophilia who would be eligible for SSI
benefits[supplemental security income] except that the
individual[had] received a settlement in a class action lawsuit
titled “Factor VIII or IX Concentrate Blood Products Litigation”.

(3) The classifications of[needy] persons listed in this
subsection shall be considered[included in the program as]
categorically needy and[thus] eligible for Medicaid participation as
limited by the provisions of this subsection.
(a) A family which correctly received Medicaid for three (3)
of the last six (6) calendar months, and would have been terminated
from receipt of AFDC using AFDC methodologies in effect on July
16, 1996 as a result of new or increased collection of child or
spousal support, shall be eligible for extended Medicaid coverage
for four (4) consecutive calendar months beginning with the first
month the family would have been ineligible for AFDC.

(b) A family which would have been terminated from AFDC
assistance using the AFDC methodologies in effect on July 16,
1996 because of increased earnings, hours of employment or loss
of earnings disregards shall be eligible for up to four (4)[twelve
(12)] months of extended Medicaid.
Section 2. Citizenship and Residency Requirements. (1) The citizenship requirements established in 42 C.F.R. 435.406 shall apply. (2) Except as established in subsection (3) or (4) of this section, to satisfy the Medicaid: 
(a) Citizenship requirement, an applicant or recipient shall be: 
1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility; 
2. Except as provided in subsection (3) of this section, a qualified alien who entered the United States on or after August 22, 1996, and is: 
(a) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101; 
(b) Granted asylum pursuant to 8 U.S.C. 1158; 
(c) A refugee admitted to the United States pursuant to 8 U.S.C. 1157; 
(d) Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year; 
(e) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997; or 8 U.S.C. 1231(b)(5); 
(f) Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980; 
(g) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522; 
(h) A battered alien pursuant to 8 U.S.C. 1641(c); 
(i) A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage; 
(j) On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d); 
(k) The spouse or unmarried dependent child of an individual described in clause i. or j. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304; 
(l) An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or 
3. A qualified alien who entered the United States on or after August 22, 1996, and is: 
(a) Granted asylum pursuant to 8 U.S.C. 1158; 
(b) A refugee admitted to the United States pursuant to 8 U.S.C. 1157; 
(c) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h) as in effect prior to April 1, 1997 or 8 U.S.C. 1231(b)(3); 
(d) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522; 
(e) A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage; 
(f) On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d); 
(g) The spouse or unmarried dependent child of an individual described in clause e. or f. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304; 
(h) An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or 
(i) An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and 
1. Is receiving SSI benefits; 
2. Previously received SSI benefits but is no longer receiving them; 
3. Is entitled to or enrolled in any part of Medicaid; 
4. Previously received Medicare benefits but is no longer receiving them; 
5. Is receiving: 
(a) Disability insurance benefits under 42 U.S.C. 423; or 
(b) Monthly benefits under 42 U.S.C. 402 based on the individual’s disability pursuant to 42 U.S.C. 423(d); 
6. Is in foster care and who is assisted under Title IV-B of the Social Security Act; or 
7. Receives foster care maintenance or adoption assistance payments under Title IV-E of the Social Security Act; 
(b) The department’s documentation requirements shall be in accordance with the requirements established in 42 U.S.C. 1396b(x).
The department shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant’s or recipient’s behalf.

An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met:

1. A pregnant woman during pregnancy, and
2. As though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy, or a child under six (6) years of age, as specified in 42 U.S.C. 1396a(a)(1), shall meet the income requirements for this eligibility group as specified in 907 KAR 1:640.
3. If an eligible child is receiving covered inpatient services on a birthday which will make him ineligible due to age, the child shall remain eligible until the end of the stay for which the covered inpatient services are furnished, if the child remains otherwise eligible except for age.
4. A child who has attained six (6) years of age but has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(a)(1) shall meet income requirements established in 907 KAR 1:640, Section 2(3)(a).
5. If Federal Medicaid matching funds are available to cover the cost of the program, an optional targeted low income child as established in 907 KAR 4:020, Section 2(1) who has not attained the age of nineteen (19) years as specified in 42 U.S.C. 1396a(a)(1) shall meet the income requirements established in 907 KAR 1:640 Section 2(2)(i).

Section 3. The Medically Needy Who Qualify Via Spenddown.

A medically needy individual (i) An individual, including a child pursuant to Section 2(2)(i) of this administrative regulation or a pregnant woman who has sufficient income to meet the individual’s basic maintenance needs (s) may apply for Medicaid with need determined in accordance with the income and resource standards established in 907 KAR 20:020 through 907 KAR 20:040[1:640]; through 907 KAR 1:665. If the individual meets:

1. [a(1)] The income and resource standards of the medically needy program established in 907 KAR 20:020[1:640] and 907 KAR 20:025[1:665]; and

2. (a) The proper requirements of the appropriate categorically needy group identified in Section 1(2) of this administrative regulation. (b) The medically needy eligible groups shall include:
(a) A pregnant woman during the course of her pregnancy;
(b) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, and who shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated); and
(c) A Medicaid works individual.

Section 4. Qualified Medicare Beneficiaries, Qualified Disabled and Working Individuals, Specified Low-Income Medicare Beneficiaries, and Medicaid Qualified Individuals Group 1 (QI-1) (QI).

1. Coverage shall be extended to a qualified Medicare beneficiary as specified in 42 U.S.C. 1396a(a)(10)(E):
(a) Subject to the income limits established in 907 KAR 20:020;
(b) Subject to the resource limits established in 907 KAR 20:025; and
(c) For the scope of benefits specified for a QMB in 907 KAR 1:006.
2. A QMB shall:
(a) Be eligible for or receive Medicare Part A and Part B benefits;
(b) Be determined to be eligible for QMB benefits effective for the month after the month in which the eligibility determination has been made; and
(c) Not be eligible for QMB benefits:
1. Retroactively; or
2. For the month in which the eligibility determination was made.
3. Subject to the income as shown in 907 KAR 1:640, and resource limitations shown in 907 KAR 1:646 and for the scope of benefits specified in 907 KAR 1:006. A qualified Medicare beneficiary shall:
(a) Be eligible for and receiving Medicare Part A benefits;
(b) Be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made; and
(c) Not be eligible for benefits as a qualified Medicare beneficiary eligible individual:
1. Retroactively; or
2. For the month in which the determination was made.
4. A qualified disabled and working individual as defined in 42 U.S.C. 1396a(a)(1) shall be eligible under Medicaid for payment of the Medicare Part A premiums as established in 907 KAR 1:006.
5. A qualified low-income Medicare beneficiary as defined in 42 U.S.C. 1396a(a)(10)(E) shall be eligible for payment of all of the Medicare Part B premium.

Section 5. Technical Eligibility Requirements. The technical eligibility factors for a family or individual included as categorically needy under Section 1(2) of this administrative regulation or as medically needy under Section 3 of this administrative regulation shall be as established in this section.

1. A child in foster care, a private institution, psychiatric hospital, psychiatric residential treatment facility, or an intermediate care facility for individuals with an intellectual disability[mental retardation institution] shall meet the definition requirements of child as established in 907 KAR 20:001, Section 1(24)(a) of this administrative regulation.
2. Except as provided by Section 2 of this administrative regulation, a pregnant woman shall be eligible upon medical proof of pregnancy.
3. At the time of application, unemployment relating to eligibility of both parents and children shall be determined using the following criteria:
(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if:
1. The work is intermittent; and
2. The excess is of a temporary nature as evidenced by the fact that the individual:
   (i) Was under the 100 hour standard for the prior two (2) months; and
   (ii) Is expected to be under the standard during the next month;
   (b) A parent is receiving or has been found ineligible for unemployment compensation;
   (c) A child is receiving or has been found ineligible for unemployment compensation.
(b) A parent shall not have refused suitable employment without good cause as determined in accordance with 45 C.F.R. 233.100(a)(2)(iii).
4. Subsection (3)(a) of this section shall not apply if a change is made in a Medicaid case or if a case is recertified.
5. An aged individual shall be at least sixty-five (65) years of age.
6. A blind individual shall meet the definition of blindness as contained in 42 U.S.C. 416 and 42 U.S.C. 1382c relating to Retirement, Survivors, and Disability Insurance or SSI benefits, or supplemental security income (SSI)
7. A disabled individual shall meet the definition of disability as established contained in 42 U.S.C. 423(d) and 42 U.S.C. 1382c(a)(3) relating to RSDI and SSI benefits.
8. Using AFDC methodologies in effect on July 16, 1996, a family who loses Medicaid eligibility solely because of increased earnings or years of employment of the caretaker relative or loss of earnings disregards may receive up to four
5. Uncle;
6. Aunt;
7. Nephew;
8. Niece;
9. First cousin;
10. A relative of the half-blood;
11. A preceding generation denoted by a prefix of:
a. Grand;
b. Great;
c. Great-great;
12. A stepfather, stepmother, stepbrother, or stepsister.
(40) An applicant who is deceased shall have eligibility determined in the same manner as if the applicant were alive to cover medical expenditures during the terminal illness.

(7)(a)(1) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member is pregnant, the unborn child shall be considered as a family member for budgeting purposes.
(12) The citizenship and residency requirements established in this subsection shall be applicable.
(a) To be eligible for Medicaid, an applicant or recipient shall be:
1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility. The cabinet:
   a. Shall exempt an applicant or recipient who currently receives Medicare or SSI or who no longer receives Medicare or SSI, but has received one (1) of them in the past, from providing further documentation of citizenship or nationality;
   b. Except as provided in paragraph (b) of this subsection, a qualified alien who entered the United States before August 22, 1996, and is:
   i. Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1110;
   ii. Granted asylum pursuant to 8 U.S.C. 1158;
   iii. A refugee admitted to the United States pursuant to 8 U.S.C. 1152;
   iv. Paroled into the United States pursuant to 8 U.S.C. 1231(b)(5), for a period of at least one (1) year;
   v. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1252(b), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);
   vi. Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;
   vii. An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1523;
   viii. A battered alien pursuant to 8 U.S.C. 1153(b),
   (c) Good cause shall exist under the following circumstances:
1. The specified relative was out-of-town for the reporting month;
2. An immediate family member living in the home was institutionalized or died during the reporting month;
3. The assistance group was the victim of a natural disaster including a flood, storm, earthquake or serious fire;
4. The assistance group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form.
(9) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.
(a) If a parent is not included in the case, one (1) other caretaker relative may be included to the same extent he would have been eligible in the Aid to Families with Dependent Children program using the AFDC methodology in effect on July 16, 1996.
(b) A caretaker relative shall include:
1. Grandfather;
2. Grandmother;
3. Brother;
4. Sister;
12. A stepfather, stepmother, stepbrother, or stepsister.

(14) An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met and the applicant is not enrolled in a managed care organization/partnership.

(b) A strike shall include a concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) or any concerted slowdown or other concerted interruption of operations by employees.

(15) A caretaker relative, but not a child, removed from a family related Medicaid only case due to failure to meet a technical eligibility requirement shall not be eligible for Medicaid as a medically needy individual unless the individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which the individual has been removed.

(16) A caretaker relative, but not a child, who is ineligible for K-TAP benefits for failure to comply with K-TAP work requirements shall not be eligible for medical assistance unless the individual is eligible as a pregnant woman.

Section 6. Institutional Status. An individual shall not be eligible for Medicaid if the individual is a:

1. Resident or inmate of a nonmedical public institution except as provided in Section 7 of this administrative regulation;
2. Patient in a state tuberculosis hospital unless he has reached age sixty-five (65);
3. Patient in a mental hospital or psychiatric facility unless the individual is:
   a. Under [age] twenty-one (21) years of age;
   b. Under age twenty-two (22) if the individual had been receiving inpatient services on his or her 21st birthday; or
   c. Sixty-five (65) years of age or over; or
4. Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases, unless the individual has reached age sixty-five (65).

Section 7. Emergency Shelters or Incarceration Status. An individual or family group who is in an emergency shelter for a temporary period of time shall be eligible for medical assistance, even though the shelter is considered a public institution, under the following conditions:[certain conditions. These conditions shall be as follows]:

1. The individual or family group shall:
   a. Be a resident of an emergency shelter no more than six months in any nine (9) month period; and
   b. Not be in the facility serving a sentence imposed by the court, or awaiting trial; and
2. Be a resident of an emergency shelter no more than six months in any nine (9) month period; and

Section 8. Application for Other Benefits. (1) As a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement, and disability benefit to which the applicant or recipient is entitled, unless the applicant or recipient can show good cause for not doing so.

(a) Good cause shall be considered to exist if other benefits have previously been denied with no change of circumstances or the individual does not meet all eligibility conditions.
(b) Annuities, pensions, retirement, and disability benefits shall include:
   1. Veterans’ compensations and pensions;
   2. Retirement and survivors disability insurance benefits;
   3. Railroad retirement benefits;
   4. Unemployment compensation; and
   5. Individual retirement accounts.

(2) An applicant or recipient shall not be required to apply for federal benefits if:

(a) The federal law governing that benefit specifies that the benefit is optional; and
(b) The applicant or recipient believes that applying for the benefit would be to the applicant’s or recipient’s disadvantage.

(3) An individual who would be eligible for SSI benefits but has not made application shall not be eligible for Medicaid.
Section 9. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have made an assignment to the cabinet[for Health and Family Services] of any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 10. Third-party Liability as a Condition of Eligibility. (1) (a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the cabinet[for Health and Family Services] in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid program unless the individual has good cause for refusing to cooperate.

(b) Good cause for failing to cooperate shall exist if cooperation:
1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;
2. Is not in a child's best interest because the child was conceived as a result of rape or incest; or
3. May interfere with adoption considerations or proceedings.

(2) A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 11. Provision of Social Security Numbers. (1) Except as provided in subsections (2) and (3) of this section, an applicant or recipient of Medicaid shall provide a Social Security number as a condition of eligibility.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a Social Security number from the United States Social Security Administration if appropriate application for the number has been made.

(3) An individual who refuses to obtain a Social Security number due to a well-established religious objection shall not be required to provide a Social Security number as a condition of eligibility.

Section 12. Applicability. (1) The provisions and requirements of this administrative regulation shall:

(a) Apply to:
1. Children in foster care;
2. Aged, blind, or disabled individuals; and
3. Individuals who receive supplemental security income benefits; and

(b) Not apply to an individual:
1. Whose Medicaid eligibility is determined using the modified adjusted gross income standard; or
2. Between the ages of nineteen (19) and twenty-six (26) years who:
   a. Formerly was in foster care; and
   b. Aged out of foster care while receiving Medicaid coverage.

(2) An individual whose Medicaid eligibility is determined using a modified adjusted gross income as the eligibility standard shall be an individual who is:

(a) A child under the age of nineteen (19) years, excluding children in foster care;

(b) A caretaker relative with income up to 133 percent of the federal poverty level;

(c) A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;

(d) An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:
   1. Does not have a dependent child under the age of nineteen (19) years; and
   2. Is not otherwise eligible for Medicaid benefits; or

(e) A targeted low income child with income up to 150 percent of the federal poverty level if the parent or caretaker relative and

the child, unless the child is a deemed eligible newborn, refuses to cooperate with obtaining a Social Security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failure to meet technical requirements.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 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, email tricia.orne@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Persons: Marchetta Carmicle or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes technical eligibility requirements for Kentucky’s Medicaid program for children in foster care; aged, blind, or disabled individuals; and individuals who receive supplemental security income (SSI) benefits. The requirements in this administrative regulation do not apply to individuals for whom a modified adjusted gross income, or MAGI, is the Medicaid income eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program eligibility requirements in accordance with federal law and regulation and as authorized by KRS 194A.030(2) which establishes the Department for Medicaid Services as the commonwealth’s single state agency for administering the federal Social Security Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 194A.030(2), 194A.050(1) and 205.520(3) by establishing Medicaid program technical eligibility requirements in accordance with federal law and as authorized by KRS 194A.030(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 194A.030(2), 194A.050(1) and 205.520(3) by establishing Medicaid program technical eligibility requirements in accordance with federal law and as authorized by KRS 194A.030(2).

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes that the technical eligibility requirements do not apply to individuals for whom a modified adjusted gross income (or MAGI) is the Medicaid eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. The Affordable Care Act bars the application of certain existing technical eligibility requirements to these populations. The requirements for MAGI individuals are being established in a separate administrative regulation – 907 KAR 20:075. The MAGI group and former foster care group were created by the Affordable Care Act. DMS anticipates the MAGI group and former foster care group will be established in another separate administrative regulation – 907 KAR 20:075. The MAGI group and former foster care group were created by the Affordable Care Act. An optional eligibility group which DMS has added to the administrative regulation is hospital admissions for incarcerated individuals who are admitted to an inpatient hospital for at least twenty-four (24) hours (provided that the individual meets Medicaid eligibility criteria.) DMS anticipates that some pregnant women will qualify under this option. Additionally, the amendment eliminates the Medicaid requirement that in order to receive coverage under Medicaid, newborns must live with the mother and that the mother must remain eligible for Medicaid (or would remain eligible if still pregnant) and also clarifies that the technical eligibility requirements apply to children in foster care; aged, blind, or
The necessity of the amendment to this administrative regulation includes language and formatting revisions to comply with Kentucky Administrative Regulations (KRS). The amendment also includes a definition for Medicaid Services (DMS) creating definitions administrative regulations for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations. The amendment also includes language and formatting revisions to comply with KRS Chapter 13A requirements.

(b) On a continuing basis: The response provided in paragraph (a) regarding the initial cost also applies as a cost estimate 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 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 the Affordable Care Act and matching funds of general fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is applied in that the technical eligibility requirements do not apply to populations who are exempted from the requirements pursuant to the Affordable Care Act.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. KRS 205.520(3) states, "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, 42 U.S.C. 1396a(e)(4) eliminates the Medicaid requirement that, in order to receive coverage under Medicaid, newborns must live with the mother and that the mother must remain eligible for Medicaid (or would remain eligible if still pregnant.) 42 U.S.C. 1396a(e) exempts the application of certain existing technical eligibility requirements to individuals whose Medicaid eligibility standard is a modified adjusted gross income. 42 U.S.C. 1396a(a)(10)(A)(i)(IX) creates the new eligibility group comprised of former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment neither imposes stricter nor additional nor different responsibilities nor 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 amendment does not impose stricter than federal requirements.

VOLUME 40, NUMBER 5 – NOVEMBER 1, 2013

STATEMENT OF EMERGENCY
907 KAR 20:010E

This is an emergency administrative regulation which establishes that the procedures for determining initial and continuing Medicaid in this administrative regulation do not apply to individuals for whom a modified adjusted gross income or MAGI is the Medicaid eligibility standard. This administrative regulation is identical to this emergency regulation filed with the Regulations Compiler. The ordinary administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

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

907 KAR 20:010E. Medicaid procedures for determining initial and continuing eligibility other than procedures related to a modified adjusted gross income eligibility standard or related to former foster care individuals.


EFFECTIVE: September 30, 2013

NECESSITY, FUNCTION, AND CONFORMITY:[EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds for the provision of medical assistance to Kentucky’s indigent citizens. This administrative regulation establishes provisions relating to determining initial and continuing eligibility for assistance under the Medicaid Program except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals who aged out of foster care while receiving Medicaid coverage.

Section 1. [Definition. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "First month of SSI payment" means the first month for which an SSI related Medicaid recipient is determined to be eligible for SSI payments.

(3) "Partnership" means an entity that meets the criteria established in 907 KAR 1:705. Demonstration project: services
provided through regional managed care partnerships (1115 Waiver). Section 5, and, under contract with the department in accordance with KRS Chapter 45A, agrees to provide, or arrange for the provision of health services to members on the basis of prepaid capitation payments.

Section 2. Eligibility Determination Process. (1)(a) Except as provided in subsection (3) or (5) of this section, eligibility shall be determined prospectively.

(b) To receive or continue to receive assistance, a household shall meet technical and financial eligibility criteria for the appropriate month of coverage, pursuant to:

1. This section;
2. (and) Section 3 of this administrative regulation; and
3. As established in:
   (i) 907 KAR 20:005;
   (ii) 907 KAR 20:20, and
   (iii) 907 KAR 20:025 the following administrative regulations for the appropriate month of coverage:
   a. 907 KAR 1:011, Technical eligibility requirements;
   b. 907 KAR 1:640, Income standards for Medicaid; and
   c. 907 KAR 1:645, Resource standards for Medicaid.

(2) A decision regarding eligibility or ineligibility for Medicaid shall be supported by facts recorded in the case record.

(a) The applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of financial and technical eligibility as required by 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025 the following administrative regulations:
   a. 907 KAR 1:011, Technical eligibility requirements;
   b. 907 KAR 1:640, Income standards for Medicaid; and
   c. 907 KAR 1:645, Resource standards for Medicaid; and
2. Give written consent to those contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(b) The department may schedule an appointment with an applicant or recipient to receive specified information as proof of eligibility.

2. Failure to appear for the scheduled appointment or to furnish the requested information shall be considered a failure to present adequate proof of eligibility if the applicant or recipient was informed in writing of the scheduled appointment and the required information.

(3) Retroactive eligibility for Medicaid not related to the receipt of SSI benefits shall be effective no earlier than the third month prior to the month of application if:

(a) A Medicaid service was received;
(b) Technical and financial eligibility requirements were met as established in 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025 the following administrative regulations:
   1. 907 KAR 1:011, Technical eligibility requirements;
   2. 907 KAR 1:640, Income standards for Medicaid; and
   3. 907 KAR 1:645, Resource standards for Medicaid; and
(c) The applicant is excluded from managed care organization participation in accordance with 907 KAR 17:010 resides in a nonpartnership county, or

2. The applicant resides in a county served by a partnership and meets one (1) of the excluded categories as established in 907 KAR 1:705, Demonstration project: services provided through regional managed care partnerships (1115 Waiver)

(4) Eligibility for qualified Medicare beneficiary (QMB) coverage shall be effective the month after the month of case approval if technical and financial eligibility requirements were met as established in 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025 the following administrative regulations:

(a) 907 KAR 1:011, Technical eligibility requirements;
(b) 907 KAR 1:640, Income standards for Medicaid; and
(c) 907 KAR 1:645;

(5) [a] Retrospective eligibility for specified low-income Medicare beneficiary (SLMB) benefits. Medicaid qualified individual group 1 (QI-1) individuals or benefits; or qualified disabled and working individuals shall be effective no earlier than the third month prior to the month of application if the individual meets technical and financial eligibility requirements as established in 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025 the following administrative regulations:

1. 907 KAR 1:011, Technical eligibility requirements;
2. 907 KAR 1:640, Income standards for Medicaid; and
3. 907 KAR 1:645.

(b) Retroactive eligibility for a qualified individual shall not include months of a prior year.

(6) An SSI-related recipient age twenty-one (21) or older. in accordance with HCFA Program Issuance Transmittal Notice, Region IV, May 7, 1997, MCD-014-97, shall be eligible for Medicaid benefits effective the month prior to the first month of SSI payment if the individual:

(a) Is eligible to be enrolled with a managed care organization in accordance with 907 KAR 17:010 resides in a partnership county, and
(b) Meets Medicaid eligibility requirements for that month.

(7) An SSI-related recipient age twenty-one (21) or older. in accordance with HCFA Program Issuance Transmittal Notice, Region IV, May 7, 1997, MCD-014-97, shall be retroactively eligible for Medicaid benefits effective no earlier than the third month prior to the first month of SSI payment if the individual:

(a) Is excluded from managed care organization participation in accordance with 907 KAR 17:010 resides in a nonpartnership county, and
(b) Meets Medicaid eligibility requirements for these months.

Section 2. Continuing Eligibility. (1) The [individual] recipient shall be responsible for reporting within ten (10) days a change in circumstances which may affect eligibility.

(2) In addition, eligibility shall be redetermined:

(a) Every twelve (12) months or
(b) If a report is received or information is obtained about a change in circumstances.

(2) Pursuant to the waiver granted by the Secretary, United States Department of Health and Human Services, and promulgated as 907 KAR 1:705, Demonstration project: services provided through regional managed care partnerships (1115 Waiver), a recipient shall have a one (1) time guarantee of six (6) months of eligibility, regardless of a loss of technical eligibility for Medicaid during that six (6) month time period if the recipient:

(a) Resides in a county included in a partnership;
(b) Did not meet one (1) of the excluded categories established in 907 KAR 1:705, Demonstration project: services provided through regional managed care partnerships (1115 Waiver);
(c) Did not receive Medicaid in any of the twelve (12) months preceding participation in a partnership;
(d) Participated in a partnership for less than six (6) months;
(e) [continued to reside in a partnership region during the guaranteed six (6) month eligibility period]; and
(f) [not]

1. An incarcerated recipient;
2. An alien who is eligible for emergency Medicaid; or
3. A recipient requesting discontinuance of Medicaid,

Section 3. Determination of Incapacity or Permanent and Total Disability. (1) Except as provided in subsections (2) and (3) of this section, a determination that a parent with whom the needy child lives is incapacitated, or that the individual requesting Medicaid due to disability is both permanently and totally disabled,
shall be made by the medical review team following review of both medical and social reports.

(2) A parent shall be considered incapacitated without a determination from the medical review team if:
(a) The parent declares physical inability to work;
(b) The worker observes some physical or mental limitation; and
(c) The parent:
1. Is receiving SSI benefits [supplemental security income (SSI)];
2. Is age sixty-five (65) years or over;
3. Has been determined to meet the definition of blindness or permanent and total disability as contained in 42 U.S.C. 1382 or 416 by either the Social Security Administration or the medical review team;
4. a. Has previously been determined to be incapacitated or both permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction without a reexamination requested; and
b. There is no visible improvement in condition;
5. Is receiving Retirement, Survivors, and Disability Insurance [RDSI] benefits, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter.
6. Is receiving Veterans Affairs [VA] benefits based on 100 percent disability, as verified by an award letter; or
7. a. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days.
b. If application was made prior to the admission, the physician shall indicate if incapacity existed as of the application date.

(3) An individual shall be considered permanently and totally disabled without a determination from the medical review team if the individual:
(a) Receives RSDI or railroad retirement benefits based on disability;
(b) Received SSI benefits based on disability during a portion of the twelve (12) months preceding the application month and discontinuance was due to income or resources and not to improvement in physical condition;
(c) Has been determined to meet the definition of blindness or both permanent and total disability as contained in 42 U.S.C. 416 or 1382 by the Social Security Administration; or
(d) Has previously been determined to be permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction without a reexamination requested; and
2. There is no visible improvement in condition.

(a) A child who was receiving SSI benefits on August 22, 1996 and who, but for the change in definition of childhood disability established by 42 U.S.C. 1396a(a)(10) would continue to receive SSI benefits, shall continue to meet the Medicaid definition of disability.
(b) If a redetermination is necessary, and in accordance with 921 KAR 5:470, the definition of childhood disability effective on August 22, 1996 shall be used.

Section 4. [5] Disqualification. An adult individual shall be disqualified from receiving Medicaid for a specified period of time if the department or a court determines the individual has committed an intentional program violation in accordance with 907 KAR 1:675, Program Integrity.

Section 5. Applicability. (1) The provisions and requirements of this administrative regulation shall not apply to an individual:
(a) Whose Medicaid eligibility is determined using the modified adjusted gross income as the income standard; or
(b) Between the ages of nineteen (19) and twenty-six (26) years who:
1. Formerly was in foster care; and
2. Aged out of foster care while receiving Medicaid coverage.
(2) An individual whose Medicaid eligibility is determined using the modified adjusted gross income as an income standard shall be an individual who is:
(a) A child under the age of nineteen (19) years, excluding children in foster care;
(b) A caretaker relative with income up to 133 percent of the federal poverty level;
(c) A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;
(d) An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:
1. Does not have a dependent child under the age of nineteen (19) years; and
2. Is not otherwise eligible for Medicaid benefits; or
(e) A targeted low income child with income up to 150 percent of the federal poverty level.

(2) This material may be:
(a) Inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or
children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level.

(b) The necessity of the amendment to this administrative regulation: The amendment exempting MAGI individuals and former foster care individuals from the requirement are necessary to comply with Affordable Care Act mandates. Eliminating the definitions from the administrative regulation is necessary as the Department for Medicaid Services is creating a definitions administrative regulation (907 KAR 20:001) for Chapter 20; and other amendments are necessary to ensure compliance with KRS Chapter 13A language and formatting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with Affordable Care Act mandates, by clarifying policy, and by revising language and formatting to ensure that it complies with KRS Chapter 13A standards.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by complying with Affordable Care Act mandates, by clarifying policy, and by revising language and formatting to ensure that it complies with KRS Chapter 13A standards.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.

(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) have to take to comply with this administrative regulation or amendment: A recipient who wishes to appeal a Medicaid service denial shall comply with the appeal provisions established in this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are exempted from the requirements will benefit from not being subject to the requirements for Medicaid eligibility purposes.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: Initially: DMS anticipates no cost as a result of exempting the MAGI individuals or former foster care individuals from the requirements in this administrative regulation.

(b) On a continuing basis: The answer provided in paragraph (a) also applies here

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is only applied in that the provisions do not apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals as the Affordable Care Act prohibits this.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 435.906 and this administrative regulation authorize the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. How much will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the income standards established in this administrative regulation nor from exempting former foster care individuals from the standards.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the MAGI individuals from the income standards established in this administrative regulation nor from exempting the former foster care individuals from the income standards.

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.

FEDERAL MANDATE ANALYSIS COMPARISON

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that cannot be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) requires the cabinet secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the commonwealth all applicable state laws and all 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 and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall 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.”
3. Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state’s Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations exempted from the new requirements (and to whom the old requirements continue to apply) include aged individuals (individuals over sixty-five (65) years of age or who receive Social Security Disability Insurance; individuals eligible for Medicaid as a result of being a child in foster care; individuals who are blind or disabled; individuals who are eligible for Medicaid via another program; individuals enrolled in a Medicare savings program; and medically needy individuals. 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) creates the new eligibility group comprised of former foster care individuals and bars the application of certain existing Medicaid eligibility requirements to this population.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter, than federal, requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter than federal requirements.

STATEMENT OF EMERGENCY
907 KAR 20:015E

This is an emergency administrative regulation which establishes that the requirements in this administrative regulation regarding applying and reapplying for Medicaid benefits do not apply to individuals for whom a modified adjusted gross income or MAGI is the Medicaid eligibility standard or to individuals who are former foster care individuals. The Affordable Care Act mandates that effective January 1, 2014, that the eligibility standard for certain categories of individuals will be a modified adjusted gross income (with differing procedures regarding applying for Medicaid benefits) and bars the application of certain existing Medicaid application rules to the MAGI population. Additionally, the Affordable Care Act bars the application of an income standard, resource standard, and of certain requirements in this administrative regulation to a new mandated Medicaid eligibility group comprised of individuals between nineteen (19) and twenty-six (26) who formerly were in foster care but aged out of foster care. As Medicaid coverage under the MAGI standards and for the former foster care individuals is mandatory January 1, 2014 and eligibility determinations can begin October 1, 2013, this administrative regulation is necessary to be implemented on an emergency basis. Thus, the Department for Medicaid Services is implementing this administrative regulation on an emergency basis to exempt individuals under the MAGI rules and former foster care individuals from the requirements established in this administrative regulation. This action must be implemented on an emergency basis to comply with federal mandate. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Emergency Amendment)

907 KAR 20:015E. Medicaid right to apply and reapply for individuals whose Medicaid eligibility is not based on a modified adjusted gross income eligibility standard or who are not former foster care individuals.

RELATES TO: KRS 205.520
EFFECTIVE: September 30, 2013
NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds for the provision of medical assistance to Kentucky’s indigent citizen. This administrative regulation establishes the [sets forth] provisions relating to the procedure by which an application for Medicaid coverage is filed, except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or for former foster care individuals between the ages of nineteen (19) and twenty-six (26) years who aged out of foster care while receiving Medicaid coverage. KRS 116.048 designates the cabinet to have responsibility for the administration of public assistance programs as a voter registration agency in accordance with 42 U.S.C. 1973gg-10. [Therefore,] This administrative regulation establishes the provisions and procedures [sets forth policy and procedure] necessary to provide an eligible Medicaid recipient the opportunity to register, or to decline from registering, to vote.

Section 1. Right to Apply or Reapply. (1) Each individual wishing to do so shall have the opportunity to apply or reapply for Medicaid through the Department for Community Based Services [Social Security Disability (SSI)] that the Department for Community Based Services [Social Security Disability (SSI)] requires that an individual submit an application form prescribed by the Department for Community Based Services [Social Security Administration].
(2) An individual eligible for TANF, mandatory state supplements, optional state supplements, or SSI benefits [Aid to Families with Dependent Children (AFDC), State Supplementation or Supplemental Security Income (SSI)] through the Social Security Administration shall be eligible for Medicaid without a separate application. 
(3)(a) An individual applying on the basis of age, blindness, or disability shall not be eligible as a medically needy individual, under 907 KAR 20:005[900 KAR 1:070] if the individual’s income and resources are within SSI limits. 
(b) Denial of assistance by the Social Security Administration for SSI for technical reasons shall also be considered a denial for Medicaid benefits.

Section 2. Application Process. (1) An application shall be considered to have been made:
(a)1. When the individual or individual’s authorized[his] representative has signed, under penalty of perjury, the application form prescribed by the Department for Community Based Services[DSI] or the Social Security Administration, for SSI benefits[.] and
2. The application has been received at the appropriate office; or
(2)[An application shall also be considered to be made] Based on the date of contact with the Department for Community Based Services[DSI] or the Social Security Administration for SSI benefits[.] by a person with a physical or mental impairment who needs special accommodation due to [the] impairment.
(3) If an[the] applicant is unable to come to the office to apply, the applicant[he] may designate an authorized representative to apply for the applicant[his] income or request a home visit to complete the application process.
(4) An[the] applicant may be;
(a) Assisted by an individual of the applicant[his] choice in the application process; or
(b)may be Accompanied by this individual in all contacts with the agency.
(5) Dead and hard of hearing services shall be provided in accordance with 920 KAR 1:070[900 KAR 1:070].
(6) Interpreter services shall be provided for persons who do not speak English, utilizing procedures and forms specified by 920
Section 3. Who May Sign an Application. (1) An application for Medicaid shall be signed by the individual requesting assistance, the relative with whom the child lives if the applicant is a child, or an authorized representative or an interested party acting on behalf of the applicant.
   (2) An application for Medicaid for a child in foster care or for a private child caring institution shall be signed by the:
      (a) Representative of the agency to which the child is committed; or
      (b) the institution in which the child is placed.

Section 4. Where Applications Are Filed and Processed. (1) An application:
   (a) May be filed at any Department for Community Based Services DSI office; and
   (b) Shall be processed in the county of residence except that any application for SSI benefits and Medicaid shall be filed in the service area office of the Social Security Administration.
(2) If an individual is applying for nursing facility or psychiatric facility services, the Department for Community Based Services DSI office in the county where the facility is located shall take and process the application.
(3) If an individual is applying in a county other than the county of residence and is hospitalized, the Department for Community Based Services DSI office in the county of:
   (a) Hospitalization shall take the application and transfer the pending application to the county of residence; and
   (b) and the DSI office in the county of. Residence shall process the application using the original application date.
(4)(a) If an individual is applying in a county other than the county of residence and is not hospitalized, the Department for Community Based Services DSI office in the receiving county shall:
   1. Partially complete the application;
   2. Transfer the application to the county of residence on the same day the application is taken; and
   3. Explain to the applicant that the application shall be processed in the county of residence.
   (b) The Department for Community Based Services DSI office in the county of residence shall:
      1. Schedule a face-to-face interview; and
      2. Process the application using the original application date.
(5)(a) If a Kentucky resident is temporarily out of state, a letter from the applicant, an interested party, or an out-of-state agency shall be accepted as the initiation of the application process when:
   1. An emergency arises from accident or sudden illness;
   2. Care and services are needed immediately; and
   3. The individual’s health would be endangered if the individual undertook to return to the state.
   (b) Upon notification of the emergency, the official application form shall be forwarded to the initiating party.

Section 5. Action on Applications. (1)(a) A decision shall be made on each Medicaid application within forty-five (45) days, except[that for an application requiring a disability determination.]
   (b) An application requiring a disability determination shall be processed within sixty (60) days shall be allowed.
(2) An exception to the timeframes referenced in subsection (1) of this section shall be made if the time frame exceptions:
   (a) [If the] Applicant is cooperating but is unable to obtain necessary verification for an eligibility decision to be made; or
   (b) [If delay is beyond the control of staff (such as failure or delay on the part of the applicant or examining physician or because of some administrative or other emergency that could not be controlled by staff).]
   (3) The case record shall document the cause for the [time standard delay.]
   (4) Failure to process an application within the[above] time frames referenced in this section[time frame exceptions] shall not be used as the basis for denial.

Section 6. Voter Registration. (1) An applicant or recipient[meeting all of the following criteria] shall be provided the opportunity at the local Department for Community Based Services office to complete an application to register to vote or update[his] current voter registration if the applicant or recipient is:
   (a) Age eighteen (18) or over;
   (b) Present in the office at the time of the interview or if a change of address is reported; and
   (c) Not[registered to vote or not registered to vote at the applicant’s or recipient's]

(2) The following individuals shall not be permitted to register to vote by the process established in this administrative regulation:
   (a) An individual not included in the Medicaid application;
   (b) A Medicaid payee only;
   (c) An authorized representative of a Medicaid recipient; or
   (d) An individual acting as a responsible party.
   (3) An individual providing voter registration services who seeks to unlawfully influence an applicant's political preference or party registration as prohibited by KRS 116.048(4) may[be] be fined or imprisoned, not to exceed five (5) years.

(4) Forms and information utilized in the voter registration process shall:
   (a) Remain confidential; and
   (b) Be used only for voter registration purposes.
   (5) Only Board of Elections officials may view forms and information utilized directly in the voter registration process.
(6)(a) Completion of the voter registration form is[only] an application to register to vote.
   (b) The State Board of Elections shall:
      1. Approve or deny the application to register to vote; and
      2. Send a confirmation or denial notice to the applicant.

Section 7. Applicability. (1) The provisions and requirements of this administrative regulation shall:
   (a) Apply to:
      1. Children in foster care;
      2. Aged, blind, or disabled individuals; and
      3. Individuals who receive supplemental security income benefits; and
   (b) Not apply to individuals:
      1. Whose Medicaid eligibility is determined using the modified adjusted gross income standard or
      2. Between the ages of nineteen (19) and twenty-six (26) years who formerly were in foster care and were receiving Medicaid benefits at the time that they aged out of foster care.
   (2) An individual whose Medicaid eligibility is determined using a modified adjusted gross income as the eligibility standard shall be an individual who is:
      (a) A child under the age of nineteen (19) years, excluding children in foster care;
      (b) A caretaker relative with income up to 133 percent of the federal poverty level;
      (c) A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;
      (d) An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:
         1. Does not have a dependent child under the age of nineteen (19) years; and
         2. Is not otherwise eligible for Medicaid benefits; or
      (e) A targeted low income child with income up to 150 percent of the federal poverty level[Materials Incorporated by Reference.
(1) Forms necessary for application for benefits under the Medicaid Program are incorporated effective April 1, 1995. These forms include the PA 1, revised October 1992; PA 1A, revised March 1991; PA 1C, revised October 1991; PA 1R, revised April 1992; PA 1UP, revised May 1991; and the KIM-100, revised March 1994.
(2) These forms may be reviewed at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m. Copies may be
Contact Persons: Marchetta Carmicle or Stuart Owen

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes Medicaid program provisions regarding applying for Medicaid benefits except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program provisions regarding applying for Medicaid benefits except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing Medicaid program provisions regarding applying for Medicaid benefits except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment replaces the reference to an obsolete agency (Department for Social Insurance) with the current agency (Department for Community Based Services); establishes that the provisions regarding applying for Medicaid benefits do not apply to individuals for whom a modified adjusted gross income is the Medicaid income eligibility standard or to individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care but aged out of foster care while receiving Medicaid benefits at the time; deletes the definitions; deletes the incorporated material; and contains language and formatting revisions to comply with KRS Chapter 13A requirements. Individuals for whom a MAGI is the Medicaid income eligibility standard are children under nineteen (19) – except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level.

(b) The necessity of the amendment to this administrative regulation: The amendment replacing the agency title Department of Social Insurance with Department for Community Based Services is necessary to correct an obsolete reference; the amendments that establish that the provisions do not apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or to former foster care individuals are necessary to comply with an Affordable Care Act mandate; removing the definitions is necessary as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations; deleting the incorporated material is necessary as DMS does not utilize the incorporated material; and language and formatting revisions are necessary to comply with KRS Chapter 13A standards.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with a federal mandate and by complying KRS Chapter 13A standards.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by complying with a federal mandate and by complying KRS Chapter 13A standards.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A recipient who wishes to appeal a Medicaid service denial shall comply with the appeal provisions established in this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are exempted from the requirements will benefit from not being subject to the requirements for Medicaid eligibility purposes.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: DMS anticipates no cost as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the Medicaid application provisions of this administrative regulation as some related requirements and provisions (established in another administrative regulation) will apply to this population. Those requirements are being established in a new administrative regulation – 907 KAR 20:100, Modified adjusted gross income (MAGI) Medicaid eligibility standards. DMS projects a cost of $3 as a result of exempting former foster care individuals from the requirements in this administrative regulation; however, the Department for Community Based Services (DCBS) has been purchasing health insurance for 700 of those individuals at an annual cost of $1 million. Covering those individuals through the Medicaid program, as mandated by federal law, will procure federal matching funds at a seventy (70) percent match rate for those individuals’ health care.

(b) On a continuing basis: The answer provided in paragraph (a) also applies here.

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

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

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

(9) Tiering: Is tiering applied? Tiering is only applied in that the provisions do not apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals as the Affordable Care Act prohibits this.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 435.906 and this administrative regulation authorize the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.
   (c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals from the requirements.
   (d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the MAGI individuals from the requirements.

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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 435.906 mandates that a Medicaid program must "afford an individual wishing to do so the opportunity to apply for Medicaid without delay." 42 C.F.R. 435.908 requires a Medicaid program to "allow an individual or individuals of the applicant’s choice to accompany, assist, and represent the applicant in the application process or a redetermination of eligibility."

2. U.S.C. 1396w-3 requires a Medicaid program to enable individuals who are eligible to apply for Medicaid or a health insurance premium subsidy through a health benefit exchange to be able to apply through the Internet.

Section 1413 of the Affordable Care Act and a bulletin issued by the Center for Medicaid and CHIP Services (CMCS) within the Centers for Medicare and Medicaid Services (CMS), dated April 30, 2013 regarding the application process for individuals applying for health insurance through the Health Insurance Marketplace or Affordable Insurance Exchange (labeled the Health Benefit Exchange in Kentucky) references mandate that individuals must be able to file an application online, by mail, over the telephone or in person. Only Medicaid individuals whose Medicaid eligibility income standard is a modified gross adjusted income can ultimately complete the application process in any of these ways. 42 U.S.C. 1396w-3(b)(3) addresses this requirement as follows: "The State Medicaid agency and State CHIP agency shall participate in and comply with the requirements for the system established under section 1413 of the Patient Protection and Affordable Care Act (relating to streamlined procedures for enrollment through an Exchange, Medicaid, and CHIP)."

3. U.S.C. 1396a(a)(10)(A)(i)(IX) creates the new eligibility group comprised of former foster care individuals and bars the application of certain existing Medicaid eligibility requirements to this population.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter than federal requirements.

STATEMENT OF EMERGENCY

907 KAR 20:020E

This is an emergency administrative regulation which establishes that the Medicaid income standards in this administrative regulation do not apply to individuals for whom a modified adjusted gross income (or MAGI) is the Medicaid eligibility standard or to former foster care individuals who aged out of foster care. The Affordable Care Act (ACA) mandates that effective January 1, 2014, the eligibility standard for the MAGI group will be a modified adjusted gross income and bars the application of existing Medicaid income standards to the MAGI population. Additionally, the Affordable Care Act created a new mandated eligibility category comprised of individuals between nineteen (19) and twenty-six (26) who formerly were in foster care but aged out of foster care while receiving Medicaid coverage and barred the application of income or resource standards to this population. As Medicaid coverage under the new eligibility groups is mandatory January 1, 2014 and eligibility determinations can begin October 1, 2013, this administrative regulation is necessary to be implemented on an emergency basis. Thus, the Department for Medicaid Services is implementing this administrative regulation on an emergency basis to exempt individuals under the MAGI rules and under the former foster care individual rules from the income standards established in this administrative regulation. This action must be implemented on an emergency basis to comply with a federal mandate. 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.
907 KAR 20:020. Income standards for Medicaid other than modified adjusted gross income (MAGI) standards or for former foster care individuals.

RELATES TO: KRS 205.520, 38 U.S.C. 5503, 42 U.S.C. 1382a, 1396(b), 1397aa, 9902(2)


EFFECTIVE: September 30, 2013

NECESSITY, FUNCTION, AND CONFORMITY:

EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with 42 U.S.C. 1396 through 1396v. 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 for the provisions of medical assistance to Kentucky’s indigent citizenry. This administrative regulation establishes the income standards by which Medicaid eligibility is determined, except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals who aged out of foster care while receiving Medicaid coverage.

Section 1[Definitions. (1) "ABD" means an individual who is aged, blind, or disabled. (2) "AFDC" means the Aid to Families with Dependent Children Program as it existed on July 16, 1996. (3) "Child" means a person who: (a) Is under the age of eighteen (18); or (b) Is under the age of nineteen (19) if the person is: (i) In high school or the same level of vocational or training school; and (ii) Expected to graduate before or during the month of his 19th birthday; 2. Is self-supporting; (i) In high school or the same level of vocational or training school; and (ii) Expected to graduate before or during the month of his 19th birthday; and 4. If previously emancipated by marriage, has returned to the home of his parents or to the home of another relative; or (b) Has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(h)(1). (4) "Family alternatives diversion payment" means a lump sum payment made to a K.TAP applicant to meet short-term emergency needs. (5) "Inc incapacity" means a condition of mind or body making a parent physically or mentally unable to provide the necessities of life for a child. (6) "Income" means money received from statutory benefits (including Social Security, Veteran’s Administration pension, black lung benefits, or railroad retirement benefits), pension plans, rental property, investments, or wages for labor or services. (7) "Lump sum income" means money received at one (1) time which is normally considered as income, including accumulated back payments from Social Security, unemployment insurance, or worker’s compensation; back pay from employment; money received from an insurance settlement, gift, inheritance, or lottery winnings; proceeds from a bankruptcy proceeding; or money withdrawn from an IRA, KEOGH plan, deferred compensation tax deferred retirement plan, or other tax deferred assets. (8) "Medicaid works individual" means an individual who: (a) But for earning in excess of the income limit established under 42 U.S.C. 1396(a)(2)(B), would be considered to be receiving supplemental security income; (b) Is less than seventeen (17), but not less than five (5), years of age; (c) Is engaged in active employment verifiable with: 1. Paycheck stubs; 2. Tax returns; 3. 1099 forms; or 4. Proof of quarterly estimated tax; (d) Meets the income standards established in this administrative regulation; and (e) Meets the resource standards established in 907 KAR 1:645. (9) "Minor parent" means a parent under the age of twenty-one (21). (10) "Official poverty income guidelines" means the poverty income guidelines which are: (a) Updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 U.S.C. 9902(2); and (b) The latest poverty guidelines available as of March 1 of the particular state fiscal year. (11) "SSI" means Supplemental Security Income Program. Section 2. Income Limits. (1)(a) [For the medically needy as described in 907 KAR 1:011] Income shall be determined by comparing adjusted income as required by Section 2(3) of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse, and minor dependent children with the following scale of income protected for basic maintenance:

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<tr>
<th>Size of Family</th>
<th>Annual</th>
<th>Monthly</th>
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<tbody>
<tr>
<td>1</td>
<td>$2,600</td>
<td>$217</td>
</tr>
<tr>
<td>2</td>
<td>3,200</td>
<td>267</td>
</tr>
<tr>
<td>3</td>
<td>3,700</td>
<td>308</td>
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<tr>
<td>4</td>
<td>4,600</td>
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<td>6</td>
<td>6,100</td>
<td>508</td>
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<tr>
<td>7</td>
<td>6,800</td>
<td>567</td>
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For each additional family member, $720 annually or sixty (60) dollars monthly shall be added to the scale. (2) The following special factors shall apply[be applicable] for a pregnant woman or child eligible pursuant to 42 U.S.C. 1396a(e):

(a) A pregnant woman or a child under age one (1) shall have family income not exceeding 185 percent of the official poverty income guidelines; (b) A child age one (1) or over but under age six (6) shall have family income not exceeding 133 percent of the official poverty income guidelines; (c) A child born after September 30, 1983, who has attained six (6) years of age but has not attained nineteen (19) years of age shall have family income not exceeding 100 percent of the official poverty income guidelines; (d) A pregnant woman or child who would be eligible under provisions of 42 U.S.C. 1396a(h) or 1397(b) except for income in excess of the allowable standard shall not become eligible by spending down to the official poverty guidelines as described in Section 3 of this administrative regulation; (e) A change of income that occurs after the determination of eligibility of a pregnant woman shall not affect the pregnant woman’s eligibility through the remainder of the pregnancy including the postpartum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy; (f) A targeted low income child as specified in 907 KAR 1:011, Section 2(3)(b), shall have family income not exceeding 150 percent of the official poverty income guidelines; (g) The following special income limits and provisions shall apply[be applicable] for a determination of eligibility of a qualified Medicare beneficiary, specified low-income Medicare beneficiary,
qualified disabled and working individual, or Medicare qualified individual group 1 (QI-1).

(a) A qualified Medicare beneficiary shall have income not exceeding 100 percent of the official poverty income guidelines.

(b) A specified low-income Medicare beneficiary shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

(c) A Medicare qualified individual group 1 (QI-1) shall have income greater than 120 percent of the official poverty income guidelines but less than or equal to 135 percent of the official poverty income guidelines.

(d) A qualified disabled and working individual shall have income not exceeding 200 percent of the official poverty income guidelines.

(4) Income shall be limited to the allowable amounts for the SSI program for:

(a) A child who lost eligibility for SSI[supplemental security income] benefits due to the change in the definition of childhood disability as established in 42 U.S.C. 1396a(a)(10); or

(b) A person with hemophilia who received a class action settlement as established in 42 C.F.R. 435.122.

(5) Income shall be limited to the allowable amounts for the mandatory or optional state supplementation[State Supplementation] program for a pass through recipient as established in 42 C.F.R. 435.135.

(6) The following special income factors shall apply for a Medicaid works individual:

(a) Income for a Medicaid works individual’s spouse shall not exceed $45,000 per year.

(b) A Medicaid works individual’s unearned income shall be less than the SSI standard plus twenty (20) dollars monthly; and

(c) The combination of earned and unearned income for a Medicaid works individual shall be less than 250 percent of the official poverty income guidelines.

Section 23. Income Disregards. In comparing income with the scale established in Section 12 of this administrative regulation, gross income shall be adjusted as established in this section follows:

(1) In a TANF[an AFDC] or family related Medicaid case:

(a) The standard work expense of an adult member or out-of-school child shall be deducted from gross earnings.

(b) For a person with either full-time or part-time employment, the standard work expense deduction shall be ninety (90) dollars per month.

(c) Earnings of an individual attending school who is a child or parent under age nineteen (19) or a child under age eighteen (18) who is a high school graduate shall be disregarded.

(2) For an ABD Medicaid case or a Medicaid works individual, the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b) shall apply.

(3) For an individual in a Medicaid eligibility group subject to 42 U.S.C. 1396a(a)(1)(E)(i), (ii), or (iv) or 42 U.S.C. 1396d(p), if an annual Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment, or federal poverty level cost-of-living adjustment causes an individual to be ineligible for Medicaid benefits:

(a) The individual’s most recent Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment, or federal poverty level cost-of-living adjustment shall be disregarded; and

(b) The disregard referenced in paragraph (a) of this subsection shall continue until the individual loses Medicaid eligibility for any other reason for three (3) consecutive months.

(4) In an AFDC or family related Medicaid case, a dependent child care work expense shall be allowed for a child who is living in the home of the caretaker and is related to the caretaker in accordance with 907 KAR 1:011, Section 50(9)(b), for full-time or part-time employment.

(a) The dependent child care work expense shall be deducted after all other disregards have been applied.

(b) The dependent child care work expense allowed shall not exceed per month:

1. $200 for full-time or part-time employment per child under age two (2), and

2. $175 for full-time employment or $150 for part-time employment per:

(a) Child age two (2) or above; or

b. Incapacitated adult.

(5) For an AFDC-related Medicaid case, a thirty (30) dollar and one-third (1/3) deduction of unearned income shall be allowed in accordance with 907 KAR 2:016.

(4) Income disregards. The income disregards:

(a) An ABD Medicaid case shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b).

(b) A Medicaid works individual shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b).

Section 3.4. Income of the Stepparent or Parent of a Minor Parent referred to as a “Grandparent”. An incapacitated stepparent’s income, or a grandparent’s income, shall be considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. If the stepparent or grandparent living in the home is not being included in the family case, the stepparent’s gross income shall be considered available to a stepparent at the appropriate income limitations scale established in this section. The following disregards and exclusions from income shall be applied:

(1) The first ninety (90) dollars of the gross earned income of the stepparent or grandparent who is employed full-time or part-time.

(2) An amount equal to the appropriate income limitations scale established in Section 2 of this administrative regulation for the appropriate family size for the support of the stepparent and grandparent and other individuals (not including the spouse or minor parent) living in the home whose needs are not taken into consideration in the Medicaid eligibility determination but are claimed by the stepparent or grandparent as dependents for purposes of determining federal personal income tax liability.

(2) Any amount actually paid by the stepparent or grandparent to an individual not living in the home who is claimed by him as a dependent for purposes of determining his personal income tax liability.

(4) A payment by the stepparent or grandparent for alimony or child support with respect to an individual not living in the home shall be disregarded.

(5) Income of a stepparent or grandparent receiving SSI; and

(6) Verified medical expenses for the stepparent or grandparent and his dependents in the home. Section 5. Lump Sum Income. Except as established in Section 8 of this administrative regulation, for a Medicaid case, lump sum income shall be considered as income in the month received.

Section 4.6. Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill an approved plan to achieve self support, IRWE deduction, or BWE for achieving self-support (PASS), impairment related work expense (IRWE) deduction, or the blind work expense (BWE) deduction shall be excluded from consideration.

(2) A payment or benefit from a federal statute, other than SSI benefits, shall be excluded from consideration as income if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.

(3) A cash payment intended specifically to enable an applicant or recipient to pay for medical or social services shall not be considered as available income in the month of receipt.

(4) A Federal Republic of Germany reparations payment shall not be considered available in the eligibility or payment determination of income of an individual in a nursing facility or hospital or who is receiving home and community based services under a waiver program.

(5) A Social Security cost of living adjustment on January 1 of each year shall not be considered as available income for a qualified Medicare beneficiary, specified low-income Medicare
beneficiary, qualified disabled and working individual or Medicare qualified individual [QI-1] until after the month following the month in which the official poverty guideline promulgated by the United States Department of Health and Human Services [U.S. Government] is published.

(6) Any amount received from a victim's compensation fund established by a state to aid victims of crime shall be excluded as income.

(7) A veteran or the spouse of a veteran residing in a nursing facility who is receiving a Veterans Administration (VA) benefit shall have ninety (90) dollars:
   (a) Excluded as income in the Medicaid eligibility determination; and
   (b) Excluded as income in the post eligibility determination process.

(8) Veterans Administration payments for unmet medical expenses [UME] and aid and attendance [A&A] shall be excluded in a Medicaid eligibility determination for a veteran or the spouse of a veteran residing in a nursing facility.

(a) Veterans Administration payments for unmet medical expenses [UME] and aid and attendance [A&A] shall be excluded in the post eligibility determination for a veteran or the spouse of a veteran residing in a nonstate-operated nursing facility.

(b) Veterans Administration payments for unmet medical expenses [UME] and aid and attendance [A&A] shall not be excluded in the post eligibility determination process for a veteran or the spouse of a veteran residing in a state-operated nursing facility.

(9) An Austrian Social Insurance payment based, in whole or in part, on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.

(10) An individual retirement account, KEOGH plan, or other tax deferred asset shall be excluded as income until withdrawn.

(11) Disaster relief assistance shall be excluded as income.

(12) Income which is exempted from consideration for purposes of computing eligibility for the comparable money supplements [medical assistance] shall be excluded.

(13) In accordance with 42 C.F.R. 435.122 and Section 4735 of Pub.L. 105-33, a payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded as income.

(14) In accordance with 42 C.F.R. 435.122, any payment received by a person with hemophilia from a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded as income.

(15) Family alternatives diversion payments shall be excluded as income.

[16] For an AFDC or family-related Medicaid case, a Medicaid recipient shall have the option to receive a one (1) time exclusion of up to two (2) months of earned income for new employment or increased wages acquired after approval and reported timely.

(17) For an AFDC-related or a family-related Medicaid case, interest and dividend income shall be excluded.

(18) All monies received by an individual from the Tobacco Master Settlement Agreement [Tobacco Settlement between the states and tobacco manufacturers] shall be excluded.

[19] Income placed in a qualifying income trust established in accordance with the basic maintenance standard, [established in Section 1(1)(24)] of this administrative regulation, [hereinafter specified in the individual's income trust] shall be applied to the special need which results in...
(60) days after delivery;

(d) An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:

1. Does not have a dependent child under the age of nineteen (19) years; and

2. Is not otherwise eligible for Medicaid benefits; or

(e) A targeted low income child with income up to 150 percent of the federal poverty level.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 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, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Marchetta Carmicle or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to Medicaid eligibility income standards. The MAGI income eligibility standard for certain individuals bars the historical Medicaid income standards from being applied to the MAGI population and bars the use of any income standard to the former foster care population. The Social Security/railroad retirement/FPL COLA amendment is necessary to restore Medicaid eligibility for individuals adversely affected by their Social Security/Railroad Retirement COLA exceeding the federal poverty level COLA. Deleting the definitions is necessary as DMS is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations. The IRA withdrawal/disbursement amendment is necessary to clarify existing policy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to Medicaid eligibility income standards.

(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 provisions related to Medicaid eligibility income standards.

(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 providing a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment establishes that the income standards in this administrative regulation do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income (MAGI) as the income standard or to former foster care individuals who aged out of foster care while receiving Medicaid coverage. Additionally, it contains an amendment which allows for a disregard when an annual Social Security, railroad retirement or federal poverty level (FPL) cost-of-living adjustment (COLA) cause ineligibility for Medicaid benefits; clarifies how individual retirement account (IRA) withdrawals/disbursements are treated; deletes the definitions; and contains language and formatting revisions to comply with KRS Chapter 13A standards. Early IRA withdrawals (meaning withdrawals made before an individual can withdraw funds without being penalized) are treated as lump sum income for the month in which the individual withdrew the money, while income from an IRA withdrawal made after the individual has reached the age where no penalty exists for the withdrawal will be prorated over the period of time the withdrawal covers [quarterly - prorated over twelve (12) months - or annually - prorated over twelve (12) months - for example.] Individuals for whom a MAGI is the Medicaid income eligibility standard are children under nineteen (19) – except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level.

(b) The necessity of the amendment to this administrative regulation: Exempting the MAGI population and former foster care individuals from the income standards in this administrative regulation is necessary to comply with an Affordable Care Act mandate. The Affordable Care Act mandate (which establishes a MAGI income eligibility standard for certain individuals) bans the historical Medicaid income standards from being applied to the MAGI population and bars the use of any income standard to the former foster care population. The Social Security/railroad retirement/FPL COLA amendment is necessary to restore Medicaid eligibility for individuals adversely affected by their Social Security/Railroad Retirement COLA exceeding the federal poverty level COLA. Deleting the definitions is necessary as DMS is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations. The IRA withdrawal/disbursement amendment is necessary to clarify existing policy.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes that the income standards in this administrative regulation do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income (MAGI) as the income standard or to former foster care individuals who aged out of foster care while receiving Medicaid coverage. Additionally, it contains an amendment which allows for a disregard when an annual Social Security, railroad retirement or federal poverty level (FPL) cost-of-living adjustment (COLA) cause ineligibility for Medicaid benefits; clarifies how individual retirement account (IRA) withdrawals/disbursements are treated; deletes the definitions; and contains language and formatting revisions to comply with KRS Chapter 13A standards. Early IRA withdrawals (meaning withdrawals made before an individual can withdraw funds without being penalized) are treated as lump sum income for the month in which the individual withdrew the money, while income from an IRA withdrawal made after the individual has reached the age where no penalty exists for the withdrawal will be prorated over the period of time the withdrawal covers [quarterly - prorated over twelve (12) months - or annually - prorated over twelve (12) months - for example.] Individuals for whom a MAGI is the Medicaid income eligibility standard are children under nineteen (19) – except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level.

(b) The necessity of the amendment to this administrative regulation: Exempting the MAGI population and former foster care individuals from the income standards in this administrative regulation is necessary to comply with an Affordable Care Act mandate. The Affordable Care Act mandate (which establishes a MAGI income eligibility standard for certain individuals) bans the historical Medicaid income standards from being applied to the MAGI population and bars the use of any income standard to the former foster care population. The Social Security/railroad retirement/FPL COLA amendment is necessary to restore Medicaid eligibility for individuals adversely affected by their Social Security/Railroad Retirement COLA exceeding the federal poverty level COLA. Deleting the definitions is necessary as DMS is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations. The IRA withdrawal/disbursement amendment is necessary to clarify existing policy.

(c) How the amendment conforms to the content of the authorizing statutes: The MAGI and former foster care group exemptions conform to the content of the authorizing statutes by complying with Affordable Care Act mandates. The Social Security/railroad retirement COLA amendment conforms to the content of KRS 194A.050(1) by protecting individuals from losing Medicaid coverage as a result of a Social Security or Railroad Retirement COLA exceeding the federal poverty level COLA.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing a brief summary of:

(a) What this administrative regulation does: This administrative regulation assists in the effective administration of KRS 194A.050(1) by protecting individuals from losing Medicaid coverage as a result of a Social Security or Railroad Retirement COLA exceeding the federal poverty level COLA.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The following will be affected by the amendment: Medicaid recipients who would have lost eligibility without the amending regarding the cost-of-living adjustment and individuals previously ineligible for Medicaid but who gain eligibility due to the income and resources requirements in this administrative regulation not applying to them. Additionally, the cost-of-living amendments preserve eligibility for anyone now or in the future (indeterminable) who would have lost eligibility. Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No actions are required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Those that are exempt from the existing Medicaid income standards will benefit from having standardized (nationwide) and simplified income eligibility standard or no income standard. This will also help lower administrative costs associated with determining eligibility for individuals.

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

(a) Initially: DMS anticipates no cost as a result of exempting the MAGI population and former foster care individuals from the income standards in this administrative regulation.

(b) On a continuing basis: The answer provided in paragraph (a) also applies here
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is only applied in that the provisions do not apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals as the Affordable Care Act prohibits this.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizens. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all 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 and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall 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."

3. Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state's Medicaid program is required – except for certain designated regulations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations exempted from the new requirements (and to whom the old requirements continue to apply) include aged individuals (individuals over sixty-five (65) years of age or who receive Social Security Disability Insurance; individuals eligible for Medicaid as a result of being a child in foster care; individuals who are blind or disabled; individuals who are eligible for Medicaid via another program; individuals enrolled in a Medicare savings program; and medically needy individuals. Also, states are prohibited from continuing to use income disregards, asset tests, or resource tests for individuals who are eligible via the modified adjusted gross income standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment to this administrative regulation.

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

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for 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 the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the income standards in this administrative regulation nor from exempting former foster care individuals from the standards.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the MAGI individuals from the income standards in this administrative regulation nor from exempting the former foster care individuals from the standards.

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

4. Will this administrative regulation impose additional or different responsibilities or requirements? No.

5. Identify each state or federal regulation that requires or authorizes the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

STATEMENT OF EMERGENCY

This is an emergency administrative regulation which establishes that the resource standards established in this administrative regulation are rendered invalid, or rendered inapplicable to individuals for whom a modified adjusted gross income or MAGI is the Medicaid eligibility standard or to individuals who formerly were in foster care and aged out of foster care while receiving Medicaid coverage. The Affordable Care Act mandates that effective January 1, 2014, that the eligibility standard for certain categories of individuals will be a modified adjusted gross income. Additionally, the Affordable Care Act prohibits the application of an asset or resource eligibility test for individuals governed by the MAGI rules. Also, the Affordable Care Act mandated a new eligibility category comprised of former foster care individuals who aged out of foster care while receiving Medicaid coverage and bars the application of any income standard or resource standard to this group. As Medicaid coverage under the MAGI standards and also for the former foster care

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individuals is mandatory January 1, 2014 and eligibility determinations can begin October 1, 2013, this administrative regulation is necessary to be implemented on an emergency basis. Thus, the Department for Medicaid Services is implementing this administrative regulation on an emergency basis to exempt individuals under the MAGI rules and individuals in the former foster care group from the resource standards established in this administrative regulation. This action must be implemented on an emergency basis to comply with a federal mandate. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations

(Emergency Amendment)


EFFECTIVE: September 30, 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 for the provision of medical assistance to Kentucky's indigent citizens. This administrative regulation establishes the resource standards for determining eligibility for Medicaid benefits.

Section 1. Definitions. (1) “ABD” means an individual who is aged, blind, or has a disability.

(2) “Department” means the Department for Medicaid Services or its designee.

(3) "Homestead" means property which an individual:

(a) Has an ownership interest in; and
(b) Uses as his or her principal place of residence.

(4) “Individual development account” means an account containing funds for the purpose of continuing education, purchasing a first home, business capitalization, or other purposes allowed by federal regulations or clarifications which meets the criteria established in 921 KAR 2:016.

(5) “K-TAP” means Kentucky’s version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death;
(b) Continued voluntary or involuntary absence;
(c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or
(d) Unemployment of one (1) parent if both parents are in the home.

(6) “Liquid resource” means cash, savings accounts, checking accounts, money market accounts, certificates of deposit, bonds and stocks.

(7) “Long-term care partnership insurance” is defined by KRS 304.14-640(4).

(8) “Long-term care partnership insurance policy” means a policy meeting the requirements established in KRS 304.14-642(2).

(9) “Medicaid works individual” means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396a(d)(2)(B) would be considered to be receiving supplemental security income;
(b) Is at least sixteen (16), but less than sixty-five (65), years of age;
(c) Is engaged in active employment verifiable with:
1. Paycheck stubs;
2. Tax returns;
3. 1099 forms; or
4. Proof of quarterly estimated tax;
(d) Meets the income standards established in 907 KAR 1:640;
(e) Meets the resource standards established in this administrative regulation.

(10) “Permanent institutionalization” means residing in a nursing facility or intermediate care facility for the mentally retarded and developmentally disabled for six (6) months or more.


(12) “Real property” means land or an interest in land with an improvement or permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.

(13) “Resources” mean cash, money, and other personal property or real property that:

(a) An individual:
1. Owns; and
2. Has the right, authority, or power to convert to cash; and

(b) Is not legally restricted for support and maintenance.

(14) “SSI” means the Social Security Administration program entitled “supplemental security income.”

Section 2. Resource Limitations. (1) For an individual whose Medicaid eligibility is determined using a resource standard, the medically needy as established in 907 KAR 1:011, the upper limit for resources for a family size of:

(a) One (1) shall be $2,000; or
(b) Two (2) shall be $4,000 respectively.

(2) For a pregnant woman or a child meeting the following criteria, resources shall be disregarded for:

(a) A child under age one (1);
(b) A child who is at least age one (1) but under age six (6);
(c) A child who is at least age six (6) but under age nineteen (19) who is eligible under federal poverty level guidelines;
(d) A targeted low-income child, as defined in 42 U.S.C. 1397b(j), from birth to age nineteen (19).

(3) For a qualified disabled and working individual Medicare beneficiary, specified low-income Medicare beneficiary, qualified working disabled individual, or a Medicare qualified individual, resources shall be limited to the low income subsidy limits established by the Centers for Medicare and Medicaid Services pursuant to 42 U.S.C. 1396w-14(a)(3)(D)[twice the allowable amount for the SSI program].

(b) For a qualified Medicare beneficiary, a specified low-income Medicare beneficiary, or a Medicare qualified individual group (QI-1), resources shall be limited to three (3) times the allowable amount for the SSI program.

(4) Resources shall be limited to the amounts allowed in the SSI program for:

(a) A pass-through recipient, as established in 907 KAR 20:050;
(b) [1:640] A person with hemophilia who received a settlement in a class action lawsuit as described in 907 KAR 20:050[4:011]; or
(c) A child who lost supplemental security income eligibility due to the change in definition of childhood disability as established in 907 KAR 20:050[1:011]. Resources shall be limited to the allowable amounts for the SSI Program.

(5) For an AFDC-related Medicaid case, the resource limit shall be $1,000.

(6) In accordance with 42 U.S.C. 1396p, an individual shall not be eligible for Medicaid nursing facility services or other Medicaid long-term care services if the individual’s equity interest in his or
Section 2.[3] Resource Exclusions. (1)(a) A homestead, personal or household effects, or [an] farm equipment shall be excluded from consideration without limitation on value.

(b) After permanent institutionalization, property shall cease to be a homestead unless:
1. Formerly was in foster care; and
2. A spouse or other dependent family member continues to reside there; or
3. A signed statement verifies that the permanently-
institutionalized individual intends to return to the homestead.

(c) The signed statement shall:
1. Be signed by:
a. The permanently-institutionalized individual; or
b. A representative payee;
c. An individual's guardian; or
d. Another legal representative; and
2. Be renewed annually. [b. Require annual renewal.]

(2) For an adult Medicaid case or a Medicaid works individual:
1. Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, shall be excluded from consideration.
2. The value of property, including the tools of a tradesperson or the machinery or livestock of a farmer, shall be excluded from consideration as a resource if the property:
   a. Is essential for self-support for the individual or spouse, or
   b. Is used in a trade or business or by the individual or member of the family group as an employee.
3. Exception as provided in paragraph (c) of this subsection, equity of $4,500 in automobiles shall be excluded from consideration.
4. If an automobile is used as a home, for employment, to obtain medical treatment of a specific or regular medical problem, or is specially equipped for use by an individual with a disability, the total value of the automobile shall be excluded.
5. A payment or benefit from a federal statutory program, other than an SSI benefit, shall be excluded from consideration as a resource if precluded from consideration in an SSI determination of eligibility by the specific terms of the statute.
6. (3) For an ABD Medicaid case:
   a. Real property other than the homestead shall be excluded from consideration if it can be demonstrated that the individual is making a reasonable effort to sell the property at fair market value or for other valuable consideration.
   b. Property which previously was a homestead shall no longer be considered a homestead at the point an individual becomes permanently institutionalized.
   c. The property is a non-homestead[fte] property[es] which was previously the homestead property of a permanently-institutionalized individual[s] shall be excluded for six (6) months if there is a verified effort to sell the property at fair market value.
   d. If a party on behalf of the permanently institutionalized individual demonstrates to the department, every six (6) months subsequent to the initial six (6) month period, a continuing effort to sell the property referenced in clause a of this subparagraph at fair market value, the department shall continue to exclude the property from resource consideration. Additional time to sell the property may be allowed, on a case-by-case basis, if it can be demonstrated that a reasonable effort to sell the property at fair market value within the specified time frame has failed.
7. Reasonable effort to sell the property shall consist of:
   a. Listing the property with a real estate agent if the agent:
      i. Places a “For Sale” sign on the property which is clearly visible from the nearest public road; and
      ii. Advertises the property in the local newspaper, [or on] local television or radio station, or the internet[ations]; or
   b. A combination of at least two (2) of the following actions:
      i. Advertising the property in the local newspaper or on local television or radio stations; or
      ii. Placing a “For Sale” sign on the property which is clearly visible from the nearest public road; and
      iii. Distributing fliers advertising the property for sale;
      iv. Posting notices regarding availability of the property on community bulletin boards; or
   c. Showing the property to interested parties on a continuing basis.
   d. Proceeds from the sale of a home shall be excluded from consideration for three (3) months from the date of receipt if used to purchase another home.

(4) For an AFDC-related Medicaid case, $1,000 in resources shall be excluded from consideration.

(5) A burial reserve of up to $1,500 per individual, which may be in the form of a burial agreement, prepaid burial or similar arrangement, trust fund, life insurance policy, savings account, checking account, or other identifiable fund, shall be excluded from consideration.

(a) For an adult Medicaid case, the cash surrender value of life insurance shall be considered if determining the total value of burial reserves.

(b) If a burial fund is commingled with another fund, the applicant shall have thirty (30) days to separately identify the burial reserve amount.

(c) Interest or other appreciation of value of an excluded burial reserve or space shall be excluded as a resource if the amount is left to accumulate as a part of the burial reserve or space.

(6)[(6) A burial trust, burial space, plot, vault, crypt, mausoleum, urn, casket, or other repository which is customarily and traditionally used for the remains of a deceased person shall be excluded from consideration as a countable resource without regard to value.

(7) For a family-related or an AFDC-related Medicaid case, proceeds from the sale of a home shall be excluded from consideration for six (6) months from the date of receipt if used to purchase another home.

(8) Resources of an individual who is blind or has a disability shall be excluded if the resources are included in an approved plan for achieving self-support (PASS).

(9) An individual development account up to a total of $5,000, excluding interest accruing, shall be excluded from consideration as a resource[for an AFDC-related Medicaid case].

(10) Disaster relief assistance shall be excluded from consideration.

(11) Cash or in-kind replacement for repair or replacement of an excluded resource shall be excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(12) A life interest that a Medicaid applicant or recipient in real estate or other property shall be excluded from consideration as an available resource.

(13) Real property other than the homestead shall be excluded from consideration if:
   a. The property is jointly owned and its sale would cause loss of housing for the other owner or owners;
   b. Its sale is barred by a legal impediment; or
   c. The owner's reasonable efforts to sell by informing the public of his intention to sell the property at fair market value have been unsuccessful.
A cash payment intended specifically to enable an applicant or recipient to pay for a medical or social service shall not be considered as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it shall be considered a resource.

An amount received which is a result of an underpayment or a retroactive payment of benefits from Retirement, Survivors, and Disability Insurance (RSDI) benefits or SSI shall be excluded as a resource for the first six (6) months following the month in which the amount is received.

A federal Republic of Germany reparation payment shall not be considered as an available resource.

An amount received from a victim’s compensation fund established by a state to aid victims of crime shall be:
(a) Completely excluded as a resource if the individual can show that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime; or
(b) Excluded as a resource for nine (9) months if the individual can show that the amount was paid for pain and suffering.

An Austrian social insurance payment based on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from resource consideration.

An individual retirement account, Keogh plan, or other tax deferred asset shall be excluded as a resource until withdrawn.

A payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded from consideration as an available resource.

A payment received from a class action lawsuit entitled “Factor VIII or IX Concentrate Blood Products Litigation” shall be excluded from consideration as an available resource.

An annuity that is irrevocable and cannot be sold or transferred shall be excluded from consideration as a resource.

Except for real property pursuant to subsection (10) of this section, a jointly held resource shall be considered as a countable resource for an applicant.

Section 3. Resource Exemptions. (1) A resource which is exempted from consideration for purposes of computing eligibility for the SSI benefits program shall be exempted from consideration by the department.

(2) For an AEDC-related or a family-related Medicaid case, all nonliquid resources shall be exempted.

(3) Resources excluded from consideration during a long-term care eligibility application process and subsequently protected from estate recovery due to payments rendered by a long-term care partnership insurance policy shall:
(a) Be issued on or after the effective date of this administrative regulation; and
(b) Be approved by the Department of Insurance as a long-term care partnership insurance policy in accordance with KRS 304.14-120, 304.14-640, 304.642, 806 KAR 14:007, 806 KAR 17:081, and 806 KAR 17:083.

(4) The exclusion referenced in subsection (2) of this section shall be based on a one (1) dollar for one (1) dollar amount of benefits paid as a direct reimbursement to providers for long-term care expenses or benefits paid on a per diem basis issued directly to the individual.

(5) In accordance with 42 U.S.C. 1396a(r)(2), an individual shall not have to exhaust the benefits of the policy prior to applying for assistance through the department.

(a) This exclusion shall be limited to the amount paid to the applicant or on behalf of the applicant at the time beginning with the receipt of the policy for Medicaid benefits.

(b) An applicant shall identify the resources to be excluded equal to the benefit received from the policy when applying for long-term care services through the department.

(c) This exclusion shall not impact an applicant’s eligibility for payment for nursing facility services or other long-term care services if the individual’s equity interest in the individual’s home property exceeds the limits established in 42 U.S.C. 1396p(l) and in Section 1(5) of this administrative regulation.

Section 4. Not Applicable to Individuals Whose Eligibility is Determined Using a Modified Adjusted Gross Income. (1) Resources shall not be considered for eligibility purposes for an individual:
(a) For whom a modified adjusted gross income is the Medicaid eligibility standard; or
(b) Between the ages of nineteen (19) and twenty-six (26) years who:
   1. Formerly was in foster care; and
   2. Aged out of foster care while receiving Medicaid coverage.

(2) An individual whose Medicaid eligibility is determined using a modified adjusted gross income as the eligibility standard shall be an individual who is:
(a) A child under the age of nineteen (19) years, excluding children in foster care;
   (b) A caretaker relative with income up to 133 percent of the federal poverty level;
   (c) A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;
   (d) An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:
      1. Does not have a dependent child under the age of nineteen (19) years; and
      2. Is not otherwise eligible for Medicaid benefits; or
   (e) A targeted low income child with income up to 150 percent of the federal poverty level.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 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, email tricia.orne@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Marchetta Carmicle or Stuart Owen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes Medicaid eligibility provisions regarding resource standards.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid eligibility provisions regarding resource standards.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid eligibility provisions regarding resource standards.
(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 Medicaid eligibility provisions regarding resource standards.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies that the resource requirements do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income (MAGI) standard as the eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. Also, the definitions are deleted and there are language and formatting changes to comply with KRS Chapter 13A requirements and standards. Individuals for whom a MAGI is the Medicaid income eligibility standard are children under nineteen (19) – except for children in foster care; caretaker relatives with income up to one hundred thirty percent of the federal poverty level; pregnant
women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income as the Medicaid eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.

(b) The necessity of the amendment to this administrative regulation: The amendments exempting the MAGI population and former foster care individuals are necessary to comply with Affordable Care Act mandates. Deleting the definitions is necessary as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations. Language and formatting revisions are necessary to comply with KRS Chapter 13A requirements and standards.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the Affordable Care Act by establishing that resource requirements do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income as the Medicaid eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.

(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. Individuals who wish to be eligible for Medicaid benefits will continue to need to comply with the Medicaid resource requirements except for individuals whose Medicaid eligibility will be determined using a modified adjusted gross income as the Medicaid eligibility standard.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Those in the MAGI group or former foster care group will benefit by being exempt from the Medicaid resource standards.

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

(a) Initially: DMS anticipates no cost as a result of exempting the MAGI individuals or former foster care individuals from the requirements in this administrative regulation.

(b) On a continuing basis: The answer provided in paragraph (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XXI of the Social Security Act and state matching funds of general and agency appropriations.

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

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

(9) If tiering is being applied? Tiering is only applied in that the provisions do not apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or to former foster care individuals as the Affordable Care Act prohibits this.

FEDERAL MANDATE ANALYSIS COMPARISON


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

3. Minimum or uniform standards contained in the federal mandate. The federal law prohibits the application of a resource test to the MAGI population or to the former foster care population.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. It does not impose stricter, additional, or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 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 (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the MAGI individuals from the resource standards in this administrative regulation.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/−):

Expenditures (+/−):

Other Explanation:

STATEMENT OF EMERGENCY 907 KAR 20:030E

This is an emergency administrative regulation which establishes that the trust and transferred resource requirements established in this administrative regulation do not apply to individuals for whom a modified adjusted gross income or MAGI is the Medicaid eligibility standard or to individuals who formerly were in foster care and aged out of foster care while receiving Medicaid coverage. The Affordable Care Act mandates that effective January 1, 2014, that the eligibility standard for certain categories of individuals will be a modified adjusted gross income. Additionally, the Affordable Care Act prohibits the application of an asset or resource eligibility test for individuals governed by the MAGI rules. Also, the Affordable Care Act created a new mandatory eligibility group comprised of individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care but aged out of foster care while receiving Medicaid coverage and bars any income or resource standard from being applied to that group. As Medicaid coverage under the MAGI standards and for former foster care individuals is mandatory January 1, 2014 and eligibility determinations can begin October 1, 2013, this administrative regulation is necessary to be implemented on an emergency basis. Thus, the Department for Medicaid Services is implementing this administrative regulation on an emergency basis to exempt individuals under the MAGI rules and former foster care individuals from the trust and transferred resource requirements established in this administrative regulation. This action must be implemented on an emergency basis to comply with a federal mandate. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

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

907 KAR 20:030E. Trust and transferred resource requirements for Medicaid.

RELATES TO: KRS 205.520, 205.619, 205.6322, 304.14-640, 304.14-642, 42 U.S.C. 1396p(b)-f


EFFECTIVE: September 30, 2013

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family 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 for the provisions of medical assistance to Kentucky's indigent citizenry. KRS 205.6322 requires the cabinet to promulgate administrative regulations to prohibit the sheltering of assets in medical assistance long-term care cases. This administrative regulation establishes trust and transferred resource requirements for Medicaid eligibility determinations for individuals for whom resources are considered for Medicaid eligibility purposes.

Section 1. Definitions. (1)“Baseline date” means the date the institutionalized individual was institutionalized and applied for Medicaid.

(2) “Cabinet” means the Cabinet for Health and Family Services.

(3) “Fair market value” means an estimate of the value of an asset if sold at the prevailing price at the time it was actually transferred.

(4) “Income” means money received from:

(a) Statutory benefits, for example, Social Security, Veterans Administration pension, black lung benefits, or railroad retirement benefits;
(b) Pension plans;
(c) Rental property;
(d) Investments; or
(e) Wages for labor or services.

(5) “Institutionalized individual” means an individual with respect to whom payment is based on a level of care provided in a nursing facility (NF) and who is:

(a) An inpatient in:
   1. A nursing facility (NF);
   2. An intermediate care facility for individuals with an intellectual disability (ICF IID); or
   3. A medical institution or occupancy;
(b) Receiving home and community based services (HCBS);
(c) “Long-term care partnership insurance” is defined by KRS 304.14-640(4).

(6) “Long-term care partnership insurance policy” means a policy meeting the requirements established in KRS 304.14-642(2).

(7) “Qualifying Income Trust” or “QIT” means an irrevocable trust established for the benefit of an identified individual in accordance with 42 U.S.C. 1396p(d)(4)(B).

(8) “Resources” mean money and other personal property or real property that an institutionalized individual or institutionalized individual’s spouse:

(a) Owns;
(b) Has the right, authority or power to convert to cash; and
(c) Is not legally restricted from using for support and maintenance.

(9) “Transferred resource factor” means an amount that is:

(a) Equal to the average monthly cost of nursing facility services in the state at the time of application. The average monthly cost shall be the average of the private pay rates for semi-private rooms of all Medicaid participating nursing facilities; and
(b) Adjusted annually.

(10) “Trust” means a legal instrument or agreement valid under Kentucky state law in which:

(a) A grantor transfers property to a trustee or trustees with the intention that it be held, managed, or administered by the trustee or trustees for the benefit of the grantor or certain designated individuals or beneficiaries; and
(b) A trustee holds a fiduciary responsibility to manage the trust corpus and income for the benefit of the beneficiaries.

(12) “Uncompensated value” means the difference between the fair market value at the time of transfer, less any outstanding loans, mortgages, or other encumbrances on the asset, and the amount received for the asset.

Section 2. Transferred Resources. (1) Transfer of resources on or before August 10, 1993.

(a) If an institutionalized individual applies for Medicaid, a period of ineligibility shall be computed if during the thirty (30) month period immediately preceding the application, but on or before August 10, 1993, the individual or the spouse disposed of property for less than fair market value.

(b) The period of ineligibility shall begin with the month of the transfer and shall be equal to the lesser of:

1. Thirty (30) months;
2. The number of months derived by dividing the total uncompensated value of the resources transferred by the transferred resource factor at the time of the application.

(2) Transfer of resources after August 10, 1993 and before February 8, 2006.

(a) If an institutionalized individual applies for Medicaid, a period of ineligibility for NF services, ICF IID services, or 1915(c)
home and community based services[or ICF-MR-DD services, or HCBS] shall be computed if:
1. During the thirty-six (36) month period immediately preceding the baseline date, but after August 10, 1993, and before March 9, 2007, assets were transferred; or
2. During the sixty (60) month period immediately preceding the baseline date, but after August 10, 1993, and before March 9, 2007, a trust was created whereby the individual or the spouse disposed of property for less than fair market value.
(b) The period of ineligibility shall:
1. Begin with the month of the transfer; and
2. Be equal to the number of months derived by dividing the total uncompensated value of the resources transferred by the transferred resource factor at the time of the application.
(3) Transfer of resources on or after February 8, 2006.
(a) If an institutionalized individual applies for Medicaid, a period of ineligibility for NF services, ICF IID services, or 1915(c) home and community based services[or ICF-MR-DD services, or HCBS] shall be computed if:
1. During the sixty (60) month period immediately preceding the baseline date, but on or after February 8, 2006, assets were transferred; or
2. During the sixty (60) month period immediately preceding the baseline date, but on or after February 8, 2006, a trust was created whereby the individual or the spouse disposed of property for less than fair market value.
(b) The period of ineligibility shall:
1. Begin with the month of Medicaid eligibility for NF services, ICF IID services, or 1915(c) home and community based services[or ICF-MR-DD services, or HCBS]; and
2. Be equal to the number of months derived by dividing the total uncompensated value of the resources transferred by the transferred resource factor at the time of application.
(4) Jointly held resources shall be considered pursuant to 42 U.S.C. 1396p(c)(3).
(5) The addition of another individual's name to a deed shall constitute a transfer of resources.
(6)(a) If a spouse transfers resources that result in an ineligibility period for the institutionalized spouse, the ineligibility period shall be apportioned between the spouses if the spouse is subsequently institutionalized and a portion of the ineligibility period against the first institutionalized spouse remains.
(b) If one (1) spouse is no longer subject to the ineligibility period, the remaining ineligibility period applicable to both spouses shall be served by the remaining spouse.
(7) The requirements of this subsection shall apply to an agreement in which an individual, prior to institutionalization, employed another person as a caregiver and made payment for all services provided by the caregiver prior to the individual's entry in a nursing facility.
(a) The caregiver agreement shall have:
1. Been notarized;
2. Identified and specified the cost of each caregiver service;
3. Specified that payment shall not have:
   a. Been made for a service not recognized in the agreement as a caregiver service; or
   b. Duplicated a service provided by another source; and
4. Included a provision that required payment to be made by the caregiver to the individual for the cost of each caregiver service not provided in accordance with the agreement.
(b) The cost of each caregiver service that was not provided in accordance with the agreement and not repaid by the caregiver shall be considered a transfer of resources.
(8) A contract that does not meet the requirements established in paragraph (b) of this subsection shall be treated as the disposal[disposal] of assets for less than fair market value.
(9)(a) The requirements of this subsection shall apply[be applicable with regard to] to annuities.
(b) A determination shall be completed regarding[with regard to] the purpose of the purchase of an annuity in order to determine if resources were transferred for less than fair market value.
(a) If the expected return on the annuity is commensurate with the life expectancy of the beneficiary, the annuity shall be:
1. Actuarially sound; and
2. [shall] Not be considered a transfer of resources for less than fair market value.
(b) In accordance with 42 U.S.C. 1396p(c)(1)(F), the purchase of an annuity occurring on or after February 8, 2006 shall be treated as the disposal of assets for less than fair market value unless the cabinet is named:
1. As the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant; or
2. a. A beneficiary in the second position after the community spouse or a minor or disabled child; and
   b. A beneficiary in the first position if the community spouse or a representative of the child disposes of any remainder for less than fair market value.
(10) The purchase of an annuity shall be considered a transfer of resources if:
(a) The expected return on the annuity is not commensurate with the life expectancy of the beneficiary[thus] making the annuity not actuarially sound; and
(b) The annuity:
1. a. Does not provide substantially equal monthly payments; and
   b. Has a balloon or deferred payment of principal or interest.
2. Payments shall be considered substantially equal if the total annual payment in any year varies by five (5) percent or less from the payment in the previous year.
(11) The policies in this subsection shall apply regarding the transfer of home property.
(a) Transfer of home property to an individual listed in[this] paragraph (b) of this subsection shall not constitute a transfer of resources for less than fair market value.
(b) Home property may be transferred to:
1. The spouse;
2. A child who:
   a. Under age twenty-one (21); or
   b. Blind or disabled;
3. A sibling who has:
   a. Equity interest in the home and lived with the institutionalized individual for one (1) year prior to institutionalization; or
   b. A child who:
      (i) Resided with the institutionalized individual for two (2) years prior to institutionalization; and
      (ii) Provided care to the institutionalized individual for one (1) year prior to institutionalization.
(12)(a) For multiple or incremental transfers prior to February 8, 2006, the ineligibility periods shall accrue and run consecutively beginning with the month of the initial transfer.
(b) For multiple or incremental transfers made on or after February 8, 2006, the ineligibility period shall begin with the month of Medicaid eligibility for home and community based services[or ICF-MR-DD services, or HCBS].
(13) An individual shall not be ineligible for Medicaid or an institutional type of service:
(a) By virtue of subsections (1) to (10) of this section to the extent that the conditions specified in 42 U.S.C. 1396p(c)(2)(B), (C), (D) or 907 KAR 20:035(907 KAR 20:035) are met; or
(b) Due to transfer of resources for less than fair market value except in accordance with this section.
(14)[Disposal of a resource.]
(a) The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual;
Treatment of Resources for a Long-Term Care Applicant who has Long-Term Care Partnership Insurance.

1. The amount of benefits paid by the long-term care partnership insurance policy as a direct reimbursement to providers for long-term care expenses or benefits paid on a per diem basis issued directly to the individual shall be considered a "Medicaid qualifying trust" if the trustee of the trust is permitted to exercise discretion as to the amount of the payments from the trust to be paid to the individual.

(a) Except as provided by paragraph (b) of this subsection, the amount considered available to the trust beneficiary shall be the maximum amount the trustee may, using the trustee's discretion, pay in accordance with the terms of the trust, regardless of the amount actually paid.

(b) The cabinet may consider as available only that amount actually paid if to do otherwise would create an undue hardship upon the individual in accordance with Section 1(16)(d)(2)(b) of this administrative regulation.

2. For purposes of determining eligibility in accordance with Section 1(11)(2)(e)(4) to (10) of this administrative regulation regarding trust agreements, the rules provided for under 42 U.S.C. 1396p(d)(3) shall be met and shall apply to a trust created after August 10, 1993 and established by an individual subject to 42 U.S.C. 1396p(d)(4).

(a) An individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the items described under 42 U.S.C.
1396p(d)(2)(A)(i), (ii), (iii), and (iv) established the trust other than by a will.

(b) If the corpus of a trust includes income or resources of any other person or persons, the trust rules shall apply to the portion of the trust attributable to the income or resources of the individual.

2. In determining countable income and resources, income and resources shall be prorated based on the proportion of the individual’s share of income or resources.

(d)(1) Payments made from revocable or irrevocable trusts to or on behalf of an individual shall be considered as income to the individual with the exception of payments for medical costs.

2. Payments for medical care or medical expenses shall be excluded as income.

(e) A trust which is considered to be irrevocable and terminates if action is taken by the grantor shall be considered a revocable trust.

(f) An irrevocable trust which may be modified or terminated by a court shall be considered a revocable trust.

(g) If payment from a revocable or irrevocable trust may be made under any circumstance, the amount of the full payment that could be made shall be considered as a resource including amounts that may be disbursed in the distant future.

(h) Placement of an excluded resource into an irrevocable trust shall not change the excluded nature of the resource.

(i) Placement of a countable resource into an irrevocable trust shall constitute a transfer of resources for less than fair market value.

(j) The treatment of trusts established in this section of this administrative regulation shall be waived if undue hardship criteria is met as established in Section 1(15)(b)(2)(15)(b)(a) of this administrative regulation.

(4) Regarding subsection (1), (2), or (3) of this section, for trusts created on or prior to August 10, 1993, any resources transferred into a previously established trust after August 10, 1993 shall be considered a transfer of resources and subject to an ineligibility period as provided for under Section 1(2) of this administrative regulation using the thirty-six (36) month transfer rules.

(5) An individual may create a qualifying income trust, in accordance with this subsection, to establish financial eligibility for Medicaid:

(a) A transfer of resources shall not apply to a qualifying income trust if:

1. The trust is established in Kentucky for the benefit of an individual;

2. The trust is composed solely of the income of the individual, including accumulated interest in the trust;

3. Upon the death of the individual, the department receives all income, including accumulated interest in the trust;

4. The trust is irrevocable.

(b) The money in a qualifying income trust shall:

1. Be maintained in a separate account; and

2. Not be commingled with any other checking or savings accounts.

(c) The corpus of a qualifying income trust interest generated by the trust shall not be counted as available income for an individual for the determination of Medicaid eligibility.

(d) A qualifying income trust shall state that the funds may only be used for:

1. Valid medical expenses, including patient liability; or

2. The community spouse income allowance established in accordance with 907 KAR 20:035(907 KAR 1:655).

(e) All expenditures from a qualifying income trust shall be verified by the department that the expenditures are allowable expenditures.

(f) Allowable payments from a qualifying income trust shall be made:  

1. Every month; or

2. By the end of the month following the month the funds were placed in the trust.

(g) If payments by the qualifying income trust are made for medical care, the individual shall be considered to have received fair market value for income placed in the trust.

Section 4. Applicability. (1)(a) The provisions and requirements established in this administrative regulation shall not apply to an individual:

1. Whose Medicaid eligibility is determined using the modified adjusted gross income standard; or

2. Between the ages of nineteen (19) and twenty-six (26) years who:

a. Formerly was in foster care; and

b. Aged out of foster care while receiving Medicaid coverage.

(b) Resources shall not be considered for eligibility purposes for an individual:

1. Whose Medicaid eligibility is determined using the modified adjusted gross income standard; or

2. Between the ages of nineteen (19) and twenty-six (26) years who:

a. Formerly was in foster care; and

b. Aged out of foster care while receiving Medicaid coverage.

(2) An individual whose Medicaid eligibility is determined using a modified adjusted gross income as the eligibility standard shall be an individual who is:

(a) A child under the age of nineteen (19) years, excluding children in foster care;

(b) A caretaker relative with income up to 133 percent of the federal poverty level;

(c) A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;

(d) An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:

1. Does not have a dependent child under the age of nineteen (19) years; and

2. Is not otherwise eligible for Medicaid benefits; or

(e) A targeted low income child with income up to 150 percent of the federal poverty level.

Section 5. Appeal Rights. An appeal of a department decision regarding Medicaid eligibility of an individual based upon application of this administrative regulation shall be in accordance with 907 KAR 20:035(907 KAR 1:560).

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 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, email tricia.orne@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Marchetta Carmicle or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid provisions and requirements regarding trusts and transferred resources for Medicaid eligibility determinations except for individuals for whom the Medicaid eligibility standard is a modified adjusted gross income.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid provisions and requirements regarding trusts and transferred resources for Medicaid eligibility determinations except for individuals for whom the Medicaid eligibility standard is a modified adjusted gross income.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms
to the content of the authorizing statutes by establishing Medicaid provisions and requirements regarding trusts and transferred resources. Medicaid eligibility determinations except for individuals for whom the Medicaid eligibility standard is a modified adjusted gross income.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid provisions and requirements regarding trusts and transferred resources for Medicaid eligibility determinations except for individuals for whom the Medicaid eligibility standard is a modified adjusted gross income.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that the provisions and requirements do not apply to individuals for whom the Medicaid eligibility standard is a modified adjusted gross income (or MAGI) or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. Individuals for whom a MAGI is the Medicaid income eligibility standard are children under nineteen (19) – excluding former foster care individuals with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level. The amendment also deletes the definitions.

(b) The necessity of the amendment to this administrative regulation: The amendments exempting the MAGI population and former foster care individuals are necessary to comply with Affordable Care Act mandates. Deleting the definitions is necessary as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations. Language and formatting revisions are necessary to comply with KRS Chapter 13A requirements and standards.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the Affordable Care Act by establishing that resource requirements do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income as the Medicaid eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the Affordable Care Act by establishing that resource requirements do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income as the Medicaid eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out of foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.

(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. Individuals who wish to be eligible for Medicaid benefits will continue to need to comply with the Medicaid resource requirements except for individuals whose Medicaid eligibility will be determined using a modified adjusted gross income as the Medicaid eligibility standard or former foster care individuals.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals whose income standard is a modified adjusted gross income or former foster care individuals will benefit due to being exempt from resource requirements.

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

(a) Initially: DMS anticipates no cost as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard or former foster care individuals from the trust and transferred resource requirements established in this administrative regulation.

(b) On a continuing basis: The response in paragraph (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is only applied in that the provisions do not apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or to former foster care individuals as the Affordable Care Act prohibits this.

FEDERAL MANDATE ANALYSIS COMPARISON

2. State compliance standards. KRS 205.520(3) authorizes the cabinet to comply with a requirement that may be imposed by the opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.
3. Minimum or uniform standards contained in the federal mandate. The federal law prohibits the application of a resource test to the MAGI population or to the former foster care population.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? It does not impose stricter, additional, or different responsibilities or requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. It does not impose stricter, additional, or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the trust and transferred resource requirements established in this administrative regulation nor from exempting former foster care individuals from the standards.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the trust and transferred resource requirements established in this administrative regulation nor from exempting former foster care individuals from the standards.

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

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

STATEMENT OF EMERGENCY
907 KAR 20:035E

This is an emergency administrative regulation which establishes that the requirements established in this administrative regulation do not apply to individuals for whom a modified adjusted gross income (or MAGI) is the Medicaid eligibility standard or to former foster care individuals who aged out of foster care while receiving Medicaid coverage. The Affordable Care Act mandates that effective January 1, 2014, that the eligibility standard for certain categories of individuals will be a modified adjusted gross income. Additionally, THE Affordable Care Act prohibits the application of the requirements in this administrative regulation to individuals governed by the MAGI rules. Also, the Affordable Care Act created a new mandatory eligibility group comprised of individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care but aged out of foster care while receiving Medicaid coverage and bars the requirements in this administrative regulation from being applied to that group. As Medicaid coverage under the MAGI standards and for former foster care individuals is mandatory January 1, 2014 and eligibility determinations can begin October 1, 2013, this administrative regulation is necessary to be implemented on an emergency basis.

Thus, the Department for Medicaid Services is implementing this administrative regulation on an emergency basis to exempt individuals under the MAGI rules and former foster care individuals from the requirements established in this administrative regulation. This action must be implemented on an emergency basis to comply with a federal mandate. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

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

907 KAR 20:035E. Spousal impoverishment and nursing facility requirements for Medicaid.


EFFECTIVE: September 30, 2013

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family 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 for the operation of a Medicaid program. This administrative regulation establishes the Medicaid program for the state or local government.

Section 1. Definitions.
(1) "Assigned support right" means the assignment of the support right of an institutionalized individual to the state or Medicaid Program.

(2) "Community spouse" means the spouse of an institutionalized spouse, who resides in the community and is not living in a medical institution or nursing facility, or participating in a home and community-based services (HCBS) waiver program.

(3) "Commuter spouse maintenance standard" means the income standard to which a community spouse’s otherwise available income is compared for purposes of determining the amount of the allowance used in the posteligibility calculation.

(4) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home or both and may include thirty (30) consecutive days of receipt of HCBS or a combination of both.

(5) "Countable resources" means resources not subject to exclusion in the Medicaid Program.

(b) "Dependent child" means the couple’s child, including a child gained through adoption, who lives with the community spouse and is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(8) "Dependent sibling" means a brother or sister of either member of a couple, including a half brother, half sister or sibling gained through adoption, who resides with the community spouse and is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(9) "Dependent support right" means an amount equal to the difference between the community spouse’s verified shelter expenses and the minimum shelter allowance.

(10) "Excess shelter allowance" means an amount equal to the difference between the community spouse’s verified shelter expenses and the minimum shelter allowance.

(11) "Gross income" means the not-reduced income which would be used to determine eligibility prior to income disregards.

(12) "Income" means money received from statutory benefits (Social Security, Veterans Administration pension, black lung benefits, railroad retirement benefits), pension plans, rental property, investments or wages for labor or services.

(13) "Institutionalized individual" means an individual with...
respect to whom payment is based on a level of care provided in a nursing facility and who is:
(a) An inpatient in:
   1. A nursing facility (NF);
   2. An intermediate care facility for individuals with an intellectual disability (ICF-IID); or
   3. A medical institution; or
(b) Receiving home and community based services (HCBS).

14. "Institutionalized spouse" means an institutionalized individual who is in a medical institution or nursing facility, or participates in an HCBS waiver program and who:
(a) Has a spouse who is not an institutionalized individual; and
(b) Is likely to remain institutionalized for at least thirty (30) consecutive days while the community spouse remains out of a medical institution or nursing facility or HCBS waiver program.


16. "Long-term care partnership insurance policy means a policy meeting the requirements established in KRS 304.14.642(2).

17. "Medical institution or nursing facility" means a hospital, nursing facility, or intermediate care facility for individuals with an intellectual disability.

18. "Minimum shelter allowance" means an amount that is thirty (30) percent of the standard maintenance amount.

19. "Minor" means the couple's minor child who:
(a) Is under age twenty-one (21);
(b) Lives with a community spouse; and
(c) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

20. "Monthly income allowance" means an amount:
(a) Deducted in the posteligibility calculation for maintenance needs of a community spouse or other family member; and
(b) Equal to the difference between a spouse's and other family member's income and the appropriate maintenance needs standards.

21. "Other family member" means a relative of either member of a couple who is a:
(a) Minor or dependent child;
(b) Dependent parent; or
(c) Dependent sibling.

22. "Other family member's maintenance standard" means an amount equal to one-third (1/3) of the difference between the income of the other family member and the standard maintenance amount.

23. "Otherwise available income" means income to which the community spouse has access and control, including gross income that would be used to determine eligibility under Medicaid without benefit of disregards for federal, state and local taxes; child support payments; or other court-ordered obligation.

24. "Resource assessment" means the assessment, at the time of application.

25. "Resources" mean money and personal property or real property that an institutionalized individual or institutionalized individual's spouse:
(a) Owns;
(b) Has the right, authority or power to convert to cash; and
(c) Is not legally restricted from using for support and maintenance.

26. "Significant financial duress" means a member of a couple has established to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other support needs of the community spouse to permit the community spouse to remain in the community.

27. "Spousal protected resource amount" means resources deducted from a couple's combined resources for the community spouse in an eligibility determination for the institutionalized spouse.

28. "Spousal share" means one-half (1/2) of the amount of a couple's combined countable resources, up to a maximum of $60,000 to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(b).

29. "Spouse" means a person legally married to another under state law.

30. "Standard maintenance amount" means one-twelfth (1/12) of the federal poverty income guideline for a family unit of two (2) members, with revisions of the official income poverty guidelines applied for Medicaid provided during and after the second calendar quarter that begins after the date of publication of the revisions, multiplied by 150 percent.

31. "State spousal resource standard" means the amount of a couple's combined countable resources determined necessary by the department for a community spouse to maintain himself in the community.

32. "Support right" means the right of an institutionalized spouse to receive support from a community spouse under state law.

33. "Undue hardship" means that Medicaid eligibility of the institutionalized spouse cannot be established on the basis of assigned support rights and the spouse is subject to discharge from the medical institution, nursing facility, or HCBS waiver program due to inability to pay.

Section 2. Resource Assessment. (1) Pursuant to 42 U.S.C. 1396r-5(c)(1)(B), an assessment of the joint resources of an institutionalized spouse and the community spouse shall be made;
(a) Upon request of either spouse at the beginning of a continuous period of institutionalization of the institutionalized spouse; and
(b) Upon receipt of relevant documentation of resources.

(2) Resources that have been protected from estate recovery due to a long-term care partnership insurance policy shall be excluded from the eligibility determination by the eligibility worker at the time of application.

(3) An assessment shall contain the total value of the joint resources and computation of the spousal share.

(4) The department shall complete the assessment within forty-five (45) days following submission of complete documentation or verification.

(5) Upon completion of an assessment, each spouse shall:
(a) Receive a copy of the assessment; and
(b) Be notified that the right of appeal of the assessment shall exist at the time the institutionalized spouse applies for Medicaid.

Section 2.3. Protection of Income and Resources of the Couple for Maintenance of the Community Spouse. (1) The income provisions established in this subsection shall apply for an individual beginning a continuous period of institutionalization on or after September 30, 1989.

(a) Except as provided in paragraph (b) of this subsection, during a month in which an institutionalized spouse is in the institution, income of the community spouse shall not be deemed available to the institutionalized spouse.

(b) In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined or reetermined to be eligible for Medicaid, the provisions of 42 U.S.C. 1396r-5(b)(2) shall apply.

(2) The resource provisions established in this subsection shall apply for an individual beginning a continuous period of institutionalization on or after September 30, 1989.

(a) Except as provided in subsection (4)(b) of this section, in calculating the resources of an institutionalized spouse at the time of an initial eligibility determination for a benefit under Medicaid, the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse.

(b) The following protected amounts shall be deducted from a couple's combined countable resources at the time of the determination of initial eligibility of the institutionalized spouse:
1. The greater amount of:
   a. The spousal share which shall not exceed a maximum of $60,000 to be increased for each calendar year in accordance with
1. A personal needs allowance of forty (40) dollars plus a
2. a. If applicable, an additional amount transferred under a
court support order; or
b. If applicable, an additional amount designated by a hearing
officer.
(c) The institutionalized spouse shall not be ineligible by reason of resources determined under paragraphs (a) and (b) of this
subsection to be available for the cost of care in the following
circumstances:
1. The institutionalized spouse has assigned to the department
his right to support from the community spouse;
2. The institutionalized spouse lacks the ability to execute an
assignment due to physical or mental impairment; and
b. The state has the right to bring a support proceeding against
a community spouse without the assignment; or
3. The department determines that denial of eligibility would
work an undue hardship.
(d) After eligibility for benefits is established for the individual:
1. During the continuous period in which an institutionalized
spouse is in an institution and after the month in which an
institutionalized spouse is determined to be eligible for a Medicaid
benefit, the resources of the community spouse shall not be
deemed available to the institutionalized spouse; and
2. Resources of the institutionalized spouse protected for the
needs of the community spouse shall be considered available to
the institutionalized spouse if the resources are not transferred to
the community spouse within six (6) months of the initial eligibility
determination.
(e) The equity value of an automobile in excess of the limits
established by 907 KAR 20:065[4:646] shall not be included as a
countable resource.
(3) The provisions established in this subsection shall apply
with regard to protecting income for [the] community spouse.
(a) After an institutionalized spouse is determined or
redetermined to be eligible for Medicaid, in determining the amount
of the spouse's income that is to be applied monthly to payment for
the costs of care in the institution, there shall be deducted from the
spouse's monthly income the following amounts in the following
order:
1. A personal needs allowance of forty (40) dollars plus a
mandatory withholding from income, including a mandatory payroll
deduction that is a condition of employment and federal, state, and
local taxes that the government requires the payer to deduct before
payment is made to the payee;
2. A community spouse monthly income allowance to the
extent income of the institutionalized spouse is made available to,
or for the benefit of, the community spouse;
3. A family allowance determined in accordance with the
definition of other family member's maintenance standard; and
4. An amount for incurred expenses for medical or remedial
care for the institutionalized spouse.
(b) [Establishment of the community spouse income allowance.]
1. The community spouse income allowance shall be the sum
of the standard maintenance amount and the excess shelter
allowance, not to exceed the community spouse maintenance
standard,
2. The community spouse maintenance standard shall be set at
$1,500 per month, to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g); or
3. The attribution of resources at the time of the initial eligibility
determination.
4. The determination of the community spouse resource
allowance.
(b) If either the institutionalized spouse or community spouse
establishes during the hearing that the community spouse needs
income above the level otherwise provided by the monthly
maintenance needs allowance, due to an exceptional circumstance
resulting in significant financial duress, an amount adequate to
provide the necessary additional income shall be substituted for the
monthly maintenance needs allowance.
(c) If either spouse established during the hearing process that
the community spouse resource allowance, in relation to the
amount of income generated by an allowance, is inadequate to
raise the community spouse's income to the monthly maintenance
needs allowance, there shall be substituted for the community
spouse resource allowance an amount adequate to provide the
monthly maintenance needs allowance.
Section 3.[4] Specified Individuals in Nursing Facilities. For an individual who is aged, blind, or has a disability and who is in a
medical institution or nursing facility but does not have a community
spouse, the requirements established in this section with respect to
income limitations and treatment of income shall apply.

(1) In determining:
(a) Eligibility, the appropriate medically needy standard or special income level, disregards, and exclusions from income shall be used; and
(b) Patient liability for the cost of institutional care, gross income shall be used as provided in subsections (2) and (3) of this section.

(2)(a) Income protected for basic maintenance shall be forty (40) dollars monthly plus mandatory withholdings.
(b) Mandatory withholdings shall:
1. Include minimum state and federal taxes; and
2. Not include court-ordered child support, alimony, or similar payment resulting from an action by the recipient.

(3)(a) An amount excluded under a plan to achieve self-support (PASS), as an impairment (income) related work expense (IWEA) or a blind work expense (BWE) shall be considered an increased personal needs allowance for a Medicaid recipient except a recipient for whom a quarterly spenddown process as established in 907 KAR 20:020(1:640) is applicable.

(4) Income in excess of the amount protected for basic maintenance shall be applied to the cost of care except as provided in this subsection:
(a) Available income in excess of the basic maintenance allowance shall be first considered as needed to provide for the needs of a minor child up to the appropriate family size amount from the scale as established by 907 KAR 20:020, Section 1(1)[1:640], Section 2(1)
(b) Remaining available income shall be applied to the incurred costs of medical and remedial care that are not subject to payment by a third party (except that the incurred costs may be reimbursed under another public program of the state or political subdivision of the state), including Medicare and health insurance premiums or medical care recognized under state law but not covered under the state's Medicaid plan.

(5) The basic maintenance standard allowed an individual during the month of entrance into or exit from the nursing facility shall take into account the home maintenance costs.

(6) If an individual loses eligibility for a supplementary payment due to entrance into a participating nursing facility and the supplementary payment is not discontinued on a timely basis, the amount of an overpayment shall be considered as available income to offset the cost of care to the Medicaid Program.

(7)(a) An SSI benefit payment, mandatory state supplement payment, or optional state supplement payment, [a supplemental security income (SSI) or state supplementation payment received by a specified institutionalized Medicaid eligible individual in accordance with 42 U.S.C. 1382(e)(1)/(G) shall be excluded from consideration as either income or a resource.
(b) The payment shall not be used in the posteligibility process to increase the patient liability.

(8)(a) Ninety (90) dollars of Veterans Affairs [Veteran's Administration (VA)] benefits received by a veteran or the spouse of a veteran shall be excluded from consideration as income.
(b) The ninety (90) dollars shall not be counted in the eligibility or the posteligibility calculation.

(9)(a) Veterans Affairs [Administration] payments for unmet medical expenses and aid and attendance shall:
(a) Be excluded in a Medicaid eligibility determination for a veteran or the spouse of a veteran residing in a nursing facility;
(b) Veterans Administration payments for unmet medical expenses and aid and attendance shall be excluded in the posteligibility determination for a veteran or the spouse of a veteran residing in a nursing facility; and
(c) Veterans Administration payments for unmet medical expenses and aid and attendance shall not be excluded in the posteligibility determination process for the veteran or the spouse of a veteran residing in a state-operated nursing facility.

(10) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030, Section 3(5)[1:650], Section 4(5).

Section 4.[5] Special Needs Contributions for Institutionalized Individuals. (1) A voluntary payment made by a relative or other party on behalf of a nursing facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medicaid Program.

(2) A special service or item shall include television or telephone service, private room or bath, or a private duty nursing service.

Section 5. Applicability. (1) The provisions and requirements established in this administrative regulation shall not apply to an individual:

1. Whose Medicaid eligibility is determined using the modified adjusted gross income standard; or
2. Between the ages of nineteen (19) and twenty-six (26) years who:
   a. Formerly was in foster care; and
   b. Aged out of foster care while receiving Medicaid coverage.

(2) An individual whose Medicaid eligibility is determined using a modified adjusted gross income as the eligibility standard shall be an individual who is:

1. A child under the age of nineteen (19) years, excluding children in foster care;
2. A caretaker relative with income up to 133 percent of the federal poverty level;
3. A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;
4. An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:
   a. Does not have a dependent child under the age of nineteen (19) years; and
   b. Is not otherwise eligible for Medicaid benefits; or
   c. A targeted low income child with income up to 150 percent of the federal poverty level.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 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, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Marchetta Carmicle or Stuart Owen

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resource requirements apply. Resource requirements do not apply to individuals for whom a modified adjusted gross income, or MAGI, is the Medicaid eligibility income standard.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resource requirements apply.
(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 spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resource requirements apply.
requirements apply.

(d) How the administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resource requirements apply.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes that the resource requirements do not apply to individuals for whom a modified adjusted gross income (or MAGI) is the Medicaid eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. Individuals for whom a MAGI is the Medicaid income eligibility standard are children under nineteen (19) – except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level. The amendment also deletes the definitions and includes language and formatting revisions to comply with KRS Chapter 13A standards.

(b) The necessity of the amendment to this administrative regulation: The MAGI-related amendment and former foster care individual amendment is necessary to comply with an Affordable Care Act mandate. Deleting the definitions is necessary as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation for Chapter 20 – the chapter which will house Medicaid eligibility administrative regulations. The language and formatting amendments are necessary to comply with KRS Chapter 13A standards.

(c) How the amendment conforms to the content of the authorizing statutes: The MAGI-related amendment and former foster care individual amendment conforms to the content of the authorizing statutes by complying with an Affordable Care Act mandate. The language and formatting amendments conform to the content of the authorizing statutes by complying with KRS Chapter 13A standards.

(d) How the amendment will assist in the effective administration of the statutes: The MAGI-related amendment and former foster care individual amendment will assist in the effective administration of the authorizing statutes by complying with an Affordable Care Act mandate. The language and formatting amendments conform to the content of the authorizing statutes by complying with KRS Chapter 13A standards.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,829 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.

(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. No actions are required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals in the MAGI group and former foster care individual group will benefit by being exempt from the requirements of this administrative regulation.

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

(a) Initially: DMS anticipates no cost as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard or former foster care individuals from the requirements established in this administrative regulation.

(b) On a continuing basis: The response in paragraph (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is applied in the sense that the requirements do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income or to former foster care individuals as the Affordable Care Act prohibits applying the requirements to these individuals.

FEDERAL MANDATE ANALYSIS COMPARISON


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

3. Minimum or uniform standards contained in the federal mandate. The federal law prohibits the application of a resource test to the MAGI population or to the former foster care population.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment neither imposes stricter nor additional nor different responsibilities nor 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 amendment does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be impacted by the amendment.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative
This is an emergency administrative regulation which establishes that the relative responsibility requirements established in this administrative regulation do not apply to individuals for whom a modified adjusted gross income (or MAGI) is the Medicaid eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. The Affordable Care Act mandates that effective January 1, 2014, that the eligibility standard for certain categories of individuals under the MAGI rules and former foster care individuals from the requirements established in this administrative regulation. Additionally, the Affordable Care Act created a new mandatory eligibility group comprised of individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care but aged out of foster care while receiving Medicaid coverage and bars the requirements in this administrative regulation from being applied to that group. As Medicaid coverage under the MAGI standards and for former foster care individuals is mandatory January 1, 2014 and eligibility determinations can begin October 1, 2013, this administrative regulation is necessary to be implemented on an emergency basis. Thus, the Department for Medicaid Services is implementing this administrative regulation on an emergency basis to exempt individuals under the MAGI rules and former foster care individuals from the requirements established in this administrative regulation. This action must be implemented on an emergency basis to comply with a federal mandate. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

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

907 KAR 20:040E. Relative responsibility requirements for Medicaid.

RELATES TO: KRS 205.520(3)

EFFECTIVE: September 30, 2013

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds [for the provisions of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes resource and income considerations regarding relatives by which Medicaid eligibility is determined, except for individuals whose eligibility is determined based on modified gross adjusted income or former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid benefits.

Section 1. [Definitions. (1) "ABD" means a person who is aged, blind, or disabled.
(2) "Adult scale" means the scale located in 907 KAR 1:640, Section 2(1), establishing Medicaid income limits by family size. (3) "AFDC" means aid to families with dependent children. (4) "AFDC-related case" means a Medicaid eligible, categorically needy individual or group based upon AFDC Program requirements effective since July 16, 1996. (5) "After the month of separation" means the first day of the month that follows the month in which an individual ceases living in the same household of a Medicaid eligible individual or group.
(6) "Family related case" or "family case" means a Medicaid eligible, medically needy group based on deprivation and within the medically needy income level.
(7) "Medically needy income level" or "MNIL" means the basic maintenance standard used in the determination of Medicaid eligibility for the medically needy.
(8) "Month of separation" means the month in which an individual ceases living in the same household of a Medicaid eligible family.
(9) "SSI" means supplemental security income.
(10) "SSI essential person, spouse, or nonspouse" means an individual necessary to an SSI recipient to enable the SSI recipient to be self-supporting.
]

Section 2. Treatment of Income and Resources for a Parent, Dependent Child, ABD Applicant, or Recipient. (1) A spouse shall be considered responsible for a spouse.
(2) A parent shall be considered responsible for a dependent minor child.
(3) Excluding a child who is at least [age] eighteen (18) years of age and [above] who is blind or disabled and for purposes of determining income and resources, a child under age twenty-one (21) years living with a parent shall be considered a dependent minor child even if the child is emancipated under state law.
(4) Responsibility regarding income and resources shall be determined as follows:
(a) 1. For an ABD applicant or a recipient living with an eligible spouse, total resources and adjusted income of the couple shall be considered in relation to the resource and income limitations for a family size of two (2) unless a dependent lives with the couple.
2. If any dependent lives with a couple, [if a dependent lives with the couple,] the appropriate family size shall include any dependent living with the couple.
(b) For an ABD applicant or a recipient living with an ineligible spouse, income from the ineligible spouse shall be deemed as available to the eligible spouse as outlined below.
1. Determine the potential spend-down amount of the eligible individual by comparing the countable income, as determined in accordance with 907 KAR 20:020[4-644], to the MNIL for one (1) as shown in 907 KAR 20:020, Section 1(1)[4-640, Section 2(1)]
2. Allocate to other dependents in the household from the ineligible spouse's income an amount equal to one-half (1/2) of the MNIL for a family size of one (1) for each dependent.
3. If the ineligible spouse's income is more than the difference between the MNIL for one (1) and MNIL for two (2), the income shall be disregarded and the income of the eligible individual shall be compared with the MNIL for a family size of one (1).

4. If the MNIL is less than the difference between the income of one (1) and MNIL for two (2), the income shall be disregarded and the income of the eligible individual shall be compared with the MNIL for a family size of one (1).
the case, the amount excluded for the needs of the grandparent or
stepparent in the determination of available income in subsection
(b) of this section shall be considered as available income for
purposes of this determination of eligibility.
3. If there is no excess income, the minor parent and
grandparent or spouse and incapacitated stepparent shall be
eligible.
4. If there is excess income, the excess amount may be spent
down according to 907 KAR 1:560. Section 9,
(1) If eligibility is being determined for an individual or a family
group with excess income, uncovered incurred medical expenses
of the individual, family group or financially responsible relative
shall be used to meet each spend-down amount.
(7) An incapacitated stepparent's resources or a grandparent's
resources shall be considered in the same manner as for a parent
if the stepparent or grandparent is included in the family case.
(8) If a stepparent or grandparent living in the home is not
included in the family case, the stepparent's resources shall be
considered available to the spouse of the stepparent or the
grandparent's resources shall be considered available to the minor
parent (child of the grandparent) but not to a stepchild or
grandchild.
(9) Only the resources of the following shall be considered to
determine a steppchild or grandchild's eligibility.
(a) The grandchild and minor parent, or
(b) The stepchild and parent.
Section 4. Companion Cases. If a spouse or parent and child
living in the same household apply separately for assistance,
relative responsibility shall be taken into consideration.
(1) For a dependent child application, the income, resources
and needs of the parent shall be determined in the determination
of need of the child even if the parent applies for assistance for
himself on the basis of age, blindness, or disability (except as
shown in subsection (2) of this section).
(2) For a spouse, income and resources of both spouses shall
be combined and compared against the medically-needy income
and resources limits for a family size of two (2) even though a
separate determination of eligibility shall be made for each
individual.
(2)(d) For a family with a child with a parent eligible for SSI,
neither the income, resources, nor needs of the SSI eligible
individual shall be included in the determination of eligibility of
the children.
(4)(a)1. A parent in an AFDC-related Medicaid case may
request that one (1) or more children be technically excluded from
the determination of eligibility due to income, while a regular
application for Medicaid eligibility is processed for other children in
the family group.
2. In this circumstance, the income and resources of each
technically excluded child and each technically excluded child's
needs shall be excluded in the budgeting process when
determining eligibility of the family group.
3. A separate spend-down case may be established for each
technically excluded child.
4. The income, resources and needs of the responsible relative
or parent shall be included in the budget process.
(b)[L] Income disregards, and needs of siblings in the other
case may also be included in budgeting for the spend-down case if
that works to the advantage of the technically excluded child for
whom eligibility is being determined in the spend-down case.
Section 3. Applicability. (1) The provisions and requirements of
this administrative regulation shall not apply to an individual:
1. Whose Medicaid eligibility is determined using the modified
adjusted gross income standard; or
2. Between the ages of nineteen (19) and twenty-six (26) years
when
a. Formerly was in foster care; and
b. Aged out of foster care while receiving Medicaid coverage.
(2) An individual whose Medicaid eligibility is determined using
the modified adjusted gross income as an income standard shall
be an individual who is:
(a) A child under the age of nineteen (19) years, excluding
children in foster care;
(b) A caretaker relative with income up to 133 percent of the
federal poverty level;
(c) A pregnant woman, with income up to 185 percent of the
federal poverty level, including the postpartum period up to sixty
(60) days after delivery;
(d) An adult under age sixty-five (65) with income up to 133
percent of the federal poverty level who:
1. Does not have a dependent child under the age of nineteen
(19) years; and
2. Is not otherwise eligible for Medicaid benefits; or
(e) A targeted low income child with income up to 150 percent
of the federal poverty level.
Section 4.2 Excess income in the spend-down case may be
spent down using uncovered incurred medical care costs of a
financially responsible relative or any member of the family.
(5) The needs of a sibling living in the household under the age
of twenty-one (21) not requesting assistance, may be included in
an AFDC-related Medicaid case if it works to the advantage of the
family group.
Section 6. Appeals. (1) An appeal of a negative action taken by
the Department for Medicaid Services regarding a Medicaid
recipient shall be in accordance with 907 KAR 1:560.
(2) An appeal of a negative action taken by the Department for
Medicaid Services regarding Medicaid eligibility of an individual
shall be in accordance with 907 KAR 1:560.
LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 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, email tricia.orme@ky.gov.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Persons: Marchetta Carmicle or Stuart Owen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This
administrative regulation establishes Medicaid program resource
and income eligibility standards and requirements regarding
relatives and
(b) The necessity of this administrative regulation: This
administrative regulation is necessary to establish Medicaid
program resource and income eligibility standards and
requirements regarding relatives in accordance with federal law
and regulation and as authorized by KRS 194A.030(2) which
establishes the Department for Medicaid Services as the
commonwealth’s single state agency for administering the federal
Social Security Act.
(c) How this administrative regulation conforms to the
content of the authorizing statutes: This administrative regulation conforms
to the content of KRS 194A.030(2), 194A.050(1) and 205.520(3) by
establishing Medicaid program resource and income eligibility
standards and requirements regarding relatives.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This
administrative regulation assists in the effective administration of
KRS 194A.030(2), 194A.050(1) and 205.520(3) by establishing
Medicaid program resource and income eligibility standards and
requirements regarding relatives.
(2) If this is an amendment to an existing administrative
regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: The amendment establishes that the standards and
requirements do not apply to individuals for whom a modified
adjusted gross income (or MAGI) is the eligibility standard or to
former foster care individuals between the ages of nineteen (19)
and twenty-six (26) who aged out of foster care while receiving
Medicaid coverage. The MAGI population includes children under
nineteen (19) – except for children in foster care; caretaker
relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level. Additionally, the amendment deletes the definitions and includes language and formatting revisions to comply with KRS Chapter 13A requirements.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to comply with the Affordable Care Act regarding populations to which the eligibility requirements established in this administrative regulation do not apply. Deleting definitions is necessary as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation to establish definitions for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with an Affordable Care Act provision that excludes the eligibility requirements from applying to individuals for whom a modified adjusted gross income is the Medicaid income eligibility standard or to former foster care individuals.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by complying with an Affordable Care Act provision that excludes the eligibility requirements from applying to individuals for whom a modified adjusted gross income is the Medicaid income eligibility standard or to former foster care individuals.

3. List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.

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 requires no action to be taken by affected individuals.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment imposes no cost on the affected individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals exempt from requirements in this administrative regulation will benefit due to the clarification that the requirements do not apply. Deleting definitions is necessary as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation to establish definitions for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations.

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

(a) Initially: DMS anticipates no cost as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard or former foster care individuals from the requirements established in this administrative regulation.

(b) On a continuing basis: The response in paragraph (a) also applies here.

(c) 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 matching funds from general fund appropriations.

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

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

9. Tiering: Is tiering applied? Tiering is applied in the sense that the requirements do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income or to former foster care individuals as the Affordable Care Act prohibits applying the requirements to these individuals.

FEDERAL MANDATE ANALYSIS COMPARISON


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

3. Minimum or uniform standards contained in the federal mandate. The federal law prohibits the application of a resource test to the MAGI population or to the former foster care population.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment neither imposes stricter nor additional nor different responsibilities nor 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 amendment does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be impacted by the amendment.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(a)(10) and 42 U.S.C. 1396a(e)(4).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the requirements established in this administrative regulation nor from exempting former foster care individuals from the requirements.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the requirements established in this administrative regulation nor from exempting former foster care individuals from the requirements.
STATEMENT OF EMERGENCY
907 KAR 20:045E

This is an emergency administrative regulation which establishes that the special income requirements in this administrative regulation do not apply to individuals for whom a modified adjusted gross income (or MAGI) is the Medicaid eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. The Affordable Care Act mandates that effective January 1, 2014, that the eligibility standard for certain categories of individuals will be a modified adjusted gross income (which differs from the income requirements established in this administrative regulation) and bars the application of existing Medicaid income requirements to the MAGI population. The Affordable Care Act also creates the special income standard for a case with income in excess of the basic maintenance standard taking into consideration the special provisions established in:

(a) This section; and
(b) 907 KAR 20:035(a)(1:650).

Income protected for basic maintenance shall be:

(a) The SSI standard and the SSI general exclusion from income;
(b) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030(4:650), Section 2(5)(3), shall not be excluded in the posteligibility determination process.

Other Explanation:

VOLUME 40, NUMBER 5 – NOVEMBER 1, 2013

907 KAR 20:045E. Special income requirements for hospice and home and community based services.

907 KAR 20:045E. Special income requirements for hospice and home and community based services.

RELATES TO: KRS 205.520, 42 U.S.C. 1396p(d)(4), and 907 KAR 20:030(4:650), Section 2(5)(3), shall not be excluded in the posteligibility determination process.

VOLUME 40, NUMBER 5 – NOVEMBER 1, 2013

907 KAR 20:045E. Special income requirements for hospice and home and community based services.

RELATES TO: KRS 205.520, 42 U.S.C. 1396p(d)(4), and 907 KAR 20:030(4:650), Section 2(5)(3), shall not be excluded in the posteligibility determination process.

Other Explanation:

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RELATES TO: KRS 205.520, 42 U.S.C. 1396p(d)(4), and 907 KAR 20:030(4:650), Section 2(5)(3), shall not be excluded in the posteligibility determination process.

Other Explanation:

VOLUME 40, NUMBER 5 – NOVEMBER 1, 2013

907 KAR 20:045E. Special income requirements for hospice and home and community based services.

RELATES TO: KRS 205.520, 42 U.S.C. 1396p(d)(4), and 907 KAR 20:030(4:650), Section 2(5)(3), shall not be excluded in the posteligibility determination process.

Other Explanation:
determination for a noninstitutionalized individual eligible on the basis of the special income level;
(b) The usual medically needy standard established in 907 KAR 20:020(1:640), Section (2), plus the SSI general exclusion for a noninstitutionalized medically needy participant, who shall spenddown on a quarterly basis;
(c) The medically needy standard for the appropriate family size plus the SSI general exclusion for the institutionalized medically needy;
(d) Forty (40) dollars per month for the hospice participant institutionalized in a long-term care facility;
(e) For a veteran or the spouse of a veteran who is receiving services from a hospice and who is receiving a Veterans Affairs (Veterans’ Administration) (VA) benefit, ninety (90) dollars, which shall be excluded from the eligibility and posteligibility determination process; or
(f) The amount of Veterans Affairs (Administration) payments for unmet medical expenses (UME) and aid and attendance (A&A), which shall be excluded in a Medicaid eligibility and posteligibility determination for a veteran or the spouse of a veteran receiving services from a hospice.

2. If eligibility is determined for an institutionalized spenddown case, the attributed cost of care against which available income of the hospice participant shall be applied shall be the hospice routine home care per diem for the hospice providing care as established by 42 U.S.C. 1395(f) plus the private pay rate for the nursing facility.

3. Eligibility shall continue on the same monthly basis as for an institutionalized individual if the recipient is eligible based on the special income level.

4. A hospice recipient shall be eligible for a benefit based on this section if he has elected coverage under the Medicaid Hospice program rather than the regular Medicaid Program.

5. Institutional deeming rules shall apply in accordance with 907 KAR 20:035(1:655) with regard to the categorically needy including a participant eligible on the basis of the special income level.

6. Community deeming procedures shall be used in accordance with 907 KAR 20:040(1:666) for a noninstitutionalized hospice recipient who is:
(a) A medically needy individual, who shall spenddown on a quarterly basis; and
(b) Not eligible under the special income level.

7. (a) In the posteligibility determination of available income, the basic maintenance needs allowance shall include a mandatory withholding from income.
(b) Mandatory withholdings shall:
1. (a) Include state and federal taxes; and
2. (b) Not include child support, alimony, or a similar payment resulting from an action by the recipient.

8. Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030(1:650), Section 2(5)(3.5), shall not be excluded in the posteligibility determination.

Section 3. Applicability. (1) The provisions and requirements of this administrative regulation shall not apply to an individual:
1. Whose Medicaid eligibility is determined using the modified adjusted gross income standard; or
2. Between the ages of nineteen (19) and twenty-six (26) years who:
   a. Formerly was in foster care; and
   b. Aged out of foster care while receiving Medicaid coverage.

(2) An individual whose Medicaid eligibility is determined using the modified adjusted gross income as an income standard shall be an individual who is:
(a) A child under the age of nineteen (19) years, excluding children in foster care;
(b) A caretaker relative with income up to 133 percent of the federal poverty level;
(c) A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;
(d) An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:
   1. Does not have a dependent child under the age of nineteen (19) years; and
   2. Is not otherwise eligible for Medicaid benefits; or
(e) A targeted low income child with income up to 150 percent of the federal poverty level.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 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, email tricia.orne@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Marchetta Carmicle or Stuart Owen
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes Medicaid special income requirements for 1915(c) home and community based waiver services and hospice services.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid special income requirements for 1915(c) home and community based waiver services and hospice services.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid special income requirements for 1915(c) home and community based waiver services and hospice services.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid special income requirements for 1915(c) home and community based waiver services and hospice services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: The amendment establishes that the requirements do not apply to individuals for whom a modified adjusted gross income (MAGI) is the Medicaid income eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. The MAGI individuals include children under nineteen (19) – except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level. The amendment also deletes the definitions and contains language and formatting revisions to comply with KRS Chapter 13A requirements.
   (b) The necessity of the amendment to this administrative regulation: The MAGI-related amendment and former foster care individuals’ amendment is necessary to comply with Affordable Care Act mandates. Deleting the definitions is necessary as DMS is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house all Medicaid eligibility administrative regulations. Language and formatting amendments are necessary to comply with KRS Chapter 13A standards.
   (c) How the amendment conforms to the content of the authorizing statutes: The MAGI-related amendment and former foster care individuals’ amendment conforms to the content of the authorizing statutes by complying with Affordable Care Act mandates. The language and formatting amendments conform to KRS Chapter 13A standards.
(d) How the amendment will assist in the effective administration of the statutes: The MAGI-related amendment and former foster care individuals’ amendment will assist in the effective administration of the authorizing statutes by complying with Affordable Care Act mandates. The language and formatting amendments will assist in the effective administration of the authorizing statutes by complying with KRS Chapter 13A standards.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.

(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. (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 requires no action to be taken by affected individuals.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment imposes no cost on the affected individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals exempt from the special income requirements in the administrative regulation will benefit due to the clarification that the requirements do not apply to them.

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

(a) Initially: DMS anticipates no cost as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard or former foster care individuals from the requirements established in this administrative regulation.

(b) On a continuing basis: The response in paragraph (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is applied in the sense that the requirements do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income or to former foster care individuals as the Affordable Care Act prohibits applying the requirements to these individuals.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky’s indigent citizenry. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to “promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all 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 and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall 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.”

3. Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state’s Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations exempted from the new requirements (and to whom the old requirements continue to apply) include aged individuals (individuals over sixty-five years of age) who receive Social Security Insurance; individuals eligible for Medicaid as a result of being a child in foster care; individuals who are blind or disabled; individuals who are eligible for Medicaid via another program; individuals enrolled in a Medicare savings program; and medically needy individuals.

Also, states are prohibited from continuing to use income disregards, asset tests, or resource tests for individuals who are eligible via the modified adjusted gross income standard. States are also required to create and adopt an income threshold (under the modified adjusted gross income) that ensures that individuals who were eligible for Medicaid benefits prior to January 1, 2014 (the date that the modified adjusted gross income standard is adopted) do not lose Medicaid coverage due to the modified adjusted gross income standard taking effect.

4. U.S.C. 1396a(a)(10)(A)(i)(IX) creates a new mandated eligibility group comprised of former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage and bars the application of an income standard or resource standard to the individuals.

5. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be impacted by the amendment.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.
regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the requirements established in this administrative regulation nor from exempting former foster care individuals from the requirements.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the requirements established in this administrative regulation nor from exempting former foster care individuals from the requirements.

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

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

STATEMENT OF EMERGENCY  
907 KAR 20:050E

This is an emergency administrative regulation which is being promulgated to comply with a federal mandate (Affordable Care Act) to authorize inpatient hospitals to make presumptive eligibility determinations for individuals whose Medicaid eligibility standard is a modified adjusted gross income (or MAGI). The mandate is effective January 1, 2014; however, as the eligibility determination process for individuals in the MAGI group can begin October 1, 2013, this administrative regulation is necessary to be implemented on an emergency basis. This action must be implemented on an emergency basis to comply with a federal mandate. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation differs from this emergency administrative regulation as it does not state the implementation date as the ordinary administrative regulation would not be adopted until after the implementation date.

STEVEN L. BESHEAR, Governor  
AUDREY TAYSE HAYNES, Secretary

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

907 KAR 20:050E. Presumptive eligibility[for pregnant women].

RELATES TO: KRS 205.520, 205.592, 42 U.S.C. 1396a(a)(47), r-1  
STATUTORY AUTHORITY: KRS 194A.030(3)(E), 194A.050(1), 205.520(3)[EO 2004-726]  
EFFECTIVE: September 30, 2013

NECESSITY, FUNCTION, AND CONFORMITY:EO 2004-726, effective July 6, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. KRS 205.592 establishes Medicaid eligibility requirements for pregnant women and children up to age one (1). This administrative regulation establishes requirements for the determination of presumptive eligibility and the provision of services to individuals[for pregnant women], deemed presumptively eligible for Medicaid-covered services.

Section 1. Definitions. (1) "Ambulatory prenatal care" means health-related care furnished to a presumed eligible pregnant woman provided in an outpatient setting.

(2) "Cabinet" means the Cabinet for Health and Family Services.

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

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

(5) "Presumptive eligibility" means eligibility granted for Medicaid-covered services as specified in Section 6 of this administrative regulation to a qualified pregnant woman based on an income screening performed by a qualified provider.

(6) "Qualified provider" means a provider who:  
(a) Is currently enrolled with the department;  
(b) Has been trained and certified by the department to grant presumptive eligibility to pregnant women; and  
(c) Provides services of the type described in 42 USC 1396d(a)(2)(A) or (B) or (E).

Section 2. Providers Eligible to Grant Presumptive Eligibility.  
(1) A determination of presumptive eligibility regarding:  
(a) A pregnant woman shall be made by a qualified provider who is:  
1. [41] [A family or general practitioner;  
2. [42] A pediatrician;  
3. [43] An internist;  
4. [44] An obstetrician or gynecologist;  
5. [45] A physician assistant;  
6. [46] A certified nurse midwife;  
7. [47] An advanced practice registered nurse[practitioner];  
8. [48] A federally-qualified health care center;  
9. [49] A primary care center;  
10. [410] A rural health clinic; or  
11. [411] A local health department; or  
(b) An individual whose income standard for Medicaid eligibility purposes is a modified adjusted gross income shall be made by an inpatient hospital participating in the Medicaid program.

(2) An individual whose Medicaid eligibility is determined using modified adjusted gross income as an income standard shall be:  
(a) An individual;  
1. Who is:  
[a] A child under the age of nineteen (19) years, excluding children in foster care;  
[b] A caretaker relative with income up to 133 percent of the federal poverty level;  
[c] A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;  
[d] An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:  
[i] Does not have a dependent child under the age of nineteen (19) years; and  
[ii] Is not otherwise eligible for Medicaid benefits; or  
[e] A targeted low-income child with income up to 150 percent of the federal poverty level; and  
(b) In accordance with 907 KAR 20:100.

Section 2.[4]: Provider Responsibilities. (1) A qualified provider who determines that an individual[for a pregnant woman] is presumptively eligible for Medicaid based on criteria established in Section 3[4] of this administrative regulation shall:  
(a) Notify the department and obtain an authorization number;  
(b) Inform the individual[woman] at the time the determination is made that the individual[woman] is required to make an application for Medicaid benefits through the individual's[her] local DCBS office;  
(c) Issue presumptive eligibility identification to the presumed eligible individual[woman]; and  
(d) Maintain a record of the presumptive eligibility screening for each applicant.
(2) If an individual is determined not to be presumptively eligible, the qualified provider shall inform the individual of the following in writing:

(a) The reason for the determination;
(b) That the individual may file an application for Medicaid if the individual wishes to have a formal determination made; and
(c) The location of the local DCBS office.

Section 3. Eligibility Criteria. Presumptive eligibility may be granted to:

(1) A woman if she:
(a) Is pregnant;
(b) Is a Kentucky resident;
(c) Does not have income exceeding 185 percent of the federal poverty level. (2) Meets income guidelines established in 907 KAR 1:054, Section 2(2)(a);
(d) Does not currently have a pending Medicaid application on file with the DCBS;
(e) Is not currently enrolled in Medicaid;
(f) Has not been previously granted presumptive eligibility for the current pregnancy; and
(g) Is not an inmate of a public institution, except as established in 907 KAR 20:005, Section 7(2).

(2) An individual whose Medicaid income eligibility standard is a modified adjusted gross income if the individual:
(a) Is a Kentucky resident;
(b) Does not have income exceeding:
1. 133 percent of the federal poverty level; or
2. 150 percent of the federal poverty level if the individual is a targeted low-income child;
(c) Does not currently have a pending Medicaid application on file with the DCBS;
(d) Is not currently enrolled in Medicaid; and
(e) Is not an inmate of a public institution except as established in 907 KAR 20:005, Section 7(2).

Section 4. Presumptive Eligibility Period. (1) Presumptive eligibility for an individual shall begin on the date on which a qualified provider:

(a) Determines that the individual is presumptively eligible based on the criteria specified in Section 3 of this administrative regulation if the qualified provider obtains an authorization number from the department on:
1. That day; or
2. If the department is closed, the next business day the department is open; or
(b) Obtains an authorization number from the department if it is not the day specified in paragraph (a) of this subsection.

(2) The presumptive eligibility period shall end on:
(a) The day preceding the date the presumptively-eligible individual was granted full eligibility in the Medicaid Program by the DBCS; or
(b) The last day of the second month following the month in which a qualified provider made the presumptive eligibility determination if the presumed eligible individual:
1. Does not apply for the full Medicaid benefit package; or
2. Applies for and is found ineligible for the full Medicaid benefit package.

(3) To illustrate the presumptive eligibility period, if an individual became presumptively eligible on July 7, 2014, the individual would remain presumptively eligible through September 30, 2014.

(4) For a woman who gains presumptive eligibility by being pregnant, only one (1) presumptive eligibility period shall be granted for each episode of pregnancy.

Section 5. Covered Services. (1) A payment for a covered service provided to a presumptively-eligible individual shall be in accordance with the current Medicaid reimbursement policy for the service unless the service is provided to an individual who is enrolled with a managed care organization.

(b) A managed care organization:

1. Shall not be required to reimburse in the same manner or amount as the department reimburses for a Medicaid-covered service provided to a presumptively eligible individual; or
2. May elect to reimburse in the same manner or amount as the department reimburses for a Medicaid-covered service provided to a presumptively eligible individual.

(2) Covered services for a presumptively-eligible:
(a) A pregnant woman shall be limited to ambulatory prenatal care services delivered in an outpatient setting and shall include:
1. Services furnished by a primary care provider, including:
   a. A family or general practitioner;
   b. A pediatrician;
   c. An internist;
   d. An obstetrician or gynecologist;
   e. A physician assistant;
   f. A certified nurse midwife; or
   g. An advanced practice registered nurse;
2. Laboratory services provided in accordance with 907 KAR 10:014, 907 KAR 10:014, 907 KAR 10:014, 907 KAR 10:014,
3. Dental services provided in accordance with 907 KAR 10:014
4. Emergency room services provided in accordance with 907 KAR 10:014, Section 11(1)(c); 907 KAR 10:014, 907 KAR 10:014, 907 KAR 10:014, 907 KAR 10:014.
5. Services delivered by rural health clinics provided in accordance with 907 KAR 10:014
6. Services delivered by primary care centers and federally-qualified health care centers provided in accordance with 907 KAR 10:014, or
7. Services delivered by local health departments provided in accordance with 907 KAR 10:014, or
8. Services delivered by primary care centers and federally-qualified health care centers provided in accordance with 907 KAR 10:014, or
9. Services delivered by primary care and federally-qualified health care centers provided in accordance with 907 KAR 10:014, or
10. Primary care services delivered by local health departments provided in accordance with 907 KAR 10:014, or
11. Inpatient or outpatient hospital services provided by a hospital.

Section 6. Appeal Rights. (1) The appeal rights of the Medicaid Program shall not apply if an individual is:
(a) Determined not to be presumptively eligible; or
(b) Determined to be presumptively eligible but fails to file an application for Medicaid with the DCBS before the individual's presumptive eligibility ends and therefore is determined to be
in eligible for Medicaid benefits. 

2. The appeals rights of the Medicaid Program shall apply if an individual has exhausted the MCO internal appeal process in accordance with 907 KAR 17:010 and requests an appeal of an adverse decision by the MCO; or

3. Except as specified in subsection (1) of this section, an appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

4. An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:671.

5. An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:671.

Section 7. Implementation Date. 

(1) An inpatient hospital shall be authorized to make presumptive eligibility determinations beginning on January 1, 2014.

(2) An individual shall not be eligible to receive Medicaid benefits as a result of a presumptive eligibility determination made by an inpatient hospital any earlier than January 1, 2014.

LAWRENCE KISSNER, Commissioner

AUDREY TAYNE HAYNES, Secretary

APPROVED BY AGENCY: September 23, 2013

FILED WITH LRC: September 30, 2013 at 4 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, email tricia.orne@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marchetta Carmicle or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid eligibility provisions regarding presumptive eligibility. Presumptive eligibility is a program designed to improve pregnant women's access to outpatient prenatal care. Providers authorized to make presumptive eligibility determinations complete an application to determine whether a given pregnant woman qualifies for Medicaid under this program. If the provider determines that the woman is eligible, the provider will be reimbursed for prenatal services provided to the woman.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid eligibility provisions regarding presumptive eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid eligibility provisions regarding presumptive eligibility.

(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 Medicaid eligibility provisions regarding presumptive eligibility.

(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 authorizes inpatient hospitals to make presumptive eligibility determinations for all individuals for whom a modified adjusted gross income is the Medicaid income eligibility standard and deletes the definitions. Hospitals are not required to make presumptive eligibility determinations but will be authorized to do so. The provider types who were previously authorized to make presumptive eligibility determinations regarding pregnant women will continue to be authorized to do so, but not for all individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.

(b) The necessity of the amendment to this administrative regulation: Authorizing inpatient hospitals to make presumptive eligibility determinations for all individuals for whom a modified adjusted gross income is in the Medicaid income eligibility standard is necessary to comply with an Affordable Care Act mandate. Deleting the definitions is necessary as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house all Medicaid eligibility administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the Affordable Care Act by establishing that inpatient hospitals will be authorized to make presumptive eligibility determinations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the Affordable Care Act by establishing that inpatient hospitals will be authorized to make presumptive eligibility determinations.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All inpatient hospitals participating in Kentucky's Medicaid program will be authorized to make presumptive eligibility decisions for individuals whose Medicaid eligibility standard is a modified adjusted gross income (MAGI) but are not required to do so. Medicaid recipients who may gain presumptive eligibility coverage as a result of an inpatient hospital's determination will have to complete the required application for each applicant to determine if the individual qualifies via the presumptive eligibility option.

(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. Inpatient hospitals who wish to make presumptive eligibility determinations will have to complete the required application for each applicant to determine if the individual qualifies via the presumptive eligibility option.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Inpatient hospitals will benefit by making determinations and being reimbursed for services provided to individuals for whom the hospital determined is eligible via the presumptive eligibility option. Individuals determined to be presumptive eligible by an inpatient hospital will benefit by receiving Medicaid-covered services during the presumptive eligibility period. Additionally, individuals will hopefully be prompted, as a result of receiving presumptive eligibility for Medicaid benefits, to apply for "standard" Medicaid coverage (before their presumptive eligibility period ends) and remain eligible for Medicaid benefits.

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

(a) Initially: The Department for Medicaid Services (DMS) is
unable to estimate how many individuals could be determined to be presumptively eligible by inpatient hospitals or to predict how many hospitals will choose to make presumptive eligibility determinations. DMS projects that over 500,000 individuals will be in the eligibility group (the MAGI group) which could be made presumptively eligible by inpatient hospitals; however, the same individuals can gain eligibility without being admitted to an inpatient hospital. As it’s difficult to predict how hospitals will make presumptive eligibility determinations and how many individuals will gain Medicaid eligibility as a result of a presumptive eligibility determination, it is difficult to estimate costs associated with inpatient hospital presumptive eligibility determinations.

(b) On a continuing basis: The answer in paragraph (a) also applies here.

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

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

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

(9) Tiering: Is tiering applied? Tiering is applied in the sense that inpatient hospitals can only make presumptive eligibility determinations for those whose Medicaid eligibility standard is a modified adjusted gross income (MAGI). The Affordable Care Act authorizes hospitals to make such determinations for only the MAGI population.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The presumptive eligibility option is not mandatory. The requirements regarding the program, for states who choose to offer it, are established in 42 U.S.C. 1396r-1, 42 U.S.C. 1396a(a)(47), and 42 U.S.C. 1396b(u)(1)(D)(v).

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

3. Minimum or uniform standards contained in the federal mandate. The presumptive eligibility option is not federally mandated; however, if a state chooses to offer it the following requirements apply: 42 U.S.C. 1396a(a)(47) establishes that any hospital participating in the Medicaid program may “elect to be a qualified entity for purposes of determining, on the basis of preliminary information, whether any individual is eligible for medical assistance under the State plan or under a waiver of the plan for purposes of providing the individual with medical assistance during a presumptive eligibility period.”

42 U.S.C. 1396b(u)(1)(D)(v) establishes that the federal government (Centers for Medicare and Medicaid Services) will not consider federal Medicaid funds spent on services to an individual who was erroneously determined to be presumptively eligible by a hospital (that chose to make presumptive eligibility determinations) to be an “erroneous excess payment for medical assistance” (i.e. an erroneous excess Medicaid expenditure.) The result of the policy is that CMS will not seek to recover such expenditure from the given state.


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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. It does not impose stricter, additional, or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 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,
This is an emergency administrative regulation which amends the Medicaid adverse action and notice requirements regarding eligibility as a result of new eligibility rules and categories mandated by the Affordable Care Act. The Affordable Care Act mandates that effective January 1, 2014, that the eligibility standard for certain categories of individuals will be a modified adjusted gross income (or MAGI). The MAGI differs from the income standard used for existing Medicaid eligibility categories. Additionally, the Affordable Care Act mandates a new eligibility category comprised of former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. The Affordable Care Act bars the application of an income standard or resource standard (for eligibility determination purposes) to this population. Therefore, the Department for Medicaid Services is amending this administrative regulation to establish different requirements unique to the MAGI population and the former foster care population. As Medicaid coverage under the MAGI standards and for former foster care individuals is mandatory January 1, 2014 and eligibility determinations can begin October 1, 2013, this administrative regulation is necessary to be implemented on an emergency basis. This action must be implemented on an emergency basis to comply with a federal mandate. 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.

STATEMENT OF EMERGENCY

907 KAR 20:060E

RELATES TO: KRS 205.520
EFFECTIVE: September 30, 2013
NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services] The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with an requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds for the provision of medical assistance to Kentucky's indigent citizen. This emergency regulation establishes the conditions under which an application is denied or medical assistance is decreased or discontinued and advance notice requirements.

Section 1. Definitions. (1) "Applicant" means an individual applying for Medicaid.
(2) "Application" means the process set forth in 907 KAR 1:610.
(3) "Medicaid coverage" means items or services a Medicaid recipient may receive through the Medicaid Program.
(4) "Recipient" means an individual who receives Medicaid.

Section 2. Reasons for Adverse Action. (1) For an individual:
(a) Whose eligibility standard is not a modified adjusted gross income, an application for Medicaid eligibility shall be denied if:
1.[(a)] Income exceeds or resources exceed the standards as established in 907 KAR 20:020[set forth in 907 KAR 1:004];
2. Resources exceed the standard established in 907 KAR 20:025;
3.[(b)] The applicant does not meet technical eligibility criteria or fails to comply with a technical requirement as established in 907 KAR 20:005[set forth in 907 KAR 1:014];
4.[(c)] Despite receipt of written notice detailing the additional information needed for a determination, the applicant fails to provide sufficient information or clarify conflicting information necessary for a determination of eligibility;
5.[(d)] The applicant fails to keep the appointment for an interview without good cause;
6.[(e)] The applicant requests, in writing, voluntary withdrawal of the application without good cause;
7.[(d)] Staff are unable to locate the applicant; or
8.[(e)] The applicant is no longer domiciled in Kentucky;
(b) Whose eligibility standard is a modified adjusted gross income, pursuant to 907 KAR 20:100, the application for Medicaid eligibility shall be denied if:
1. Income exceeds the standards as established in 907 KAR 20:100;
2. The applicant does not meet the citizenship, residency, and other technical requirements established in 907 KAR 20:100;
3. Despite receipt of written notice detailing the additional information needed for a determination, the applicant fails to provide sufficient information or clarify conflicting information necessary for a determination of eligibility;
4. The applicant fails to keep the appointment for an interview without good cause;
5. The applicant requests, in writing, voluntary withdrawal of the application without good cause;
6. Staff are unable to locate the applicant; or
7. The applicant is no longer domiciled in Kentucky; or
(c) Who is a former foster care individual between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage, an application for Medicaid shall be denied if:
1. The applicant does not meet the citizenship, residency, and other technical requirements established in 907 KAR 20:075;
2. Despite receipt of written notice detailing the additional information needed for a determination, the applicant fails to provide sufficient information or clarify conflicting information necessary for a determination of eligibility;
3. The applicant fails to keep the appointment for an interview without good cause;
4. The applicant requests, in writing, voluntary withdrawal of the application without good cause;
5. Staff are unable to locate the applicant; or
6. The applicant is no longer domiciled in Kentucky.

(2) Medicaid eligibility shall be discontinued:
(a) For a recipient whose Medicaid eligibility income standard is not a modified adjusted gross income if:
1. Income exceeds the standards established in 907 KAR 20:020;
2. Resources of the recipient exceed the standard established in 907 KAR 20:025;
3. Deductions decrease resulting in income exceeding the standards established in 907 KAR 20:020;
4. The recipient does not meet technical eligibility criteria or fail to comply with a technical requirement as established in 907 KAR 20:005;
5. Despite receipt of written notice detailing the additional information needed for a redetermination, the recipient fails to provide sufficient information or clarify conflicting information necessary for a redetermination of eligibility;
6. The recipient fails to keep the appointment for an interview;
7. Staff are unable to locate the recipient;
8. The recipient is no longer domiciled in Kentucky; or
9. A change in program policy that adversely affects the recipient has occurred;
(b) For a recipient whose Medicaid eligibility income standard is a modified adjusted gross income if:
1. Income of the recipient exceeds the standards established in 907 KAR 20:100;
2. The applicant does not meet the citizenship, residency, and other technical requirements established in 907 KAR 20:100;
3. Despite receipt of written notice detailing the additional information needed for a redetermination, the recipient fails to provide sufficient information or clarify conflicting information necessary for a redetermination of eligibility;
4. The recipient fails to keep the appointment for an interview;
5. Staff are unable to locate the recipient;
6. The recipient is no longer domiciled in Kentucky; or
7. A change in program policy that adversely affects the recipient has occurred; or
(c) For a former foster care individual between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage if:
1. The applicant does not meet the citizenship, residency, and other technical requirements established in 907 KAR 20:075;
2. Despite receipt of written notice detailing the additional information needed for a redetermination, the recipient fails to provide sufficient information or clarify conflicting information necessary for a redetermination of eligibility;
3. The recipient fails to keep the appointment for an interview;
4. Staff are unable to locate the recipient;
5. The recipient is no longer domiciled in Kentucky; or
6. A change in program policy that adversely affects the recipient has occurred;
7. Patient liability shall be increased if:
(a) The recipient's income increases; or
(b) Deductions decrease.

(4) Medicaid eligibility may be redetermined in another category resulting in a reduction of Medicaid coverage for an individual whose income eligibility standard is:
(a) Not a modified adjusted gross income, if:
1. Income exceeds the standards established in 907 KAR 20:020;
2. The individual does not meet technical eligibility requirements established in 907 KAR 20:005; or
3. Medicaid coverage may be reduced due to a change in Medicaid coverage policy.

Section 3. [4.] Advance Notice of a Discontinuance, Increase in Patient Liability, or a Reduction of Medicaid Coverage. (1) [The] recipient shall be given ten (10) days advance notice of the proposed action if a change in circumstances indicates:
(a) A discontinuance of Medicaid coverage;
(b) An increase in patient liability; or
(c) A reduction of Medicaid coverage.

(2) The recipient shall be given five (5) days advance notice of the proposed action if a change in circumstances indicates:
(a) Facts that should be taken because of probable fraud by the recipient; and
(b) The facts have been verified through secondary sources.

(3) The ten (10) days advance notice and the five (5) days advance notice of proposed action shall:
(a) Be in writing;
(b) Explain the reason for the proposed action;
(c) Cite the applicable state administrative regulation;
(d) Explain the individual's right to request an administrative [fair] hearing;
(e) Provide an explanation of the circumstances under which Medicaid is continued if an administrative hearing is requested; and
(f) Include that the recipient may be represented by an attorney or other party if the recipient so desires.

(4) An administrative hearing request received during the advance notice period may result in a delay of the discontinuance of Medicaid coverage, a delay in an increase in patient liability, or delay of a reduction of Medicaid coverage pending the hearing officer's decision, as established in 907 KAR 20:059.

Section 4. [5.] Exceptions to the Advance Notice Requirement. An advance notice of proposed action shall not be required, but written notice of action taken shall be given, if discontinuance of Medicaid coverage or an increase in patient liability resulted from:
(1) Information reported by the recipient if the recipient signs a waiver of the notice requirement indicating understanding of the consequences;
(2) A clear written statement, signed by the recipient, that the recipient no longer wishes to receive Medicaid;
(3) Factual information is received that the recipient has died;
(4) Written notification is returned indicating no known forwarding address; and
(5) Establishment by the agency that Medicaid has been
accepted in another state; provide conditions that; or
(b) If between twenty-one (21) and sixty-five (65) years of age, a mental hospital or an institution for mental disease (IMD); or
(7) A change in the level of medical care is prescribed by the recipient’s physician.

Section 5. Expiration of Hospital or Psychiatric Residential Treatment Facility Stay. (6) Expiration of an approved time-limited hospital or psychiatric residential treatment facility stay shall not constitute a termination, suspension, or reduction of benefits.

Section 6. Individuals Whose Income Eligibility Standard is a Modified Adjusted Gross Income. An individual whose Medicaid eligibility is determined using a modified adjusted gross income as the eligibility standard shall be an individual who is:
(1) A child under the age of nineteen (19) years, excluding children in foster care;
(2) A caretaker relative with income up to 133 percent of the federal poverty level;
(3) A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;
(4) An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:
(a) Does not have a dependent child under the age of nineteen (19) years; and
(b) Is not otherwise eligible for Medicaid benefits; or
(5) A targeted low income child with income up to 150 percent of the federal poverty level. Material incorporated by Reference. [1] The forms necessary for adverse action in the Medicaid Program are being incorporated effective April 1, 1995. These forms include the MA 105, revised July 1992 and the KIM 105, revised September 1992.
(2) Material incorporated by reference may be reviewed at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m. Copies may be obtained from that office upon payment of the appropriate fee allowed by 200 KAR 1:020.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the conditions under which an application for Medicaid is denied, medical assistance is decreased or discontinued, and related advance notice requirements.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program conditions and requirements addressed in paragraph (a) in accordance with federal law and regulation and as authorized by KRS 194A.030(2) which establishes the Department for Medicaid Services as the commonwealth’s single state agency for administering the federal Social Security Act.
(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 Medicaid program conditions and requirements addressed in paragraph (a).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 194A.030(2), 194A.050(1) and 205.520(3) by establishing the Medicaid program conditions and requirements addressed in paragraph (a).
(3) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment establishes adverse action and notice requirements for individuals for whom the Medicaid income eligibility standard is a modified adjusted gross income (or MAGI) and for former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. These are two (2) new eligibility categories created by the Affordable Care Act and having eligibility requirements differing from the old/existing Medicaid eligibility rules. The MAGI group includes individuals previously eligible under the old rules but there is no resource standard for these individuals and their income is determined in a more simplified way under the new rules. The MAGI group also includes what is known as the expansion group which is a new eligibility group comprised of childless adults who do not otherwise qualify for Medicaid and have income up to 133 percent of the federal poverty level. The MAGI group in entirety is comprised of children under nineteen (19) – except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women including through day sixty (60) of the month; adults under age sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level. Another new group – a group which is mandated by the Affordable Care Act – is comprised of former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. There is no income standard or resource standard for this group. The amendment also removes definitions from the administrative regulation as those are now being established in a definitions administrative regulation for all administrative regulations within the new chapter – Chapter 20 – which will house Medicaid eligibility administrative regulations; deletes incorporated material not used by the Department for Medicaid Services; and also includes language and formatting revisions to comply with KRS Chapter 13A requirements.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with an Affordable Care Act mandate which requires eligibility standards for the MAGI group and for former foster care individuals which differ from the eligibility standards for those who remain under the old/existing Medicaid eligibility rules. Deleting the incorporated material is necessary as the Department for Medicaid Services (DMS) does not use the material. Deleting the definitions is necessary as DMS is creating a definitions administrative regulation for Chapter 20. Additionally, language and formatting amendments are necessary to ensure conformity with the requirements established in KRS Chapter 13A.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with Affordable Care Act mandates.
(d) How the amendment will assist in the effective administration of the statutes: The amendment conforms to the content of the authorizing statutes by complying with Affordable Care Act mandates.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.
(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 imposes no action to be taken by the affected individuals.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment imposes no cost on the affected individuals.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals will be able to appeal adverse actions as prescribed in this administrative regulation.
   (5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: DMS anticipates no cost as a result of the amendment.
   (b) On a continuing basis: The answer provided in paragraph (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement the administrative regulation: The amendment to this administrative regulation neither imposes stricter nor additional or different responsibilities nor requirements than those required by the federal mandate. The amendment does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be impacted by the amendment.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates no revenue being generated for the first year for state or local government due to the amendments.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue being generated for subsequent years for state or local government due to the amendments.

4. Tiering: Is tiering applied? Tiering is only applied in that different requirements apply to the MAGI group and to the former foster care individuals as mandated by the Affordable Care Act.

5. Assess whether or not this administrative regulation would not be adopted until after the implementation date. This administrative regulation would not be adopted until after the implementation date.

STATEMENT OF EMERGENCY
907 KAR 20:075E

This is an emergency administrative regulation which is being promulgated to comply with a federal mandate in the Affordable Care Act. The Affordable Care Act created a new mandatory eligibility group - effective January 1, 2014 - comprised of former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out foster care while receiving Medicaid coverage. As eligibility determinations can begin October 1, 2013 – even though the individuals could not receive benefits until January 1, 2014 - this administrative regulation is necessary to be implemented on an emergency basis. This action must be implemented on an emergency basis to comply with a federal mandate. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation differs from this emergency administrative regulation as it does not state the implementation date (January 1, 2014) as the ordinary regulation would not be adopted until after the implementation date.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary
CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations  
(New Emergency Administrative Regulation)  
907 KAR 20:075E. Eligibility provisions and requirements regarding former foster care individuals.  

RELATES TO: KRS 205.520  
EFFECTIVE: September 30, 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 Medicaid eligibility provisions and requirements for an individual between the ages of nineteen (19) and twenty-six (26) years, who formerly was in foster care and was receiving Medicaid benefits at the time that the individual aged out of foster care.  

Section 1. Former Foster Care Eligibility Criteria. An individual between the ages of nineteen (19) and twenty-six (26) years, who formerly was in foster care, and was receiving Medicaid benefits at the time the individual’s age exceeded the foster care age limit shall be eligible for Medicaid benefits if the individual meets the requirements of this administrative regulation.  

Section 2. Income Standard. There shall be no income standard for individuals between the ages of nineteen (19) and twenty-six (26) years and who formerly were in foster care but aged out of foster care.  

Section 3. Resource Standard. There shall be no resource standard for individuals between the ages of nineteen (19) and twenty-six (26) years and who formerly were in foster care but aged out of foster care.  

Section 4. Attestation of Having Aged Out of Foster Care. (1) An individual between the ages of nineteen (19) and twenty-six (26) years, who formerly was in foster care, and was receiving Medicaid benefits at the time the individual’s age exceeded the foster care age limit shall attest, during the application process, that the individual was receiving Medicaid benefits at the time that the individual reached the age which exceeds the foster care age limit.  

(2) An individual who does not attest as established in subsection (1) of this section shall not be eligible for Medicaid benefits.  


(2) Except as established in subsection (3) or (4) of this section, to satisfy the Medicaid:  

(a) Citizenship requirements, an applicant or recipient shall be:  

1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility;  

2. Except as provided in subsection (3) of this section, a qualified alien who entered the United States before August 22, 1996, and is:  

a. Lawfully admitted for permanent resident pursuant to 8 U.S.C. 1101;  

b. Granted asylum pursuant to 8 U.S.C. 1158;  

c. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;  

d. Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;  

e. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);  

f. Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;  

g. An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;  

h. A battered alien pursuant to 8 U.S.C. 1641(c);  

i. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;  

j. On active duty other than active duty for training in the Armed Forces of the United States who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);  

k. The spouse or unmarried dependent child of an individual described in clause i. or j. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;  

l. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(i) or (ii); or  

3. A qualified alien who entered the United States on or after August 22, 1996 and is:  

a. Granted asylum pursuant to 8 U.S.C. 1158;  

b. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;  

c. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h) as in effect prior to April 1, 1997 or 8 U.S.C. 1231(b)(3);  

d. An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;  

(e) A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;  

f. On active duty other than active duty for training in the Armed Forces of the United States who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);  

g. The spouse or unmarried dependent child of an individual described in clause e. or f. of this subparagraph or the unmarried surviving spouse of an individual described in clause e. or f. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;  

h. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(i) or (ii); or  

i. An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and  

(b) Residency requirements, the applicant or recipient shall be a resident of Kentucky who meets the conditions for determining state residency pursuant to 42 C.F.R. 435.403.  

(3) A qualified or nonqualified alien shall be eligible for medical assistance as provided in this subsection.  

(a) The individual shall meet the income, resource, and categorical requirements of the Medicaid Program.  

(b) The individual shall have, or have had within at least one (1) of the three (3) months prior to the month of application, an emergency medical condition:  

1. Not related to an organ transplant procedure;  

2. Which shall be a medical condition, including severe pain, in which absence of immediate medical attention could reasonably be expected to result in placing the individual’s health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.  

(c) Approval of eligibility shall be for a time limited period which includes, except as established in subparagraph 2 of this paragraph, the month in which the medical emergency began and the next following month.  

2. The eligibility period shall be extended for an appropriate period of time upon presentation to the department of written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period.  

(d) The Medicaid benefits to which the individual is entitled
shall be limited to the medical care and services, including limited follow-up, necessary for the treatment of the emergency medical condition of the individual.

(4)(a) The satisfactory documentary evidence of citizenship or nationality requirement in subsection (2)(a)1 of this section shall not apply to an individual who:
1. Is receiving SSI benefits;
2. Previously received SSI benefits but is no longer receiving them;
3. Is entitled to or enrolled in any part of Medicare;
4. Previously received Medicare benefits but is no longer receiving them;
5. Is receiving:
   a. Disability insurance benefits under 42 U.S.C. 423; or
   b. Monthly benefits under 42 U.S.C. 402 based on the individual’s disability pursuant to 42 U.S.C. 223(d);
6. Is in foster care and who is assisted under Title IV-B of the Social Security Act;
7. Receives foster care maintenance or adoption assistance payments under Title IV-E of the Social Security Act.

(b) The department’s documentation requirements shall be in accordance with the requirements established in 42 U.S.C. 1396(a)(10).

(5) The department shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant’s or recipient’s behalf.

(6)(a) Except as established in paragraph (b) of this subsection, an individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met.

(b) The retroactive eligibility period shall begin no earlier than January 1, 2014 for an individual who gains Medicaid eligibility solely by qualifying:
1. As a former foster care individual pursuant to this administrative regulation; or
2. As an adult with income up to 133 percent of the federal poverty level who:
   a. Does not have a dependent child under the age of nineteen (19) years; and
   b. Is not otherwise eligible for Medicaid benefits.

Section 6. Provision of Social Security Numbers. (1)(a) Except as provided in subsections (2) and (3) of this section, an applicant for or recipient of Medicaid shall provide a Social Security number as a condition of eligibility.

(b) If a parent or caretaker relative and the child, unless the child is a deemed eligible newborn, refuses to cooperate with obtaining a Social Security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failing to meet technical eligibility requirements.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a Social Security number from the United States Social Security Administration if appropriate application for the number has been made.

(3) An individual who refuses to obtain a Social Security number due to a well-established religious objection shall not be required to provide a Social Security number as a condition of eligibility.

Section 7. Institutional Status. (1) An individual shall not be eligible for Medicaid if the individual is a:
(a) Resident or inmate of a nonmedical public institution except as established in subsection (2) of this section;
(b) Patient in a state tuberculosis hospital unless he has reached age sixty-five (65);
(c) Patient in a mental hospital or psychiatric facility unless the individual is:
   1. Under age twenty-one (21) years of age;
   2. Under age twenty-two (22) if the individual was receiving inpatient services on his or her 21st birthday; or
   3. Sixty-five (65) years of age or over; or
(d) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases, unless the individual has reached age sixty-five (65).

(2) An inmate who meets the eligibility criteria in this administrative regulation may be eligible for Medicaid after having been admitted to a medical institution and been an inpatient at the institution for at least twenty-four (24) consecutive hours.

Section 8. Incarceration Status. An inmate who meets the eligibility requirements of this administrative regulation shall be eligible for Medicaid after having been admitted to a medical institution and been an inpatient at the institution for at least twenty-four (24) consecutive hours.

Section 9. Application for Other Benefits. (1)(a) As a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement, and disability benefit to which the individual is entitled, unless the individual can demonstrate good cause for not doing so.

(b) Good cause shall be considered to exist if other benefits have previously been denied with no change of circumstances or the individual does not meet all eligibility conditions.

(c) Annuities, pensions, retirement, and disability benefits shall include:
1. Veterans’ compensations and pensions;
2. Retirement, Survivors, and Disability Insurance;
3. Railroad retirement benefits;
4. Unemployment compensation; and
5. Individual retirement accounts.

(2) An applicant or recipient shall not be required to apply for federal benefits if:
(a) The federal law governing that benefit specifies that the benefit is optional; and
(b) The applicant or recipient believes that applying for the benefit would be to the applicant’s or recipient’s disadvantage.

(3) An individual who would be eligible for SSI benefits but has not applied for the benefits shall not be eligible for Medicaid.

Section 10. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have assigned to the Cabinet for Health and Family Services any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 11. Third-party Liability as a Condition of Eligibility. (1)(a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the Cabinet for Health and Family Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid program unless the individual has good cause for refusing to cooperate.

(b) Good cause for failing to cooperate shall exist if cooperation:
1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;
2. Is not in a child’s best interest because the child was conceived as a result of rape or incest; or
3. May interfere with adoption considerations or proceedings.

(2) A failure of an individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 12. Application Process, Initial and Continuing Eligibility Determination. (1) An individual may apply for Medicaid benefits by:
(a) Using the Web site located at www.kynect.ky.gov;
(b) Applying over the telephone by calling:
   1. 1-855-459-6328; or
   2. 1-855-326-4654 if deaf or hearing impaired;
(c) Faxing an application to 1-502-573-2007;
(d) Mailing a paper application to Office of Health Benefits Exchange, 12 Mill Creek, Frankfort, Kentucky, 40601; or
(e) Going to the applicant’s local Department for Community Based Services Office and applying in person.

(2) An individual shall attest in accordance with Section 4 of this administrative regulation when applying for Medicaid benefits.

(3)(a) An application shall be processed (approved, denied, or a request for additional information sent) within forty-five (45) days of application submission.

(b) If a trusted source indicates that an applicant is incarcerated, a request for additional information shall be generated requesting verification of the applicant’s incarceration dates.

(c) If an applicant fails to provide information in response to a request for additional information within forty-five (45) days of the beginning of the application process, the application shall be denied.

(4)(a) An annual renewal of eligibility shall occur without an individual having to take action to renew eligibility, unless:

1. The individual’s eligibility circumstances change resulting in the individual no longer being eligible for Medicaid; or
2. A request for additional information is generated due to a change in income or incarceration status.

(b) If an individual receives a request for additional information as part of the renewal process, the individual shall provide the information requested within forty-five (45) days of receiving the request.

2. If an individual fails to provide the information requested within forty-five (45) days of receiving the request, the individual’s eligibility shall be terminated on the forty-fifth day from the request for additional information.

(5) An individual shall be required to report to the department any changes in circumstances or information related to Medicaid eligibility.

Section 13. Adverse Action, Notice, and Appeals. The adverse action, notice, and appeals provisions established in 907 KAR 20:060 shall apply to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.

Section 14. Implementation Date of Former Foster Care Eligibility Provisions and Requirements. (1) The eligibility provisions and requirements established in this administrative regulation shall be effective beginning on January 1, 2014.

(2) An individual shall not be eligible to receive Medicaid benefits pursuant to the eligibility provisions and requirements established in this administrative regulation any earlier than January 1, 2014.

Contact Persons: Marchetta Carmicle or Stuart Owen

(1) Provide a brief summary of:
(a) What is the administrative regulation does: This administrative regulation establishes the provisions and requirements regarding Medicaid eligibility for a new eligibility group mandated by the Affordable Care Act. The new group is comprised of individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care and aged out of foster care while receiving Medicaid coverage at the time of aging out of foster care. To qualify for Medicaid coverage the individuals have to attest to having received Medicaid benefits at the time they aged out of foster care but there is no income standard or resource standard/test for this population as the Affordable Care Act prohibits such standards from being applied to this population. Additionally, the individuals have to meet residency and citizenship requirements that other Medicaid applicants/recipients have to meet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with an Affordable Care Act mandate to establish Medicaid eligibility for a new eligibility group comprised of individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care and aged out of foster care while receiving Medicaid benefits at the time of aging out of foster care.

(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 eligibility requirements for a new Medicaid eligibility group mandated by the Affordable Care Act.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the eligibility requirements for a new Medicaid eligibility group mandated by the Affordable Care Act.

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of this amendment: 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.

(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 this amendment: 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.

(a) Initially: Adding the new mandated Medicaid eligibility group mandated by the Affordable Care Act mandate to establish Medicaid eligibility for a new eligibility group comprised of individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care and aged out of foster care [at a seventy (70) percent match rate] for health insurance coverage for these individuals. Previously, the Department for Community Based Services (DCBS) purchased health insurance, but the Department for Medicaid Services (DMS) estimates that over 3,300 individuals will become eligible for Medicaid coverage as a result of this new eligibility group.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals in the new mandated Medicaid eligibility group – individuals aged nineteen (19) to twenty-six (26) who previously were in foster care but aged out of foster care – will benefit by becoming eligible for Medicaid benefits.

(5) Provide an estimate of how much it will cost to implement this administrative regulation.
The federal matching percent for this new eligibility group is seventy (70) percent; thus, the federal share of $42.1 million would be $29.47 million and the commonwealth’s share would be $12.63 million.

(b) On a continuing basis: DMS projects the cost of covering former foster care individuals estimated for the first year will remain near that level in future years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional funding for DMS will be needed to cover the cost of care of individuals between the ages of nineteen (19) and twenty-six (26) who were formerly in foster care but aged out of foster care.

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

(9) Tiering: Is tiering applied? Tiering is not applied as the requirements apply equally to all individuals in the new eligibility group.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1396a(a)(10)(A)(i)(I)

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all 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 and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall 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."

3. Minimum or uniform standards contained in the federal mandate. Federal law created the new mandatory eligibility category of individuals between nineteen (19) and twenty-six (26) who formerly were in foster care but aged out of foster care and were receiving Medicaid benefits at the time of aging out of foster care and bars the application of an income standard or resource/asset test or standard to this population.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS), the Department for Community Based Services (DCBS), and Department of Corrections 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. 435.603 and this administrative regulation authorize the action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? Adding the new mandated Medicaid eligibility group – individuals aged nineteen (19) to twenty-six (26) who previously were in foster care but aged out of foster care – will enable the Department for Medicaid Services (DMS) to receive federal funding (at a seventy (70) percent match rate) for health insurance coverage for these individuals. Previously, the Department for Community Based Services (DCBS) purchased health insurance coverage for approximately 700 of these individuals with 100 percent state general funds. The annual cost was approximately $1 million. Thus, covering this group via the Medicaid program is expected to reduce Cabinet for Health and Family Services’ expenditures by $700,000 annually. However, DMS estimates that over 3,300 individuals could become eligible in the next year via this eligibility category with a total cost of approximately $42.1 million. The federal matching percent for this new eligibility group is seventy (70) percent, thus, the federal share of $42.1 million would be $29.47 million and the commonwealth’s share would be $12.63 million.

(d) How much will it cost to administer this program for subsequent years? DMS projects the cost of covering former foster care individuals estimated for the first year will remain near that level in future 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

907 KAR 20:100E

This is an emergency administrative regulation which is being promulgated to comply with a federal mandate (Affordable Care Act) to adopt a modified adjusted gross income (or MAGI) as the income eligibility standard for certain individuals effective January 1, 2014. Individuals governed by the modified adjusted gross income rules are subject to a different income standard than the traditional Medicaid income standards are not subject to any resource standard. As eligibility determinations can begin October 1, 2013, this administrative regulation is necessary to be implemented on an emergency basis. This action must be implemented on an emergency basis to comply with a federal mandate. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation differs from this emergency administrative regulation as it does not state the implementation date as the ordinary administrative regulation would not be adopted until after the implementation date.
Section 2. MAGI-based Methods. The department shall use the adjusted gross income determined using an eligibility standard that is not the modified adjusted gross income. The affected individuals include children under the age of nineteen (19) years, pregnant women up to sixty (60) days postpartum, caretaker relatives, and adults under age sixty-five (65) who do not have a dependent child under the age of nineteen (19) years and are not otherwise eligible for Medicaid benefits.

Section 3. Resources Not Considered. An individual’s resources shall not be considered for the purpose of determining Medicaid eligibility when the eligibility standard is the modified adjusted gross income.


(2) Except as established in subsection (3) or (4) of this section, to satisfy the Medicaid:

(a) Citizenship requirements, an applicant or recipient shall be:

1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility;

2. Except as provided in subsection (3) of this section, a qualified alien who entered the United States before August 22, 1996, and is:

   a. Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;
   b. Granted asylum pursuant to 8 U.S.C. 1158;
   c. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;
   d. Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;
   e. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);
   f. Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;
   g. An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;
   h. A battered alien pursuant to 8 U.S.C. 1641(c);
   i. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;
   j. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);
   k. The spouse or unmarried dependent child of an individual described in clause i. or j. of this subparagraph or the unremarried surviving spouse of an individual described in clause i. or j. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;
   l. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or
   m. A qualified alien who entered the United States on or after August 22, 1996, and is:

      a. Granted asylum pursuant to 8 U.S.C. 1158;
      b. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;
      c. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1153(h) as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);
      d. An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;
      e. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;
      f. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);
      g. The spouse or unmarried dependent child of an individual described in clause e. or f. of this subparagraph or the unremarried surviving spouse of an individual described in clause e. or f. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;
      h. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or
      i. An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and
      j. Residency requirements, the applicant or recipient shall be
a resident of Kentucky who meets the conditions for determining state residency pursuant to 42 C.F.R. 435.403.

(3) A qualified or nonqualified alien shall be eligible for medical assistance as provided in this subsection.

(a) The individual shall meet the income, resource, and categorical requirements of the Medicaid Program.

(b) The individual shall have, or have had within at least one (1) of the three (3) months prior to the month of application, an emergency medical condition:

1. Not related to an organ transplant procedure;
2. Which shall be a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the individual’s health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(c) Approval of eligibility shall be for a time limited period which includes, except as established in subparagraph 2 of this paragraph, the month in which the medical emergency began and the next following month.

2. The eligibility period shall be extended for an appropriate period of time upon presentation to the department of written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period.

(d) The Medicaid benefits to which the individual is entitled shall be limited to the medical care and services, including limited follow-up, necessary for the treatment of the emergency medical condition of the individual.

(4) The satisfactory documentary evidence of citizenship or nationality requirement in subsection (2)(a)1 of this section shall not apply to an individual who shall:

1. Is receiving SSI benefits;
2. Previously received SSI benefits but is no longer receiving them;
3. Is entitled to or enrolled in any part of Medicare;
4. Previously received Medicare benefits but is no longer receiving them;
5. Is receiving:
   a. Disability insurance benefits under 42 U.S.C. 423; or
   b. Monthly benefits under 42 U.S.C. 402 based on the individual’s disability pursuant to 42 U.S.C. 223(d); or
6. Is in foster care and who is assisted under Title IV-B of the Social Security Act; or
7. Receives foster care maintenance or adoption assistance payments under Title IV-E of the Social Security Act.

(b) The department’s documentation requirements shall be in accordance with the requirements established in 42 U.S.C. 1396b(x).

The department shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant’s or recipient’s behalf.

(6) Except as established in paragraph (b) of this subsection, an individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met.

(b) The retroactive eligibility period shall begin no earlier than January 1, 2014 for an individual who gains Medicaid eligibility solely by qualifying:

1. As a former foster care individual pursuant to this administrative regulation; or
2. As an adult with income up to 133 percent of the federal poverty level who:
   a. Does not have a dependent child under the age of nineteen (19) years; and
   b. Is not otherwise eligible for Medicaid benefits.

Section 5. Provision of Social Security Numbers. (1)(a) Except as provided in subsections (2) and (3) of this section, an applicant for or recipient of Medicaid shall provide a Social Security number as a condition of eligibility.

(b) If a parent or caretaker relative and the child, unless the child is a deemed eligible newborn, refuses to cooperate with obtaining a Social Security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failing to meet technical eligibility requirements.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a Social Security number from the United States Social Security Administration if appropriate application for the number has been made.

(3) An individual who refuses to obtain a Social Security number due to a well-established religious objection shall not be required to provide a Social Security number as a condition of eligibility.

Section 6. Spend-down. (1) An individual shall be eligible on the basis of utilizing income above 133 percent of the federal poverty level to pay for incurred medical expenses resulting in the individual’s income being below 133 percent of the federal poverty level after the expenses have been deducted.

(2) The eligibility date of an individual eligible pursuant to subsection (1) of this section shall be the date on which the spend-down liability amount is met.

Section 7. Institutional Status. (1) An individual shall not be eligible for Medicaid if the individual is:

(a) Resident or inmate of a nonmedical public institution except as established in subsection (2) of this section;
(b) Patient in a state tuberculosis hospital unless he has reached age sixty-five (65);
(c) Patient in a mental hospital or psychiatric facility unless the individual is:
   1. Under age twenty-one (21) years of age;
   2. Under age twenty-two (22) if the individual was receiving inpatient services on his or her 21st birthday; or
   3. Sixty-five (65) years of age or over;
   (d) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases, unless the individual has reached age sixty-five (65).

(2) An inmate who meets the eligibility criteria in this administrative regulation may be eligible for Medicaid after having been admitted to a medical institution and been an inpatient at the institution for at least twenty-four (24) consecutive hours.

Section 8. Incarceration Status. An inmate who meets the eligibility requirements of this administrative regulation shall be eligible for Medicaid after having been:

1. Admitted to a medical institution; and
2. An inpatient at the institution for at least twenty-four (24) consecutive hours.

Section 9. Application for Other Benefits. (1)(a) As a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement, and disability benefit to which the individual is entitled, unless the individual can demonstrate good cause for not doing so.

(b) Good cause shall be considered to exist if other benefits have previously been denied with no change of circumstances or the individual does not meet all eligibility conditions.

(c) Annuities, pensions, retirement, and disability benefits shall include:

1. Veterans’ compensations and pensions;
2. Retirement, Survivors, and Disability Insurance;
3. Railroad retirement benefits;
4. Unemployment compensation; and
5. Individual retirement accounts.

(2) An applicant or recipient shall not be required to apply for federal benefits if:

(a) The federal law governing that benefit specifies that the benefit is optional; and
(b) The applicant or recipient believes that applying for the benefit would be to the applicant’s or recipient’s disadvantage.

(3) An individual who would be eligible for SSI benefits but has not applied for the benefits shall not be eligible for Medicaid.
Section 10. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have assigned to the Cabinet for Health and Family Services any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 11. Third-party Liability as a Condition of Eligibility. (1)(a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the Cabinet for Health and Family Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid program unless the individual has good cause for refusing to cooperate.

(b) Good cause for failing to cooperate shall exist if cooperation:
1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;
2. Is not in a child’s best interest because the child was conceived as a result of rape or incest; or
3. May interfere with adoption considerations or proceedings.

(2) A failure of an individual to cooperate without good cause shall result in ineligibility of the individual.

(3) (a) An annual renewal of eligibility shall occur without an application submittal.

(b) If a family member is pregnant, the unborn child shall be considered as a family member for income determination purposes.

(c) If a trusted source indicates that an applicant is incarcerated, a request for additional information shall be generated requesting verification of the applicant’s incarceration dates.

(d) If an applicant fails to provide verification of the applicant’s incarceration dates, a request for additional information shall be generated requesting verification of the applicant’s incarceration dates.

(e) If an applicant fails to provide verification of the applicant’s incarceration dates, a request for additional information shall be generated requesting verification of the applicant’s incarceration dates.

(f) If an applicant fails to respond to a request for additional information received within thirty (30) days of the beginning of the application process, the application shall be denied.

(3)(a) An annual renewal of eligibility shall occur without an individual having to take action to renew eligibility, unless:
1. The individual’s eligibility circumstances change resulting in the individual no longer being eligible for Medicaid; or
2. A request for additional information is generated due to a change in income or incarceration status.

(b) If an individual receives a request for additional information as part of the renewal process, the individual shall provide the information requested within forty-five (45) days of receiving the request.

(c) If an individual fails to provide the information requested within forty-five (45) days of receiving the request, the individual’s eligibility shall be terminated on the forty-fifth day from the request for additional information.

(d) An individual shall be required to report to the department any changes in circumstances or information related to Medicaid eligibility.

Section 13. Adverse Action, Notice, and Appeals. The adverse action, notice, and appeals provisions established in 907 KAR 20:060 shall apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.

Section 14. Miscellaneous Special Circumstances. (1) A woman during pregnancy, and as though pregnant through the end of the month containing the sixtieth day of a period beginning on the last day of pregnancy, or a child under six (6) years of age, as specified in 42 U.S.C. 1396a(a)(1), shall meet the income requirements for this eligibility group in accordance with this administrative regulation.

(2) If an eligible child is receiving covered inpatient services, except for services in a long term care facility or behavioral health services in an inpatient facility on a long-term basis, on a birthday which will make the child ineligible due to age, the child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the child remains otherwise eligible except for age.

3 A child born to a woman eligible for and receiving Medicaid shall be eligible for Medicaid as of the date of the child’s birth if the child has not reached his or her first birthday.

(4)(a) A parent, including a natural or adoptive parent, may be included for assistance if a child is a minor child.

(b) If a parent is not included in the case, one (1) other caretaker relative may be included to the same extent the caretaker relative would have been eligible in the Aid to Families with Dependent Children program using the AFDC methodology in effect on July 16, 1996.

(5) For an individual eligible on the basis of desertion, a period of desertion shall have existed for thirty (30) days, and the effective date of eligibility shall not precede the first day of the month of application.

(6) For an individual eligible on the basis of utilizing his or her excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met.

(7) A caretaker relative (not including a child):

(a) Removed from a family related Medicaid only case due to failure to meet a technical eligibility requirement shall not be eligible for Medicaid as a medically needy individual unless the individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which the individual has been removed; or

(b) Who is ineligible for K-TAP benefits for failure to comply with K-TAP work requirements shall not be eligible for medical assistance unless the individual is eligible as a pregnant woman.

(8)(a) Children with a common parent residing in the same household as the common parent shall be included in the same Medicaid case as the common parent unless doing so results in ineligibility of an otherwise eligible household member.

(b) If a family member is pregnant, the unborn child shall be considered as a family member for income determination purposes.

Section 15. Implementation Date of MAGI Eligibility Provisions and Requirements. (1) The MAGI eligibility provisions and requirements established in this administrative regulation shall be effective beginning on January 1, 2014.

(2) An individual shall not be eligible to receive Medicaid benefits pursuant to K-TAP if the MAGI eligibility provisions and requirements established in this administrative regulation any earlier than January 1, 2014.
administrative regulation establishes the provisions and requirements regarding Medicaid eligibility for individuals whose "eligible standard" is the modified adjusted gross income (MAGI) rather than existing Medicaid eligibility rules, for certain populations of individuals.

(2) If this is an amendment to an existing administrative regulation, provide a list the regulated 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. Individuals who wish to receive Medicaid benefits will have to apply for benefits in accordance with the requirements established in this administrative regulation and satisfy the requirements.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals who were eligible under the existing Medicaid eligibility rules (DMS estimates this number to be over 500,000) will benefit by having a simpler eligibility standard - standard which does not consider resources (assets that can be readily converted to cash) for Medicaid eligibility purposes nor certain technical requirements (such as having to be aged, blind, or have a disability.) Under the old Medicaid income eligibility rules, a state examined a person's gross income then subtracted miscellaneous "income disregards" to create a net income used for income eligibility determination purposes. The elimination of income disregards (income that could be ignored from the eligibility determination) included some child support payments, certain childcare expenses, and the first ninety (90) dollars of earned income. Furthermore, each state established its own, unique income disregards. The new standard – MAGI – eliminates income disregards and in lieu of disregards establishes the same income standard for all states. Also, the MAGI standard does not count/consider some income (for eligibility determination purposes) that previously was counted as income. One (1) example of such includes Social Security benefits. Previously these benefits were counted as income. The elimination of it will enable the opportunity for individuals under sixty-five (65) who have a disability but previously did not qualify for Medicaid benefits due to having income in excess of the income limit. Additionally, there is no resource test/standard for individuals for whom a modified adjusted gross income is the Medicaid eligibility standard. Finally, as authorized by the Affordable Care Act, the department shall apply a five (5) percent increase in the income threshold for those whose income threshold is 133 percent of the federal poverty level, but the individual's initial eligibility determination indicates that the individual's income exceeds 133 percent of the federal poverty level.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions and requirements regarding Medicaid eligibility for individuals whose eligibility standard is the modified adjusted gross income. The Affordable Care Act mandates that the modified adjusted gross income be used (effective January 1, 2014) to determine Medicaid eligibility for certain populations rather than the prior Medicaid eligibility rules; thus, the administrative regulation is necessary to comply with the 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 federal mandate to establish the modified adjusted gross income as the Medicaid eligibility standard, rather than existing Medicaid eligibility rules, for certain populations of individuals.

(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 federal mandate to establish the modified adjusted gross income as the Medicaid eligibility standard, rather than existing Medicaid eligibility rules, for certain populations of individuals.
FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14), 42 U.S.C. 1396a(r)(2).

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all 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 and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall 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."

3. Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state's Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations governed by the new requirements include children under nineteen (19) [excluding children in foster care]; pregnant women (including the postpartum period up to sixty (60) days); caretaker relatives with income up to 133 percent of the federal poverty level; adults with no child under nineteen (19) with income up to 133 percent of the federal poverty level who are not otherwise eligible for Medicaid benefits; and targeted low-income children with income up to 150 percent of the federal poverty level. States are also required to create and enforce throughout the Commonwealth all applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall 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.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS), the Department for Community Based Services (DCBS), and Department of Corrections 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. 435.603 and this administrative regulation authorize the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the revenues and expenditures of a state or local government agency (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is projected to generate $563 million in federal funds for the Medicaid program in state fiscal year (SFY) 2014 and reduce Department of Corrections' expenditures by $1.4 million for the same period. Additionally, the University of Louisville's Urban Studies Institute analyzed the projected impact on Kentucky's economy of Kentucky taking advantage of the Medicaid expansion authorized by the Affordable Care Act. USI's assessment projected that the expansion would create 7,600 jobs in SFY 2014 generating an economic impact of over $905 million and federal funds $1.26 billion; SFY 2015 (state funds $32 million/federal funds $71 million); SFY 2016 (state funds $124 million/federal funds $1.307 billion); SFY 2017 (state funds $33 million/federal funds $1.26 billion); SFY 2018 (state funds $74 million/federal funds $1.271 billion); SFY 2019 (state funds $91 million/federal funds $1.307 billion); SFY 2020 (state funds $124 million/federal funds $1.330 billion); SFY 2021 (state funds $151 million/federal funds $1.361 billion.) DMS projects the following reduction in state fund expenditures as a result of covering incarcerated individuals' inpatient hospital admissions which last at least twenty-four (24) hours [these are reductions in Department of Corrections expenditures]: $7 million for SFY 2015; $7.2 million for SFY 2016; $7.5 million for SFY 2017; $7.7 million for SFY 2018; $7.9 million for SFY 2019; $8.2 million for SFY 2020; and $8.4 million for SFY 2021. DMS projects the following additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

Expenditures (+/-): $7 million for SFY 2015; $7.2 million for SFY 2016; $7.5 million for SFY 2017; $7.7 million for SFY 2018; $7.9 million for SFY 2019; $8.2 million for SFY 2020; and $8.4 million for SFY 2021. DMS projects the following additional or different responsibilities or requirements.

Other Explanation:

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:
COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS, October 8, 2013)

13 KAR 1:020. Private college licensing.

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

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

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

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

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

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

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

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

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

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

(8) "Net tuition and fees" means the total of tuition and mandatory fee revenue less institutional scholarships and fellowships.

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

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

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

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

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

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

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

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

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

(13) "Unrestricted cash" means any cash or cash equivalents held by a college which are available to cover payments to students for any unearned tuition.

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

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

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

(b) Except as provided in paragraph (c) of this subsection, an out-of-state college that is operating or soliciting using on-line instruction to Kentucky residents shall be considered to have an online campus which shall be licensed separately as an instructional site.

(c) Licensure shall not be required for an out-of-state college if the college:

1. Is only operating and soliciting under Section 1(9)(b) of this administrative regulation solely due to a faculty member residing in Kentucky and providing online instruction to Kentucky students; and

2. Has less than one (1) percent of its faculty members residing in Kentucky.

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) The institution shall disclose to each prospective student:
   a. A statement of the purpose of the institution, its educational programs, and curricula;
   b. A description of its physical facilities;
   c. Its status regarding licensing;
   d. Its fee schedule and policies regarding retaining student fees if a student withdraws;
   e. Its refund policy on tuition and other instructional charges; and
   f. A statement regarding the transferability of credits to and from other institutions.

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

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

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

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

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

   (a) College charter;
   (b) College catalog;
   (c) College constitution and bylaws;
   (d) Student enrollment application;
   (e) Student contract or agreement;
   (f) Documentation of accreditation, licensure, or approval by appropriate agencies; and
   (g) A Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 shall be submitted by an in-state college at least ninety (90) working days prior to the completion of the site visit, or within sixty (60) working days of the submission of a complete licensure application if a site visit is not conducted, the president shall do one (1) of the following:
   (a) Issue a license for a period of no less than one (1) year, nor more than two (2) years;
   (b) Deny the application for a license;
   (c) Notify the applicant college of deficiencies which shall be corrected before a license is issued; or
   (d) Issue a conditional license in accordance with subsection (3)(2) of this section if the college has:
      1. Not met all of the standards for licensure at the time the application is filed; and
      2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

3. If an institution fails to respond in writing to an official notification of deficiency within sixty (60) working days, it shall be required to submit a new application and fee to apply for licensure.

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

(a) The college’s failure to satisfy the conditions within the specified timeframe shall:
   1. Result in automatic revocation of the conditional license; or
   2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college’s written request for an extension with supporting justification.

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

Section 4. Site Visits. (1) Within ninety (90) working days of the receipt of a full and complete application for a license, a supplementary application, or Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020, the president may conduct, or may have conducted, a site visit.

Personnel conducting the site visit shall possess the expertise appropriate to the type of college to be visited. The purpose of a site visit shall be to make an assessment of a college using the standards for licensure as set forth in Section 8 of this administrative regulation.

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

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

(4) Cost of site visits.

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

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

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

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

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

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

(b) Deny the application for a license;

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

(d) Issue a conditional license in accordance with subsection (3)(2) of this section if the college has:

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

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

2. If an institution fails to respond in writing to an official notification of deficiency within sixty (60) working days, it shall be required to submit a new application and fee to apply for licensure.

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

(a) The college’s failure to satisfy the conditions within the specified timeframe shall:

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

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

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

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

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

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

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

(e) A Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 shall be submitted by an in-state college at least
ninety (90) days prior to the effective date of:
1. A change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at the main campus; or
2. The establishment of an instructional site away from the main campus of an in-state college for the purpose of offering courses for college credit which comprise at least twenty-five (25) percent of the course requirements for a degree program.

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

(g) A college shall submit a Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020 within thirty (30) days following action by an accrediting agency or another state licensing agency which results in:
1. A college being placed in a probationary status;
2. A college losing accreditation or licensure; or
3. A college being denied accreditation or licensure.

(2) If an institution fails to respond in writing to an official request for an extension with supporting justification.

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

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

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

(a) Financial statements including:
1. A statement of financial position of unrestricted net assets and liabilities, including foundation and trust agreements;
2. An audit report prepared by an independent certified public accountant for each corporation of the college; and
3. If available, audit reports for the past three (3) years;
(b) The name of a bank or other financial institution used by the college as a reference;
(c) A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency from the U.S. Department of Education related to programs administered by that department that the college is in good standing; and
(d) An annual operating budget for the college.

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

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

(a) Except as provided in paragraph (d) of this subsection, an in-state college shall:
1. Secure and maintain a surety bond equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or
2. Provide a letter of credit equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(b) An out-of-state college shall secure and maintain a surety bond:
1. Equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year
2. At least $10,000;
3. Executed by a surety company qualified and authorized to do business in Kentucky, and made payable to the Council on Postsecondary Education.

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

(d) An in-state college licensed continuously by the council for:
1. Five (5) to ten (10) years shall maintain coverage by surety bond, letter of credit, or unrestricted cash reserve for ten (10) percent of its annual total net tuition and fees collected by the college in its most recently completed fiscal year or
2. Ten (10) years or more shall maintain coverage by surety bond, letter of credit, or unrestricted cash reserve for five (5) percent of its annual total net tuition and fees collected by the college in its most recently completed fiscal year.

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

(4) Notice required.

(a) If a surety bond is terminated, a college shall notify the president and the license shall automatically expire with the bond unless a replacement bond is provided without a lapse in bonding.
(b) An in-state college using an unrestricted cash reserve or letter of credit to satisfy the provisions of subsection (3) of this section shall notify the president if the
unrestricted cash reserve letter of credit falls below the required amount, and the college shall obtain a surety bond for the required amount.

5. Personnel requirements.
   (a) The college shall furnish information regarding the administrative officers, the directors, the owners, and the faculty, as required by the appropriate application form.
   (b) The chief administrator shall hold at least an earned baccalaureate degree from an accredited or licensed college and shall have sufficient experience to qualify for the position.
   (c) Faculty members.

1. For a course or program licensed by the council prior to January 1, 2014:
   (a) A bachelor's degree; or
   (b) A master's degree with a minimum of eighteen (18) graduate semester hours in the discipline being taught; or
   (c) Professional licensure or certification in the field.
   (d) Faculty member qualifications shall have sufficient experience to qualify for the position.
   (e) Demonstrated outstanding professional contributions to the discipline being taught; or
   (f) Professional licensure or certification in the field.
   (g) There shall be a sufficient number of full-time faculty to ensure continuity and stability of the educational program.

2. To teach a certificate or diploma course, a faculty member shall hold:
   (a) A bachelor's degree; or
   (b) A master's degree in the discipline being taught; or
   (c) Professional licensure or certification in the field.

3. To teach an associate degree course not designed for transfer to a baccalaureate degree, a faculty member shall hold:
   (a) A bachelor's degree in the discipline being taught; or
   (b) An associate's degree in the discipline being taught along with one (1) or more of the following:
      (i) Demonstrated outstanding professional experience;
      (ii) Demonstrated outstanding professional contributions to the discipline being taught; or
      (iii) Professional licensure or certification in the field.

4. To teach a general education course, a faculty member shall hold:
   (a) A master's degree in the discipline being taught; or
   (b) A master's degree with a minimum of eighteen (18) graduate semester hours in the discipline being taught.

5. To teach a baccalaureate course or an associate course designated for transfer to a baccalaureate degree, a faculty member shall hold:
   (a) A master's degree in the discipline being taught; or
   (b) A master's degree with a minimum of eighteen (18) graduate semester hours in the discipline being taught; or
   (c) A baccalaureate degree in the discipline being taught along with one (1) or more of the following:
      (i) Demonstrated outstanding professional experience;
      (ii) Demonstrated outstanding professional contributions to the discipline being taught; or
      (iii) Professional licensure or certification in the field.

6. To teach a graduate course, a faculty member shall hold:
   (a) An earned doctorate or terminal degree in the discipline being taught or in a related discipline; or
   (b) A master's degree in the discipline being taught along with one (1) or more of the following:
      (i) Demonstrated outstanding professional experience;
      (ii) Demonstrated outstanding professional contributions to the discipline being taught; or
      (iii) Professional licensure or certification in the field.

7. Library resources. The library shall be appropriate to support the programs offered by the college in accordance with this subsection.
   (a) A college, through ownership or formal agreements, shall provide and support student and faculty access to adequate library collections, and to other learning and information resources where courses and programs are offered. Library resources shall be consistent with the total educational and general budget, shall be sufficient to support all educational, research, and public service programs.
   (b) A college that does not provide its own library facilities, but instead relies on another institution, shall demonstrate that it has permission to utilize the resources of the other institution, by providing a copy of the written agreement to the president at the time of license application, and prior to the offering of any courses.
   (c) A college that is dependent on another college or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the president and to students and faculty.
   (d) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited colleges of similar types.
   (e) Library staff shall be qualified as required for accredited colleges of similar types.
   (f) Sufficient seating and work space for a reasonable proportion of the faculty and students to be accommodated at one (1) time shall be provided as observed in accredited colleges of similar types.
   (g) The physical environment of the library shall be conducive to reflective intellectual pursuits common to institutions of higher learning.

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

   (a) Except as provided in subparagraph 2. of this paragraph, a course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited colleges where the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level.
   (b) A course may be offered that is not transferable based on the uniqueness of a program.
   (c) A college shall require a minimum of:
      1. Sixty (60) student credit hours for an associate degree;
      2. 120 student credit hours for a baccalaureate degree; or
      3. Thirty (30) student credit hours for a post-baccalaureate, graduate, or first professional degree.
   (d) A minimum of twenty-five (25) percent of the student credit
hours required for a degree shall be earned through instruction offered by:

1. The college awarding the degree; or
2. A college that is:
   a. A party to a joint, cooperative, or consortia agreement; and
   b. Either:
      (i) Licensed by the Council on Postsecondary Education; or
      (ii) A Kentucky state-supported postsecondary education institution.
   c. A majority of the student credit hours required for a graduate degree may be met through a joint, cooperative, or consortia agreement in which the instruction is offered by a college that is:
      1. A party to the agreement; and
      2. Either:
         a. Licensed by the Council on Postsecondary Education; or
         b. A Kentucky state-supported postsecondary education institution.
   d. A college shall have a systematic program of curriculum revision in order to maintain the general standards of accredited colleges with similar programs.
   e. A college shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.
   f. A college shall make provision for the maintenance of student records if the college ceases operations in accordance with KRS 164.020(23). The location of student records shall be approved in advance by the president.

(14) College policies.
(a) The college shall maintain records in an orderly manner and make them available for inspection by the president or his or her designated representative.
(b) A catalog shall be published and distributed at least every two (2) years and shall include general information, administrative policies, and academic policies of the college including:
   1. General information:
      a. Official name and address of the college, name of the chief administrative officers, members of the governing body, and names of principal owners;
      b. The college's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates;
      c. Names of faculty, including relevant education and experience; and
   d. Full disclosure of the philosophy and purpose of the college;
   2. Administrative policies:
      a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education;
      b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal;
      c. Schedules for all tuition and instructional charges, and refund schedules for the tuition and instructional charges;
      d. Statement of financial aid available to students; and
      e. Procedures for obtaining transcripts in a timely fashion at reasonable cost; and
   3. Academic policies:
      a. Policy on class attendance;
      b. Description of grading system;
      c. Description of the degree, diploma, certificate, or other programs, including the course requirements and the time normally required to complete each degree, diploma, certificate, or other program; and
      d. Full description of the nature and objectives of all degrees offered.
   (c) Refund policy on tuition and other instructional charges. The refund policy shall meet the minimum requirements established in this paragraph.
   1. If tuition and other instructional charges are collected in advance of enrollment and the student fails to enroll, the college shall retain not more than $100, or not more than ten (10) percent of the tuition and other instructional charges for a term or semester, whichever is less.
   2.a. Except as provided in clause b. of this subparagraph, tuition and other instructional charges shall be charged by the enrollment period, and the student shall not be obligated for tuition or other instructional charges relating to an enrollment period that
had not begun when the student withdrew.

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

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

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

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

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

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

Section 10. Annual Maintenance of a College’s License and Renewal of a College’s License. (1) A college shall submit an Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 to the president by April 1 of each year.

(a) In an odd numbered year, the application shall contain the following information:

1. Financial Information:

   a. A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the United States Department of Education related to programs administered by that department that the college is in good standing;

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

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

2. Institutional information:

   a. Name and address of college;

   b. Chief executive officer’s name, title, address, phone number, fax number, and email address;

   c. Institutional liaison’s name, title, address, phone number, fax number, and email address;

   d. A current list of the college’s agents;

   e. Copies of articles of incorporation, charter, constitution, and by-laws if there have been any changes to the documents within the last two (2) years;

   f. A copy of each articulation agreement the college has with a Kentucky licensed college or state-supported institution entered into or changed within the last two years;

   g. Accreditation status:

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

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

   h. Tuition for the current enrollment period per credit hour, specifying semester hour, quarter hour, or other basis, and per full-time student;

   i. A copy of the college’s current catalog;

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

   k. Program information:

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

      j. Results of the most recent program evaluation;

      k. Methods used to assess student achievement;

      l. Results of the most recent assessment of student achievement;

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

   n. Faculty information: Vitae for each program faculty member employed within the last two years;

   o. Facilities information: Verification of compliance with all applicable local, state, and federal safety and fire codes; and

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

(b) In an even numbered year, the application shall only contain the information required by paragraphs (a) 2., b., and (a) 2., a., b., and c., of this subsection. An institution shall provide any other information listed in paragraph (a) of this subsection upon request of the council.

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

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

(a) Notify the college of any deficiencies which shall be corrected before the college’s license is maintained or renewed;

(b) Deny maintenance or renewal of the college’s license;

(c) Maintain the college’s license without changing the college’s license renewal date;

(d) Renew the college’s license to June 30 of the next year; or

(e) Issue a conditional license in accordance with subsection (4) of this section if the college has:

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

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed one (1) year.

(4) A conditional license shall not exceed a period of one year and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.
(a) The college's failure to satisfy the conditions within the specified timeframe shall:
1. Result in automatic revocation of the conditional license; or
2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall renew the license in accordance with subsection (3)(d) of this section.

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

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

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

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

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

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

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

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

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

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

Section 14. Hearings and Appeals. (1) The president shall, for cause, require the chief administrative officer, or other officers, of a college to appear for a hearing within thirty (30) working days of notification of the data submission process in accordance with the provisions of KRS 13B.005-13B.170, in order to determine the facts if the president has determined that there is sufficient cause for a suspension, or revocation of a license, or placement of a college's license in a probationary status for a designated period not to exceed one (1) year while deficiencies are being corrected.

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

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

(4) If it is determined that the public interest requires that sanctions be imposed, the president shall:
(a) Impose one (1) of the following sanctions:
(1) Place the college's license in a probationary status for a designated period not to exceed one (1) year while deficiencies are being corrected;
(2) Suspend the college's license for a period not to exceed one (1) year; or
(3) Revoke the college's license;
(b) Refer the case to other officials for appropriate legal action.
(c) A college which is sanctioned, whether the sanction is probation, suspension of license, or revocation of license, shall comply with the terms of the sanction.

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

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

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

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

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

(e) Upon completion, the report of the appeals officer shall be forwarded to the college and to the president of the Council on Postsecondary Education.

(f) Within thirty (30) working days of receiving the report of the appeals officer, the president shall take one (1) of the following actions:
1. Issue a license;
2. Renew the license;
3. Impose one (1) of the sanctions authorized in this section; or
4. Refer the case to other officials for appropriate action.

Section 15. License Fees. (1) The president shall assess a fee in accordance with the Kentucky Licensure Fee Schedule.

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

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013[November 2009];
(b) "Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013[November 2009];
(c) "Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020", June 2013[November 2009];
(d) "Supplementary Application for Change of Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020", June 2013[November 2009];
(e) "Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020", June 2013[November 2009];
(f) "Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013[November 2009];
(g) "Supplementary Application to Operate as an In-State Non-Public Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013[November 2009];
(h) "Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020", June 2013[November 2009];
(i) "Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020", June 2013[November 2009];
EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, October 8, 2013)

16 KAR 3:080. Career and technical education school principals[administrators].

RELATES TO: KRS 161.020, 161.025, 161.027, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.027, 161.028(156.070, 161.030)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020(1) requires an educator to hold a certificate of legal qualifications issued by the Education Professional Standards Board prior to being employed in a certified school position. KRS 161.028 authorizes the Education Professional Standards Board to promulgate administrative regulations establishing the standards for obtaining and maintaining a teaching certificate[and] KRS 161.027 specifically requires the Education Professional Standards Board to promulgate administrative regulations establishing the requirements for the preparation and certification of principals. KRS 161.020(3) requires the board to promulgate administrative regulations establishing renewal requirements. This administrative regulation establishes the certification requirements for career and technical education school principals. KRS 161.030 requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed and approved by the Education Professional Standards Board; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates by the Education Professional Standards Board. KRS 161.027 establishes testing and internship requirements for principals. This administrative regulation establishes appropriate certificate conditions for their issuance and renewal, and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for Preparation/Certification of Professional School Personnel for career and technical education administrators.

Section 1. Application and Renewal Procedures. (1) A certificate for career and technical education school principal shall be issued to an applicant who has:
(a) At least three (3) years of teaching experience in a career and technical education teaching assignment;
(b) Completed an approved educator preparation program for career and technical education school principal, as established in 16 KAR 5:010, and
(c) Obtained the specified minimum score on any assessment required by 16 KAR 6:030.

(2) Application for an initial certificate for career and technical education school principal shall be made on the Application for Kentucky Certification or Change in Salary Rank, Form TC-1, incorporated by reference in 16 KAR 2:010.

(b) The following shall be executed in accordance with KRS 161.027(2):
1. Issuance of the initial certificate for career and technical education school principal;
2. Completion of the internship program for career and technical education school principal; and
3. Extension of the certificate for career and technical education school principal.

The initial certificate for career and technical education school principal shall be issued for a duration period of one (1) year upon obtaining employment for an internship position as principal or assistant principal of a career and technical school.

2. During the period of validity of the one (1) year certificate, the internship program for career and technical education school principals as outlined in KRS 161.027 shall be completed.

3. Upon successful completion of the internship, the certificate shall be extended for four (4) years.

(b) 1. A certificate for career and technical education school principal shall be renewed subsequently for five (5) year periods.
2. Each five (5) year renewal thereafter shall require the completion of:
   a. Two (2) years of experience as a career and technical education school principal;
   b. Three (3) semester hours of additional graduate credit related to the position of career and technical education school principal; or
   c. Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program.
3. Application for renewal of a certificate for career and technical education school principal shall be made on Form TC-2, incorporated by reference in 16 KAR 4:060.

Section 2. Certifications permissible for position of career and technical education school principal. The following certificates shall be valid for the position of school principal:

1. The certificate for career and technical education school principal; or
2. A certificate for instructional leadership - school principal.

The certificate for administration, supervision, and coordination of vocational education issued only through January 4, 1988 under prior versions of this administrative regulation shall:

(1) Not qualify the holder for any vocational education position, and
(2) Be designated as one of the several requirements for certain positions of administration, supervision, and coordination as identified in the Kentucky State Plan for Vocational Technical Education, as incorporated by reference in 780 KAR 1:010.

Section 2. (1) The certificate for career and technical school principal shall be issued in accordance with the pertinent Kentucky certification regulations, and education related to the Kentucky Education Professional Standards Board administrative regulations to an applicant who has:
   a. At least three (3) years of teaching experience in a career and technical education teaching assignment; and
   b. Completed the approved program of preparation which corresponds to the certificate of a teacher education institution approved under the standards and procedures for approval of preparation programs as established in 16 KAR 5:010.

(1) The certificate shall be issued and renewed in accordance with the provisions of KRS 161.027, 16 KAR 6:030, and 16 KAR 2:020.

(a) The initial certificate for career and technical school principal shall be issued for a duration period of one (1) year upon:
   a. Successful completion of the approved curriculum and the
tests prescribed under KRS 161.027 and 16 KAR 6.030; and 
b. obtaining employment for an internship position as principal or assistant principal of a career and technical school.

2. During the period of validity of the one (1) year certificate, the internship program for career and technical school principals as outlined in KRS 161.027 shall be completed.

3. Upon successful completion of the internship, the certificate shall be extended for four (4) years.

(b) The certificate shall be renewed subsequently for five (5) year periods.

2. Each five (5) year renewal thereafter shall require the completion of:

(a) Two (2) years of experience as a career and technical school principal;

(b) Three (3) semester hours of additional graduate credit related to the position of career and technical school principal.

(c) Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Program.

(4) In compliance with KRS 161.027, persons applying for the certificate for career and technical school principal who satisfy the curriculum requirements and all other prerequisites, and who have completed at least two (2) years of successful full-time experience, including at least 90 days per year, as a career and technical school principal, within a ten (10) year period prior to making application, shall:

(a) Exempt from the internship requirements for career and technical school principal; and

(b) required to pass the written examinations required by KRS 161.027 and the governing administrative regulation.

(b) The certificate for career and technical school principal shall be valid for the position of principal at a career and technical school.

(5) The hiring authority of a career and technical school may employ as a principal a candidate who possesses the following:

1. A valid Kentucky certificate or statement of eligibility for instructional leadership school principal;

2. A valid career and technical certificate for a career and technical education; and

3. A minimum of three (3) years of teaching experience in the field of career and technical education.

Section 3. (1) The certificate for career and technical education principal shall be issued in accordance with the pertinent Kentucky statutes to an applicant who has at least three (3) years of teaching experience in career and technical education, teaching assignment and who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures of the Education Professional Standards Board pursuant to KAR 5:010.

2) The certificate for career and technical education principal shall be issued for a duration period of five (5) years and shall be renewed subsequently for five (5) year periods.

(b) Each five (5) year renewal shall require the completion of:

1. Two (2) years of experience as a supervisor or coordinator of career and technical education;

2. Three (3) semester hours of additional graduate credit related to the position of supervisor or coordinator of career and technical education;

3. Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Program.

CASSANDRA WEBB, Chairperson

APPROVED BY AGENCY: August 5, 2013

FILED WITH LRC: August 12, 2013 at 4 p.m.

ATTEST: Alicia A. Snead, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.
(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;
(d) Develop a written agreement to provide, in collaboration with the administration of the candidate’s employing school, mentoring to the candidate in the employment setting which shall include:
1. Prior to the candidate’s enrollment in the Kentucky Teacher Internship Program pursuant to KRS 161.030 and 16 KAR 7:010, a minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing instruction in the classroom, as follows:
   a. A minimum of five (5) hours of observation by university faculty;
   b. A minimum of five (5) hours of observation by a district-based mentor; and
   c. A minimum of five (5) hours of observation by either the university faculty or the district-based mentor;
2. A description of how support shall be offered to the candidate during in-class and out-of-class time to assist the candidate in meeting the teacher’s instructional responsibilities;
3. The name, contact person, and role for the collaborating educator preparation institution mentor; and
4. The name and role of all school district mentor teachers;
(e) Establish a process to maintain regular communication with the employing school so that the institution and employing school may assist the candidate as needed and address identified areas of improvement; and
(f) Notify the Education Professional Standards Board in writing if a candidate’s employment in a covered position or enrollment in the alternative certification teacher program permanently ceases.
(4) Student teaching shall not be required for program completion.

Section 4. Temporary Provisional Certificate for Teaching. (1) The temporary provisional certificate for teaching shall be issued and renewed in accordance with KRS 161.048(7) for a validity period not to exceed one (1) year.
(2)(3) The temporary provisional certificate for teaching may be renewed a maximum of two (2) times.
(4) Upon verification that a candidate has met all eligibility requirements, the institution after the candidate’s completion of the preparation program established in KRS 161.030 and 16 KAR 7:010, the candidate may apply to the Education Professional Standards Board for program approval in accordance with 16 KAR 5:010.
(5) The candidate shall submit to the Education Professional Standards Board an official college transcript from each college or university attended.
(6) If a candidate fails to complete all alternative certification program requirements during the initial issuance and two (2) renewals of the temporary certificate, in accordance with KRS 161.048(7), the candidate may seek reissuance of the temporary provisional certificate upon successful completion of the following requirements:
   a. Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional certificate;
   b. A minimum of six (6) semester hours or its equivalent from the approved preparation program;
   c. Completion of Form TC-TP.
(2) A candidate shall be eligible for the final renewal of the temporary provisional certificate upon successful completion of the following requirements:
   a. Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional certificate;
   b. A minimum of six (6) new semester hours or its equivalent from the approved preparation program;
   c. The required assessments as established in 16 KAR 6:010; and
   d. Completion of Form TC-TP.

Section 5. Issuance of a Temporary Provisional Certificate for Teaching. (1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the institution written and dated documentation of eligibility for the alternative certification teacher program to provide to school districts pursuant to KRS 160.345(2)(h).
(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.
(3) The candidate shall submit to the Education Professional Standards Board an official college transcript from each college or university attended.
(4) The employing school district shall submit with Form TC-TP a completed and signed copy of the mentoring collaboration agreement with the alternative certification teacher program as required by Section 3(3)(d) of this administrative regulation.

Section 6. Requirements for Renewal of the Temporary Provisional Certificate for Teaching. (1) A candidate shall be eligible for the first renewal of the temporary provisional certificate upon successful completion of the following requirements:
   a. Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional certificate;
   b. A minimum of six (6) semester hours or its equivalent from the approved preparation program; and
   c. Completion of Form TC-TP.
(2) A candidate shall be eligible for the final renewal of the temporary provisional certificate upon successful completion of the following requirements:
   a. Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional certificate;
   b. A minimum of six (6) new semester hours or its equivalent from the approved preparation program;
   c. The required assessments as established in 16 KAR 6:010; and
   d. Completion of Form TC-TP.

Section 7. Alternative Certification Teacher Program Completion Requirements. (1) If the candidate has successfully passed the required assessments as outlined in 16 KAR 6:010, and completed the required coursework, the institution shall provide written notice to the employing school district that a candidate is eligible to participate in the Kentucky Teacher Internship Program in each subject area covered by the temporary provisional certificate and in accordance with 16 KAR 7:010.
(2) When the candidate is prepared to enroll in the Kentucky Teacher Internship Program, the recommending institution shall complete and sign page five (5) of the TC-TP form and deliver it to the employing school district for submission to the Education Professional Standards Board.
(3) Upon completion of all program requirements of the alternative certification teacher program, including successful completion of the Kentucky Teacher Internship Program established in KRS 161.030 and 16 KAR 7:010, the candidate may make application to the Education Professional Standards Board for the professional certificate on the form TC-1, which is incorporated by reference in 16 KAR 2:010.
(4) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a professional certificate.
(5) A candidate who failed to successfully complete the assessments, the internship, or the required coursework during the initial issuance and two (2) renewals of the temporary certificate, in accordance with KRS 161.048(7), and who has been transitioned into the institution’s traditional education program shall be eligible for a Teacher Internship Statement of Eligibility: Confirmation of Employment as a Teacher upon recommendation of the institution after the candidate’s completion of the preparation program and the required assessments.
(6) If a candidate fails to complete all alternative certification program requirements during the initial issuance and two (2) renewals of the temporary provisional certificate, in accordance with KRS 161.048(7), the employing school district may, pursuant to 16 KAR 2:010, 2:120, and 2:180, submit an application for emergency or conditional certification on behalf of the former employee to allow the individual to continue employment.

Section 8. University Requirements for an Alternative Certification Administrator Program. (1) An accredited college or university seeking to offer an alternative certification administrator program shall apply to the Education Professional Standards Board for program approval in accordance with 16 KAR 5:010.
(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation institution seeking alternative certification administrator program approval shall design the alternative certification administrator program to provide a candidate with the coursework and mentoring appropriate to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments, including any internship or training programs, within a period of two (2) years for those enrolled in an alternative certification administrator program.
(3) Upon approval, the alternative certification administrator
program unit shall:

(a) Assess a candidate’s educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate’s school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification administrator program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate’s employing school, mentoring to the candidate in the employment setting which shall include:

1. A minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing in the appropriate administrative role, as follows:
   a. A minimum of five (5) hours of observation by university faculty;
   b. A minimum of five (5) hours of observation by a district-based mentor; and
   c. Five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate to assist the candidate in meeting the candidate’s administrative responsibilities;

3. The name, contact person, and role for the collaborating educator preparation institution mentor; and

4. The name and role of all school district mentors;

(e) Establish a process to maintain regular communication with the employing school so that the institution and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the Education Professional Standards Board in writing if a candidate’s employment in a covered position or enrollment in the alternative certification administrator program permanently ceases.

Section 9. Temporary Provisional Administrative Certificate. (1) The temporary provisional administrative certificate shall be issued for a validity period not to exceed one (1) year.

(2) The temporary provisional administrative certificate may be renewed a maximum of one (1) time.

(3) The temporary provisional administrative certificate shall be valid for employment in a position consistent with the area of certification being sought through the preparation program.

Section 10. Issuance of a Temporary Provisional Administrative Certificate. (1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the institution written and dated documentation of eligibility for the university based alternative certification administrator program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the Education Professional Standards Board an official college transcript from each college or university attended.

(4) The employing school district shall submit with Form TC-TP a completed and signed copy of the mentoring collaboration agreement with the university based alternative certification program as required by Section 8(3)(d) of this administrative regulation.

Section 11. Requirements for renewal of the temporary provisional certificate for an administrator. (1) A candidate shall be eligible for no more than one (1) renewal of the temporary provisional certificate.

(2) A candidate shall be eligible for renewal of the temporary provisional certificate upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the position indicated on the temporary provisional certificate;

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program; and

(c) Completion of Form TC-TP.

Section 12. Alternative Certification Administrator Program Completion Requirements. (1)(a) If the alternative certification administrator candidate for principal certification has successfully passed the required assessments, as outlined in 16 KAR 6:030, and completed the required coursework, the institution shall provide written notice to the district that the candidate is eligible to participate in the Kentucky Principal Internship Program in accordance with 16 KAR 7:020.

(b) When a principal candidate is ready to enroll in the Kentucky Principal Internship Program, the recommending institution shall complete page five (5) of the TC-TP form and deliver the form to the employing school district for submission to the Education Professional Standards Board.

(b) If the candidate was initially enrolled in the alternative certification program for principal, the candidate shall be eligible for a Principal Internship Statement of Eligibility-Confirmation of Employment as a Principal/Assistant Principal in an Accredited Kentucky School upon recommendation of the institution after the candidate’s completion of the preparation program and the required assessments.

(3)(a) During the period of enrollment in the alternative certification administrator program, a candidate seeking superintendent certification and serving in a local school district as a superintendent or assistant superintendent shall successfully complete both the coursework in the institution’s alternative certification administrator program as well as the Superintendents Training Program and assessments required in KRS 156.111.

(b) The college or university faculty shall maintain contact with the employing school district and the Kentucky Department of Education regarding the completion of coursework to ensure that a superintendent candidate has completed the required coursework to prepare for the assessments and participation in the Superintendents Training Program.

(4) Upon completion of the alternative certification administrator program, the assessments, and the internship or Superintendents Training Program as applicable, the university shall provide a recommendation for the professional certificate on the candidate’s TC-1 form.

(5) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a professional certificate.

(1)(a) An accredited college or university seeking to establish or maintain a Kentucky alternative teacher or administrator program shall apply to the Education Professional Standards Board for program approval in accordance with 16 KAR 5:010.

(2)(a) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation institution seeking alternative teacher or alternative administrator program approval shall develop and publish a plan of selection and admission of candidates to the alternative program.

(b) The plan shall be filed with the Education Professional Standards Board and shall include:

1. A method to verify that an applicant has a minimum of a bachelor’s degree from an accredited college or university and the minimum grade point average required for admission to the program;
2. One (1) or more assessments to measure academic proficiency for program admission;
3. An evaluation of a candidate's disposition for the education profession;
4. A procedure to ensure that a candidate reviews the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020; and
5. A copy of the declaration signed by a candidate affirming a commitment to upholding the Code of Ethics and acknowledging awareness of information required for state certification.

(3) The alternative program shall be designed to provide a candidate with the coursework and mentoring appropriate to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments; including internship programs, within a period of:
   (a) Three (3) years for those enrolled in an alternative teacher program; or
   (b) Two (2) years for those enrolled in an alternative administrator program.

(4) Upon approval, the alternative teacher or administrator program unit shall:
   (a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;
   (b) Provide a candidate written and dated documentation of eligibility for the university alternative certification program so that the candidate may be considered for employment pursuant to KRS 180.345(2)(a);
   (c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;
   (d) Establish, in consultation with the administration of a candidate's employing school, a written plan for mentoring the candidate in the employment setting;
   (e) Provide, prior to a candidate's participation in the Kentucky Teacher or Principal Internship Program, a minimum of fifteen (15) hours of observation of a candidate in practice in the employment setting utilizing university faculty and a district-based mentor teacher;
   (f) Provide effective candidate mentoring by maintaining an adequate number of personnel and sufficient resources to ensure that candidates meet professional, state, and institutional standards, including successful transition to the professional certificate;
   (g) Maintain regular communications with the employing school so that the institution and employing school may assist the candidate as needed and address identified areas of improvement; and
   (h) Notify the Education Professional Standards Board in writing if a candidate's employment in a covered position or enrollment in the alternative certification program permanently ceases.

Section 3. Participation in the Alternative Teacher Program
(1) Participation in the institution's alternative teacher program shall be available only to individuals who meet the institution's alternative program admission requirements.
(2) A candidate's employment position shall be consistent with the area of certification being sought through the preparation program.
(3) After notice of acceptance into the alternative teacher program and subsequent notification of selection for an eligible position, a candidate shall apply for a temporary provisional certificate by submitting a completed TC-TP Application for Temporary Provisional Certificate to the Education Professional Standards Board.
   (a) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a temporary provisional certificate.
   (b) The temporary provisional certificate shall be:
      1. Issued for a period of one (1) year;
      2. Limited to the employing school district; and
      3. Contingent upon the candidate's continued enrollment in the alternative preparation program and employment in an eligible position that corresponds to a candidate's certification program.

(5) A candidate shall be eligible for no more than two (2) renewals of the temporary provisional certificate.
(6) Application for renewal shall be made by submitting a completed TC-TP form.
(c) The Education Professional Standards Board shall renew the temporary provisional certificate upon verification of compliance with all eligibility requirements, including continued enrollment in the alternative preparation program and employment in an eligible position.
(7) Upon receipt of the written notification regarding readiness for participation in the institution's alternative program, the employing school district shall submit to the Education Professional Standards Board a Confirmation of Employment in an alternative program admission requirements.
(8) A candidate who failed to successfully complete the assessments, the internship, or the required coursework during the initial issuance and two (2) renewals of the temporary certificate and who has not been transitioned into an institution's traditional educator preparation program, shall be eligible for a Statement of Eligibility upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.
(9) If a candidate fails to complete all alternative program requirements during the initial issuance and two (2) renewals of the temporary provisional certificate, the employing school district may, pursuant to 16 KAR 2:010, 2:120, and 2:160, submit an application for emergency or conditional certification on behalf of the former employee to allow the individual to continue employment.

Section 4. Participation in the Alternative Administrator Program
(1) Participation in the university alternative administrator program shall be available only to individuals who meet the institution's alternative program admission requirements.
(2) The employment position shall be consistent with the area of certification being sought through the preparation program.
(3) After notice of acceptance into the alternative administrator program and subsequent notification of selection for an eligible position, a candidate shall apply for a temporary provisional certificate by submitting a completed TC-TP Application for Temporary Provisional Certificate to the Education Professional Standards Board.
   (a) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a temporary provisional certificate.
   (b) The temporary provisional certificate shall be:
      1. Issued for a period of one (1) year;
      2. Limited to the employing school district; and
      3. Contingent upon the candidate's continued enrollment in the alternative preparation program and employment in an eligible position that corresponds to a candidate's certification program.

(5) A candidate shall be eligible for no more than one (1) renewal of the temporary provisional certificate.
(6) Application for renewal shall be made by submitting a completed TC-TP form.
(c) The Education Professional Standards Board shall renew the temporary provisional certificate upon verification of compliance with all eligibility requirements, including continued enrollment in the alternative preparation program and employment in an eligible position.
(7) Upon receipt of the written notification regarding readiness for participation in the Kentucky Principal Internship Program in accordance with 16 KAR 7:010.
Section 1. An applicant for a license as a long-term care[nursing home] administrator shall, in addition to meeting all of the requirements provided by KRS 216A.080(1),

(1) Have satisfactorily completed a course of study for, and have been awarded a baccalaureate degree from, an accredited college or university recognized by the Board of Examiners for Nursing Home Administrators; and

(2) Pass the written examination administered and verified by the National Association of Long-Term Care Administrator Boards.

(b) Submit to the Board of Licensure for Long-Term Care Administrators documentation of a passing score, as defined by the National Association of Long-Term Care Administrator Boards.

1. This score shall not be less than seventy-five (75) percent of the scaled score.

2. The examination shall be passed within: a. Two (2) years before filing an application for licensure or reinstatement; or

b. Six (6) months after filing documentation of a passing score, as defined by the National Association of Long-Term Care Administrator Boards but not less than seventy-(70) percent of the scaled score, to the Board of Licensure for Long-Term Care Administrators[. Nursing Home Administrators]. This examination shall be passed no more than two (2) years prior or no more than six (6) months subsequent to the filing of an application for licensure or reinstatement, and

3. [¶] Except as provided in paragraph (b) and/or (c) of this subsection, have six (6) months of continuous management experience, or, if part-time, but not less than 1,000 hours within [not less than] a twenty-four (24) month period, with that experience to be completed in a long-term care[health care] facility. This experience shall be completed within two (2) [three (3)] years of the date of application. [¶]

The management experience shall include evidence of responsibility for:

1. Personnel management;
2. Budget preparation;
3. Fiscal management; and
4. Public relations; and
5. Regulatory compliance and quality improvement.

(b) An [A] preceptorship or [an] internship, that is at least 1,000 hours[as (6) months] in length, which is a part of a degree in long-term care administration or a related field, shall satisfy the experience requirement established in paragraph (a) of this subsection.

(c) A bachelor’s or master’s degree from an academic program accredited by the National Association of Long-Term Care Administrator Boards at the time of the applicant’s graduation and which was awarded within two (2) years of the date of the application shall satisfy the experience requirement established in this subsection.

Section 2. (1) The examination for licensure established by KRS 216A.080(1)(e) shall be the examination prepared by the National Association of Long-Term Care Administrator Boards.
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(2) An applicant shall not be permitted to sit for the examination more than four (4) times within twelve (12) months.

Section 3. Any application not completed within six (6) months of having been approved to take the exam shall be mandatorily withdrawn as incomplete.

Section 4. A licensee shall provide the board with written notification within thirty (30) days of the occurrence of any of the following:

(1) Change of home address;
(2) Change of employer;
(3) Conviction of a felony or misdemeanor;
(a) A licensee providing notice of a conviction shall provide a copy of the judgment in the case.
(b) A plea of nolo contendere or an alford plea shall not absolve the licensee of an obligation to report a conviction;
(4) Immediate Jeopardy or Standard Level of Care notice[citation] received from the Cabinet for Health and Family Services by the long-term care facility at which the licensee serves as the administrator of record. A licensee providing notice of a citation shall provide a copy of the inspection report and submitted plan of correction.

Section 5. An applicant for licensure shall complete and submit an Application for Licensure.

Section 6. Incorporation by Reference. (1) “Application for Licensure”, October/August 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Kentucky Board of Licensure for Long-Term Care Administrators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREG WELLS, Board Chair
APPROVED BY AGENCY: July 24, 2013
FILED WITH LRC: August 14, 2013 at 3 p.m.
CONTACT PERSON: Karen Lockett, Board Administrator, Board of Licensure for Long-Term Care Administrators, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Long-Term Care Administrators
(As Amended at ARRS, October 8, 2013)

201 KAR 6:030. Temporary permits.

RELATES TO: KRS 216A.070(4)
STATUTORY AUTHORITY: KRS 216A.070(3), (4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(3) authorizes the Board of Licensure for Long-term Care Administrators to promulgate administrative regulations necessary for the proper performance of its duties. KRS 216A.070(4) authorizes the board to promulgate administrative regulations concerning the issuance of a temporary permit. This administrative regulation establishes the requirements for issuance of a temporary permit.

Section 1. (1) A temporary permit to practice as a nursing home administrator shall be granted by the Office of Occupations and Professions to an applicant:
(a) The applicant has applied for licensure under the provisions of KRS Chapter 216A;
(b) The applicant has completed all of the requirements established in 201 KAR 6:020 except the examination required pursuant to 201 KAR 6:020, Section 1(2), and the management experience required by 201 KAR 6:020, Section 1(3) [for licensure except the examination];
(c) The facility where the applicant is to be employed as the administrator is without a licensed administrator; and
(d) The facility owner provides a written request and supporting information to the board indicating that an emergency situation exists. An emergency situation shall be deemed to exist if:
   1. The facility is without a licensed long-term care administrator; and
   A licensed long-term care administrator is not available to fill the position.
   2. The request for temporary permit shall include payment of the temporary permit fee as established in 201 KAR 6:060, Section 3.
   3. A temporary permit shall be subject to review by the board at the meeting immediately following issuance of the temporary permit. The board shall revoke the temporary permit if it does not comply with KRS 216.070(4) or this administrative regulation.
   4. An individual shall not be granted a temporary permit more than once during a five (5) year period.
   5. A temporary permit shall not authorize the individual to whom the permit was issued to manage more than one (1) facility at the same time.

GREG WELLS, Board Chair
APPROVED BY AGENCY: July 24, 2013
FILED WITH LRC: August 14, 2013 at 3 p.m.
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GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Long-Term Care Administrators
(As Amended at ARRS, October 8, 2013)

201 KAR 6:040. Renewal, reinstatement, and reactivation of license.

RELATES TO: KRS 36.450, 216A.080, 216A.090
STATUTORY AUTHORITY: KRS 216A.070(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(3) authorizes the Board of Licensure for Long-term Care Administrators to promulgate administrative regulations necessary for the proper performance of its duties. KRS 216A.090 requires the holder of a license to renew that license biennially. This administrative regulation establishes the requirements for renewal, late renewal, inactive licensure, and reinstatement of a license.

Section 1. (1) A license shall be renewed every two (2) years from date of issue or from date of last renewal. To apply for renewal, a licensee shall:
(a) Submit a completed Renewal Form [B130-2] to the board; and
(b) Pay to the board the appropriate renewal fee established in 201 KAR 6:060 for the renewal of a [his] license.
(2) A sixty (60) day grace period shall be allowed after the renewal date, during which time a licensee may continue to
practice and may renew their license upon payment of the late renewal fee established in 201 KAR 6:060.

(a) Except as provided by KRS 36.450, a license not renewed by the end of the sixty (60) day grace period shall terminate based on the failure of the licensee to renew in a timely manner.

(b) Upon termination, the licensee shall not practice in the Commonwealth.

(3) A license shall be deemed inactive if:

(a) The board receives a written request seeking inactive status from the licensee;

(b) A licensee pays to the board the inactive license fee established in 201 KAR 6:060 for an inactive license;

(c) The grace period established in subsection (2) of this section has not expired; and

(d) The license is in good standing when the inactive status request is received.

(4)(a) After the sixty (60) day grace period, in order to apply for reinstatement, an individual with a terminated license shall submit a completed Reinstatement Application and pay the reinstatement fee as set forth in 201 KAR 6:060.

(b) A person who applies for reinstatement after expiration of a license shall not be required to meet current licensure requirements, except those established in 201 KAR 6:070. Section 10, if reinstatement application is made within two (2) years from the date of expiration.

(5)(a) In order to apply for reactivation, an individual with an inactive license shall submit a completed Inactive Renewal and Reactivation Form accompanied by the reactivation fee established in 201 KAR 6:070.

(b) An individual who has continuously maintained inactive status and who makes application to return to active status shall not be required to meet current licensure requirements except those established by 201 KAR 6:070, Section 10.

(6) A licensee who fails to reactivate a license within two (2) years after its termination shall not have it renewed, restored, reissued, or reinstated. A person may apply for and obtain a new license by meeting the current requirements for licensure established in KRS 216A.080(Chapter 216A) and 201 KAR Chapter 6.

(7)(6) A suspended license shall be subject to expiration and termination and shall be renewed as provided in this administrative regulation. Renewal shall not entitle the licensee to engage in the practice until the suspension has ended, or is otherwise removed by the board and the right to practice is restored by the board.

(8)(7) A revoked license shall be subject to expiration and termination and shall not be renewed. If it is reinstated, the licensee shall pay the reinstatement fee as set forth in subsection (2) of this section and the renewal fee as set forth in subsection (1) of this section.

(9)(8) A licensee applying for renewal, late renewal, or reinstatement of a license shall show evidence of completion of continuing education as established by 201 KAR 6:070.

(10) An inactive licensee shall renew his or her inactive license biennially by submitting an application on the Inactive Renewal and Reactivation Form and submitting payment of the fee established in 201 KAR 6:060.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Renewal Form", August 2013;

(b) "Reinstatement Application", August 2013; and

(c) "Inactive Renewal and Reactivation Form", August 2013(130-F, 17th edition), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Long-Term Care Administrators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREG WELLS, Board Chair
APPROVED BY AGENCY: July 24, 2013
201 KAR 6:070. Fees.

RELATES TO: KRS 216A.110(1), 216A.130
STATUTORY AUTHORITY: KRS 216A.070(3), (4), 216A.110(1), 216A.130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(4) requires the board to establish a fee for a temporary permit. KRS 216A.110(1) requires the board to prescribe and collect reasonable fees and charges for processing applications, examination, and issuance of licenses, including renewals. KRS 216A.130 authorizes the board to establish a fee for licensure by reciprocity. This administrative regulation establishes those fees.

Section 1. Application Fee. (1) The application fee for board review of the application for licensure shall be $100. (2) The application fee shall be nonrefundable.

Section 2. Initial Licensure Fee. (1) The initial licensure fee shall be $150 for an applicant for licensure. (2) The fee for licensure by endorsement shall be $300 for an applicant for licensure. (3) If the applicant successfully completes all requirements for licensure, this fee shall cover licensure for the initial two (2) year period.

Section 3. Temporary Permit Fee. The fee for a temporary permit shall be seventy-five (75) dollars.

Section 4. Biennial Renewal Fee, Late Renewal Fee, Inactive License Fee, and Reinstatement Fee. (1) The renewal fee shall be $125. (2) The late renewal fee shall be $200. (3) The inactive license fee shall be seventy-five (75) dollars. (4) The fee for reactivating an inactive license shall be fifty (50) dollars. (5) The reinstatement fee shall be $300.

Section 5. Duplicate License Fee. The duplicate license fee shall be twenty-five (25) dollars.

Section 6. Licensure Verification Fee. The fee for verification of state licensure shall be twenty-five (25) dollars.

Section 7. Continuing Education Fees. (1) The application fee[to apply] for preapproval to present a single continuing education program as described in 201 KAR 6:070, Section 5(1)(a), shall be fifty (50) dollars. (2) The application fee[to apply] for approval of credit for a single continuing education program not preapproved as described in 201 KAR 6:070, Section 4, shall be twenty-five (25) dollars.

GREG WELLS, Board Chair
APPROVED BY AGENCY: July 24, 2013
FILED WITH LRC: August 14, 2013 at 3 p.m.
CONTACT PERSON: Karen Lockett, Board Administrator, Board of Licensure for Long-Term Care Administrators, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Long-Term Care Administrators
(As Amended at ARRS, October 8, 2013)
psychology, gerontology, or health professions including nursing or premedicine, except that a college course described in this paragraph shall not fulfill more than one-half (1/2) of a licensee’s continuing education requirement;

(b) A relevant program or academic course presented by the licensee. A presenter of a relevant program or academic course shall earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course; or

(c) A relevant program or academic course presented by the licensee. A presenter of a relevant program or academic course shall earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements.

Section 4. Procedures for Approval of Continuing Education Programs. A course which has not been preapproved by the board may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review this program, the licensee requesting approval shall submit the following information shall be submitted:

1. A published course or seminar description;
2. Names and qualifications of the instructors;
3. A copy of the program agenda indicating hours of education, coffee breaks, and lunch breaks;
4. Number of continuing education hours requested;
5. Official certificate of completion or college transcript from the sponsoring agency or college; and
6. Application for Continuing Education;
7. The fee required by 201 KAR 6:060, Section 7 (credit approval).

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval.

(a) Any entity seeking to obtain approval;

(b) of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation.

(b) An applicant seeking continuing education program under Section 3(1) of this administrative regulation shall satisfy the board that the entity seeking this status:

1. Consistently offers programs which meet or exceed all the requirements set forth in Section 4 of this administrative regulation; and
2. Does not exclude any licensee from its programs.

(2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:

(a) Is an organized program of learning;
(b) Pertains to subject matters which integrally relate to the practice of nursing home administration;
(c) Contributes to the professional competency of the licensee; and
(d) Is conducted by individuals who have relevant educational training or experience.

Section 6. Responsibilities and Reporting Requirements of Licensees. (1) Each licensee shall be responsible for obtaining required continuing education hours. The licensee shall:

(a) Identify his or her own continuing education needs;
(b) Take the initiative in seeking continuing professional education activities to meet these needs and seek ways to integrate new knowledge, skills, and attitudes; and
(c) Each person holding licensure shall:

(2) Select approved activities by which to earn continuing education hours;

(3) Submit to the board, if applicable, a request for continuing education activities requiring approval by the board as established in Section 4 of this administrative regulation;

(4) Maintain his or her own records of continuing education hours;

(5) At the time of renewal, list the continuing education hours obtained during that licensure renewal period; and

(6) At the time of renewal, furnish documentation of attendance and participation in the number of continuing education hours required by Section 2 of this administrative regulation and at the time of renewal, as required by this paragraph.

1. If the board approves an application for approval of continuing education programs, it shall:

(a) Each person holding licensure shall maintain, for a period of two (2) years from the date of renewal, all documentation verifying successful completion of continuing education hours;

(b) During the two (2) year licensure renewal period, up to fifteen (15) percent of all licensees shall be required by the board to furnish documentation of the completion of the number of continuing education hours required by Section 2 of this administrative regulation, for the current renewal period;

(c) Verification of continuing education hours shall not otherwise be reported to the board;

(d) Documentation sent in to the board prior to renewal shall be returned to the licensee by regular mail.

(e) Documentation shall take the form of official documents including:

1. Transcripts;
2. Certificates; and
3. Affidavits signed by instructors; or
4. Receipts for fees paid to the sponsor;

(f) Each licensee shall retain copies of the documentation.

Section 7. Responsibilities and Reporting Requirements of Providers. (1) A provider of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 4 of this administrative regulation, directly to the licensee.

(2) A provider of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 8. Board to Approve Continuing Education Hours; Appeal when Approval Denied. (1) If an application for approval of continuing education is denied, the licensee may request reconsideration by the board of its decision.

(2) The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board’s decision denying approval of continuing education hours.

Section 9. Waiver or Extensions of Continuing Education. (1) The board may, in an individual case involving medical disability, illness, or undue hardship as determined by the board, grant a waiver of the minimum continuing education requirements or an extension of time within which to fulfill the requirements or make an appropriate report.

(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding a license and shall be accompanied by a verifying document signed by a licensed physician.

(3) A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the requirements shall be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding licensure shall reapply for the waiver or extension.
Section 10. Continuing Education Requirements for Reinstatement or Reactivation of Licensure. (1) A person requesting reinstatement or reactivation of licensure shall submit evidence of thirty (30) hours of continuing education within the twenty-four (24) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) Upon request by a licensee, the board may permit the licensee to resume practice, with the provision that the licensee shall receive thirty (30) hours continuing education within six (6) months of the date on which the licensee is approved to resume practice.

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Long-Term Care Administrators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREG WELLS, Board Chair
APPROVED BY AGENCY: July 24, 2013
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GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for
Long-Term Care Administrators
(As Amended at ARRS, October 8, 2013)


RELATES TO: KRS Chapter 209, Chapter 216, 216A.070(1)(a), (c), (d), 510.010(7)

STATUTORY AUTHORITY: KRS 216A.070(1)(a), (1)(d), (3) NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(3) authorizes the board to promulgate administrative regulations necessary for the proper performance of its duties. KRS 216A.070(1)(a) requires the board to develop, impose, and enforce standards which shall be met by an individual licensed as a long-term care administrator. [KRS 216A.070(4)(c) requires the board to discipline an individual who fails to meet those standards after licensure.] KRS 216A.070(1)(d) requires the board to establish and carry out procedures to insure compliance with the established standards. This administrative regulation establishes a code of ethics as a portion of the standards which shall be met in compliance with KRS 216A.070(1)(a), (c), and (d).

Section 1. Definitions. (1) "Long term care administrator" is defined by KRS 216A.010(3) as an individual responsible for the operation of a nursing home, as defined under KRS 216A.010(2).

(2) "Long term care facility" is defined by KRS 216A.010(4) as an institution licensed pursuant to KRS 202 KAR 20-300 and KRS 202 KAR 20-009.

(3) "Resident" is defined by KRS 216A.010(5) as an individual who resides as a patient in a nursing facility, pursuant to KRS 202 KAR 20-060, Section 1(4).

Section 2. Responsibility to Residents. (1) A long-term care administrator shall:

(a) Advance and protect the welfare of the resident;
(b) Respect the rights of a person seeking services;
(c) Operate the facility consistent with laws and administrative regulations applicable to nursing facilities under KRS Chapter 216; and
(d) Have the duty to report to the proper authorities knowledge of resident abuse, pursuant to KRS Chapter 209.

(2) A long-term care administrator shall not:
(a) Provide services other than those for which the administrator is prepared and qualified to perform;
(b) Discriminate against or refuse professional service to anyone on the basis of race;
(c) Misrepresent qualifications, education, experience, or affiliations;
(d) Exploit the trust and dependency of a resident;
(e) Participate in activities that reasonably may be considered to create a conflict of interest, or have the potential to have a substantial adverse impact on the facility, its residents, or its staff;
(f) Engage in a sexual relationship or sexual contact, as defined under KRS 510.010(7), with a resident; or
(g) Engage in sexual or other harassment or exploitation of a resident, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in an investigation or disciplinary proceeding.

Section 3. Confidentiality. A long-term care administrator shall not divulge confidential information, except:

(1) As mandated, or permitted, by law;
(2) To prevent a clear and immediate danger to a person;
(3) In the course of a civil, criminal, or disciplinary action;
(4) To comply with the terms of a consent agreement if written informed consent has been obtained.

Section 4. Professional Competence and Integrity. (1) A long-term care administrator shall maintain standards of professional competence and integrity and shall be subject to disciplinary action for:

(a) Conviction shall include conviction based on:
(1) A plea of no contest or an "Alford Plea";
(2) The suspension or deferral of a sentence;
(3) Impairment due to mental incapacity or the abuse of alcohol or another substance which negatively impacts the practice of nursing home administration;
(4) Misrepresentation or concealment of a material fact in obtaining or seeking reinstatement of license;
(5) Refusing to comply with an order issued by the board;
(6) Failing to cooperate with the board by not:
(1) Furnishing in writing a complete explanation to a complaint filed with the board;
(2) Furnishing documentation requested by the board regarding a complaint;
(3) Appearing before the board at the time and place designated; or
(4) Properly responding to a subpoena issued by the board;
(b) Violating KRS Chapter 216 or 201 KAR Chapter 6, a state statute or administrative regulation governing the practice of long-term care administration;
(2) Impaired Licensure. (a) A licensee shall not practice as a long-term care administrator if the competency of the licensee is impaired due to a mental, emotional, psychological, pharmacologic, or substance abuse condition.

(b) If an impairment develops during the employment as a long-term care administrator, the licensee shall:
1. Terminate or suspend the employment after promptly identifying a replacement licensed by the board in an appropriate manner.

2. Notify the long-term care facility where the licensee is employed of the impairment in writing; and

3. Assist the long-term care facility in obtaining services from another licensee.

(c) Full compliance with paragraph (b) of this subsection shall not constitute a defense to an administrative charge brought against a licensee alleging violation of paragraph (a) of this subsection but may be considered by the board as a mitigating factor.

(c) Full compliance with paragraph (b) of this subsection shall not constitute a defense to an administrative charge brought against a licensee alleging violation of paragraph (a) of this subsection but may be considered by the board as a mitigating factor.

GREG WELLS, Board Chair
APPROVED BY AGENCY: July 24, 2013
FILED WITH LRC: August 14, 2013 at 3 p.m.
CONTACT PERSON: Karen Lockett, Board Administrator,
Board of Licensure for Long-Term Care Administrators, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for
Long-Term Care Administrators
(As Amended at ARRS, October 8, 2013)


RELATES TO: KRS Chapter 13B, Chapter 216A [216A.070(1)(a)]

STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(3) authorizes the board to promulgate administrative regulations necessary for the proper performance of its duties. KRS 216A.070(1)(e) requires the board to investigate a person engaging in a practice which violates the provisions of KRS Chapter 216A. This administrative regulation establishes procedures for the investigation of a complaint received by the board.

Section 1. Definitions. (1) "Chairman" means the chairman or vice-chairman of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (4) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 216A or 201 KAR Chapter 6 (the administrative regulations promulgated thereunder).

(3) "Complaint" means:

(a) A written allegation alleging misconduct by a credentialed individual or other person which might constitute a violation of KRS Chapter 216A, 201 KAR Chapter 6 (the administrative regulations promulgated thereunder), or another state or federal statute or administrative regulation;

(b) A notification which relates to the credential of the individual pursuant to KRS Chapter 216A; or


(4) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal action.

(5) "Informal proceeding" means a proceeding instituted during the disciplinary process with the intent of reaching a dispensation of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(6) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

(7) "Standards of practice committee" means the committee appointed pursuant to Section 7 of this administrative regulation.

Section 2. Receipt of Complaints. (1) A complaint may be submitted by an individual, organization, or entity. A complaint shall be in writing and shall be signed by the person offering the complaint. The board may file a complaint or a formal complaint based on information in its possession.

(2) (a) Upon receipt of a complaint against a licensee, the board shall:

(1) a copy of the complaint shall be sent to the licensee[individual] named in the complaint along with a request for that licensee[individual] response to the complaint.

(b) The licensee[individual] shall file a response to the complaint within twenty (20) days from the date the letter was mailed as specified by the date on the letter[be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(b) Upon receipt of the written response of the individual named in the complaint, a copy of his response shall be sent to the complainant. The complainant shall have five (5) days from the receipt to submit a written reply to the response.

(3) Upon receipt of a notification of substandard care, a copy of the notification shall be sent to the licensee administering the facility at issue[individual] along with a letter from the board requesting the following information:

(a) The effective date of that administrator becoming the administrator of record for the facility. If that has occurred within the last 180 days, the facility shall furnish the name of the previous administrator[.]

(b) A copy of completed and approved 2567L and notice of acceptance of allegation of compliance as issued by the Cabinet for Health and Family Services;

(c) A copy of notice of results of revisit as issued by the Cabinet for Health and Family Services; and

(d) A formal notice of each remedy imposed by the Cabinet for Health and Family Services, if applicable.

(4) A licensee shall provide the documentation listed in subsection (3) of this section if a request is made by the board pursuant to that provision.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the licensee[individual's] response, the standards of practice committee shall consider the complaint, the licensee[individual's] response [complainant's reply to the response], and other relevant material available and make a recommendation to the board regarding whether an investigation of the complaint is required [The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint].

(2) (a) If, in the opinion of the board, a complaint does not warrant a formal investigation[an individual complaint], the board shall dismiss the complaint[and shall notify both the complaining party and the individual of the outcome of the complaint].

(b) If, in the opinion of the board, a complaint warrants a formal investigation against either a licensed individual or a person who may be practicing without appropriate credential, the board shall authorize an investigator to investigate the matter and make a report to the standards of practice committee [at the earliest opportunity].

(b) If, at any time, the board determines that it has enough information, it may file a formal complaint pursuant to Section 4.1 in the case of a notification of substandard care, the board shall:

1. Open a formal investigation;

2. Proceed under Section 4.3 of this administrative regulation.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1)(a) Upon completion of the formal investigation, the investigator shall submit a report to the standards of practice committee of the facts regarding the complaint.

(b) The committee shall review the investigative report and make a recommendation to the board.

(c) The board shall determine whether there is enough evidence to believe that a violation of KRS Chapter 216A or 201 KAR Chapter 6 (the law or administrative regulations) may have occurred and whether a complaint shall be filed.
Section 5. Settlement by Informal Proceedings. [(a)] The board through counsel and the standards of practice committee may at any time enter into a settlement agreement or agreed order (informal proceedings) with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

[(1) (a)] An agreed order or settlement agreement (reached through this process) shall only be effective after being approved by the board and signed by the individual who is the subject of the complaint and the chairman.

[(2) (b)] The board may employ mediation as a method of resolving the matter informally. [(2) (a)] The board may issue a written admonishment to the licensee if in the judgment of the board:

1. An alleged violation is not of a serious nature; and
2. The evidence presented to the board after the investigation and appropriate opportunity for the licensee to respond provides a clear indication that the alleged violation did in fact occur.

[(b)] A copy of the admonishment shall be placed in the permanent file of the licensee.

[(c)] Within thirty (30) days of receipt of an admonishment, the licensee shall:

1. A response to the admonishment which shall be placed in the licensee's permanent license file;
2. A request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

Section 6. Notice and Service Process. A notice required by KRS Chapter 216A or this administrative regulation shall be issued pursuant to KRS 317A.050(43B.040).

Section 7. Standards of Practice Committee. The standards of practice committee shall:

(1) Be appointed by the chairman of the board; and:
(a) Review a complaint or investigative report; and
(b) Participate in an informal proceeding to resolve a formal complaint;

(2) Consist of two (2) or three (3) board members (persons), including:
(a) A board member who is a nursing home administrator;
(b) A board member who is not a nursing home administrator; and
(c) One (1) other person, which may be the executive director of the board or another board member.

GREG WELLS, Board Chair
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CONTACT PERSON: Karen Lockett, Board Administrator, Board of Licensure for Long-Term Care Administrators, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296.

GENERAL GOVERNMENT CABINET
Kentucky Board of Hairdressers and Cosmetologists
(As Amended at ARRS, October 8, 2013)

201 KAR 12:020. Examination.

STATUTORY AUTHORITY: KRS 317A.050, 317A.060, 317B.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060(2)(f) and 317B.020(3)(j) require the board to promulgate administrative regulations regarding examinations of applicants for licenses in cosmetology, nail technology, and esthetics. This administration regulation establishes the procedure and qualifications for these examinations.

Section 1. (1) A graduate of any school of cosmetology licensed by this board shall not be accepted for apprentice examination if the person (who) has not registered with the board at least ten (10) months and two (2) weeks prior to the examination.

(2) A graduate nail technician shall not be accepted for examination if the person (who) has not registered with the board at least seventy-five (75) days prior to examination.

(3) A graduate esthetician shall not be accepted for examination if the person (who) has not registered with the board at least six (6) months and two (2) weeks prior to examination.

Section 2. An applicant for licensure who completed hours in another state shall submit a certification from the state board or agency of the state in which the hours were obtained.

Section 3. (1) A student, apprentice cosmetologist, nail technician, or esthetician shall not be permitted to take the board's examination if the person's completed (whose) application completed in full has not reached the office of the board at least ten (10) working days prior to the beginning date of the examination.

(2) The application required by subsection (1) of this section shall be the:
(a) Apprentice Cosmetologist Application for Examination;
(b) Manicurist/Nail Technician Application for Examination;
(c) Esthetician Application for Examination;
(d) Out of State Application; or
(e) Cosmetologist Application.

Section 4. (1) The board's examination shall be given only to an applicant who has been notified to appear for the examination and is wearing a professional clean, washable uniform, and who has with him or her instruments and all supplies needed to be used in the giving of the practical examination.

(2) A professional uniform shall be considered a lab jacket or smock over clothing.

(3) Bibs, aprons, shorts, or denim jeans shall not be allowed.

Section 5. (1) The examination shall consist of both a written test and practical demonstration in subjects from the curriculum as specified in 201 KAR 12:082 and 201 KAR 12:088.

(2) The practical demonstration shall be performed on a:
(a) Mannequin head and hand for the cosmetology practical examination;
(b)[1] Mannequin head for the esthetician practical examination; or
(c)[and-a] Mannequin hand for the nail technician practical examination.

(3) Any mannequin head or hand needed for an examination shall be provided by the applicant.

Section 6. (1)(a) An average grade of seventy (70) percent in theory and practical demonstration shall be required as a passing grade on the board’s apprentice cosmetologist, nail technician, or esthetician examination.

(b) A license shall not be issued to an applicant, not including an instructor, with a grade below seventy (70) percent in any [one] subject. An applicant shall submit to reexamination on subjects not successfully completed.

(2) (a) An instructor’s license shall not be issued to any applicant receiving a grade below eighty (80) percent on written and eighty-five (85) percent on practical.

(b) An applicant shall submit to reexamination on subjects not successfully completed.

Section 7. A student who practices cosmetology, nail technology, or esthetics in a beauty salon prior to the examination given by the board shall (may) be [considered] ineligible to take the examination pending a hearing before the board.

Section 8. A bulletin board shall be provided by a school and the examination schedule shall be conspicuously displayed thereon at all times.

Section 9. (1) An applicant successfully completing the state board examinations shall be issued his or her license within thirty (30) days following the examination.

(2) Failure to purchase the license as required by subsection (1) of this section shall require the payment of the appropriate restoration fee as required by:

(a) 201 KAR 12:260; or

(b) and appropriate restoration fee as required by 201 KAR 12:220(4) for an aesthetics license.

(3) An applicant who does not purchase a license after the (1) year of passing the examination shall retake the examination and pay the appropriate examination fee, if the applicant wants to be licensed.

Section 10. The fee accompanying an application shall not be refunded unless the application is rejected by the board.

Section 11. Any applicant who:

(1) Fails the state board examinations may be rescheduled for examination during any examination period if all qualifications are met; or

(2) is caught cheating or impersonating another shall not be rescheduled for examination for a minimum of six (6) months, plus any additional amount of time until the next examination is scheduled following the six (6) month period.

Section 12. (1) Except as provided by subsections (2) or (3) of this section, any applicant who fails to report for examination on the date [forin] which the applicant was notified shall submit an examination application and pay the examination fee as required by 201 KAR 12:260 prior to being rescheduled for examination.

(2) The board shall waive the examination fee with sufficient proof of the following circumstances:

(a) Illness or medical condition of the applicant that prohibits the applicant from reporting to the examination; or

(b) Death, illness, or medical condition in the applicant’s immediate family that prohibits the applicant from reporting to the examination; or

(c) Car trouble or interstate closure on the way to the examination site that prohibits the applicant from arriving at the scheduled time; or

(d) For not more than two (2) consecutive examination periods, the applicant contacts the office of the board not later than two (2) business days prior to the scheduled examination.

(3) The board may waive the examination fee for other reasonable circumstances beyond the applicant’s control.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) “Apprentice Cosmetologist Application for Examination”, June 30, 2006;

(b) “Manicurist/Nail Technician Application for Examination”, June 30, 2006; [and]

(c) “Esthetician Application for Examination”, June 30, 2006;

(d) “Out of State Application”, January 30, 2013; and


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BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

GENERAL GOVERNMENT CABINET

Kentucky Board of Hairdressers and Cosmetologists

(As Amended at ARRS, October 8, 2013)

201 KAR 12:040. Apprentices; ratio to operators.

RELATES TO: KRS 317A.030, 317A.060

STATUTORY AUTHORITY: KRS 317A.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.050(2)(b) requires an apprentice cosmetologist to work six (6) months under the supervision of a licensed cosmetologist. This administrative regulation establishes the ratio of one (1) cosmetologist to apprentice cosmetologist ratio.

Section 1. (1) A salon employing an apprentice cosmetologist shall maintain the following ratio:

(a) Two (2) apprentice cosmetologists to one (1) cosmetologist; or

(b) Three (3) apprentice cosmetologists to two (2) cosmetologists; or

(c) Four (4) apprentice cosmetologists to three (3) cosmetologists.

(2) Any salon employing more than four (4) apprentice cosmetologists shall maintain an equal ratio of one (1) apprentice cosmetologist per cosmetologist.

Section 2. A licensed cosmetologist shall be on site and continuously available for immediate supervision any time an apprentice cosmetologist provides any service relating to the practice of cosmetology.

BEA COLLINS, Chair

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GENERAL GOVERNMENT CABINET

Kentucky Board of Hairdressers and Cosmetologists

(As Amended at ARRS, October 8, 2013)

201 KAR 12:045. Apprentice, nail technician, esthetician, and instructor’s licensing.

RELATES TO: KRS 317A.050, 317B.025
VOLUME 40, NUMBER 5 – NOVEMBER 1, 2013

STATUTORY AUTHORITY: KRS 317A.060, 317B.020
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020 authorize the board to promulgate administrative regulations regarding licenses in cosmetology, nail technology, and esthetics. This administrative regulation establishes procedures for examination and license applications.

Section 1. An application for any examination established under KRS Chapter 317A shall be accompanied by a notarized certification of hours from the school the student attended.

Section 2. (1) An apprentice cosmetologist shall apply for a cosmetologist license no sooner than six (6) months and no longer than eighteen (18) months after passing the apprentice examination. Any extension of this period of time shall be granted no longer than eighteen (18) months after passing the apprentice examination, financial hardship related to a medical hardship, a family death, or a military transfer impeding the applicant’s ability to appear.

(2) Proof of a six (6) month apprenticeship shall consist of documentation showing that the apprentice cosmetologist worked in a licensed beauty salon for an average of twenty (20) hours per week for six (6) months.

Section 3. An apprentice cosmetology instructor shall apply for an instructor license no sooner than six (6) months and no longer than twenty-four (24) months after receiving an apprentice cosmetology instructor license. An extension of this period of time shall be granted if that state requires at least six (6) months of instruction.

GENERAL GOVERNMENT CABINET
Kentucky Board of Hairdressers and Cosmetologists
(As Amended at ARRS, October 8, 2013)

201 KAR 12:050, Reciprocity for valid license.

RELATES TO: KRS 317A.050, 317A.100, 317B.040
STATUTORY AUTHORITY: KRS 317A.060, 317A.100(1), 317B.020, 317B.040(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.100(1), (2), and (3) and 317B.040(1) allow the board to prescribe reasonable administrative regulations pertaining to the issuance of a [cosmetology] license to any person holding a comparable license by another state, and the issuance of an esthetics license to any person holding a comparable license by another state or country. This administrative regulation establishes reciprocity requirements for cosmetologists and estheticians applicants licensed in other states and for an esthetic practitioner licensed in another country.

Section 1. Pursuant to KRS 317A.100(1) or 317B.040(1), a comparable license shall be a license issued by another state if that state requires at least:

(1) 1,800 hours of curriculum for cosmetology, including a six (6) month apprenticeship;
(2) 600 hours of curriculum for nail technology; or
(3) 1,000 hours of curriculum for esthetics.

Section 2. (1) Except as provided in subsection (2) of this section, any applicant from another state within the United States who meets the requirements of KRS 317A.100(1) or 317B.040(1) shall be licensed by reciprocity upon payment of the:

(a) License fee established in KRS 317A.050; or
(b) Esthetician license fee established in 201 KAR 12:220, Section 1(1).

(2) Any applicant who meets the requirements of KRS 317A.100(2) or (3) shall:

(a) Pay the license fee required by subsection (1) of this section;
(b) Pay the applicable examination fee established in 201 KAR 12:220, Section 3(1), or 201 KAR 12:260, Section 3; and
(c) Meet the additional requirements established in KRS 317A.100(2) or (3) Any applicant from another state within the United States, who holds a valid license that is comparable to a license in Kentucky, requiring 1,800 hours of curriculum for cosmetology including a six (6) month apprenticeship, 600 hours of curriculum for nail technology, and 1,000 hours curriculum for esthetics, [cosmetology or esthetic license][and who can show proof of two (2) years current experience, may come before the state board for examination (written and practical)] — by paying the out-of-state [cosmetologist][esthetician] license fee established in KRS 317A.050(1)(a) or the [cosmetologist][esthetician] license fee established in KRS 317A.050(2)(d) — or by paying the esthetician license fee established in 201 KAR 12:220, Section 3(1) and the out-of-state esthetician examination fee established in 201 KAR 12:220, Section 3(3). [Section 2. An applicant shall provide:

(a) A certification or official equivalent and copy of current license from the state board or state granting original license; and
(b) Proof of two (2) years high school education or its equivalent for a cosmetologist license; or
(b) Proof of four (4) years high school education or its equivalent for an esthetician license.

Section 3. (1) An esthetician practitioner who is a Comite Internationale D'Esthetique Et de Cosmetologie Organization (CIDESCO) Diplomate shall receive a license to practice esthetics without examination if the practitioner:

(a) Provides proof of successful completion of the CIDESCO examination; and
(b) Pays a fee of $200.

(2) Proof of successful CIDESCO examination completion shall be the following:

(a) Date, time and place of sitting for and passing the CIDESCO examination; and
(b) Copy of the CIDESCO diploma and statement of verification from the CIDESCO International organization in Zurich, Switzerland.

GENERAL GOVERNMENT CABINET
Kentucky Board of Hairdressers and Cosmetologists
(As Amended at ARRS, October 8, 2013)

201 KAR 12:060. Inspections.

RELATES TO: KRS 317A.050, 317A.060, 317B.025
STATUTORY AUTHORITY: KRS 317A.060, 317B.020
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.050, 317A.060, and 317B.020 require the board to promulgate administrative regulations governing the operation of any schools and salons of cosmetology, nail technology, threading, and esthetics, and to protect the health and safety of the public.
This administrative regulation establishes inspection and health and safety requirements for all schools and salons of cosmetology, nail technology, threading, and esthetics.

Section 1. Any board member, [the] administrator, or inspector may[and inspectors shall be allowed to] enter any establishment licensed by this board or any place purported to be practicing cosmetology, nail technology, threading, or esthetics at any reasonable hour for the purpose of determining if an individual, salon, or school is in compliance with KRS Chapters 317A or and 317B, and 201 KAR Chapter 12.

Section 2. (1) Each licensee or permit holder shall attach his or her picture to the license or permit[and] and place it in a conspicuous area in the salon or school.
(2) A conspicuous area shall be visible to the general public and shall include/includes:
(a) The main entrance door or window of the premises;
(b) The work station of the employee or independent contractor;
(c) A public area within twenty (20) feet of the main entrance;
(d) A manager shall have the manager’s license posted with a picture in a conspicuous area at all times.
(e) A salon or school shall post its license without a picture in a conspicuous area at all times.

Section 3.(1) Each salon shall post the most recent inspection report in a conspicuous area in the salon or school.
(2) A conspicuous area shall be visible to the general public and shall include/includes:
(a) The main entrance door or window of the premises;
(b) A public area within twenty (20) feet of the main entrance.
Any salon closing for business but maintaining yearly license renewal shall be considered an inactive salon and shall remain same provided plumbing and equipment is not removed.
(2) A salon shall be inspected periodically.
(3) Any salon removing equipment and plumbing shall be considered out of business and the license voided.

Section 4.(1) Each establishment shall be responsible for compliance with KRS Chapters 317A and, 317B, and 201 KAR Chapter 12.

Section 5. It shall be unprofessional conduct to withhold information or lie to an inspector who is conducting a lawful investigation of an alleged violation of KRS Chapters 317A or and 317B, or 201 KAR Chapter 12.

Section 6.(1) A beauty salon, nail salon, or esthetic salon which is new, relocating, or thread schools new or relocating shall constitute unprofessional conduct.
(2) The provisions of subsection (1) of this section shall not apply to a nursing home if it:
(a) Has obtained a salon license from the board; and
(b) The practice of barbering does not occur at the same time as the practice of cosmetology.
(3) If the provisions of subsection (2) of this section have been met, a cosmetologist may engage in the practice of cosmetology on the premises of a nursing home in the same facility established by the nursing home for the practice of barbering.

Section 7. Any change to a license shall require a new application to be filed.

Section 8. Incorporation by Reference. (1) "New Salon Application", 11/2012.[The following material] is incorporated by reference:
(a) "Beauty-Salon Application", [12/2003].
(b) “Nail Salon Application” [2003].

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GENERAL GOVERNMENT CABINET
Kentucky Board of Hairdressers and Cosmetologists
(As Amended at ARRS, October 8, 2013)

201 KAR 12:082. School's course of instruction.

RELATES TO: KRS 317.050(8), 317A.090
STATUTORY AUTHORITY: KRS 317A.060(1), 317A.090
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060(1) requires the board to promulgate administrative regulations governing schools of cosmetology, including their hours and courses of instruction. KRS 317A.090 establishes the requirements for schools of cosmetology. This administrative regulation establishes requirements for the hours and courses of instruction of schools of cosmetology.

Section 1. The regular courses of instruction for cosmetology students shall contain courses relating to the four subject areas identified in this section.[the following:] (1) The first area of courses shall relate to professional practices, which shall include:[ -]
   (a) The cosmetology profession:[ -]
      1. Cosmetology vocabulary:[ -]
      2. Brief history; how it began, and changes: and[ -]
      3. Ethics: ethics in a beauty salon; and salon conduct:[ -]
   (b) Salon procedures:[ -]
      1. Hygiene and good grooming:[ -]
         a. Personal and public; and
         b. Personal characteristics; and
      2. Professional attitudes and salesmanship:[ -]
         a. Personality development;
         b. Salesmanship and business management;
         c. Customer relationship; and
         d. Telephone personality:[ -]
      3. Public relations and psychology:[ -]
         a. Behavior; and
         b. Proper image: and[ -]
   (c) Specialty services:[ -]
      1. Facial treatments and make-up:[ -]
         a. Facial treatment/make-up preparation;
         b. Implements and supplies;
         c. Procedure in giving a plain facial;
         d. Purpose and effect of massage movements;
         e. Facial cosmetics;
         f. Special problems;
         g. Eyebrow arching; and
         h. Lash and brow dye and enhancements:[ -]
      2. Nail technology:[ -]
         a. Purpose and effect;
         b. Preparation;
         c. Equipment; and
         d. Procedures, including the following:
            i. Plain manicure; and
            ii. Oil manicure;
            iii. Removal of stains;
            iv. Repair work;
            v. Hand and arm massage;
   (d) The second area of courses shall relate to life sciences (general anatomy), which shall include:[ -]
      (a) Osteology:[ -]
         1. Definition; and
      (b) Myology:[ -]
         1. Definition; and
      (c) Neurology:[ -]
         1. Definition; and
   (e) Dermatology:[ -]
      1. Structure of skin; and
      2. Functions of skin;
      3. Appendages of skin;
      4. Conditions of the skin; and
      5. Lesions of the skin:[ -]
   (f) Trichology:[ -]
      1. Structure of hair;
      2. Composition;
      3. Blood and nerve supply;
      4. Growth and regeneration;
      5. Color;
      6. Texture;
      7. Elasticity;
      8. Porosity; and
      9. Conditions to be recognized:[ -]
   (g) Nails:[ -]
      1. Structure and composition;
      2. Growth and regeneration; and
      3. Irregularities.
   (2) The third area of courses shall relate to physical sciences (chemistry and treatment), which shall include:[ -]
      (a) Chemistry:[ -]
         1. Elements, compounds, and mixtures:[ -]
            a. Properties of;
            b. Acid and alkali; and
            c. Chemistry of water:[ -]
      2. Composition and uses of cosmetics:[ -]
         a. For the body;
         b. For the skin and face; and
         c. For the scalp and hair:[ -]
      3. Chemistry of hair lightening:[ -]
      4. Chemistry of hair coloring:[ -]
      5. Chemical hair relaxing:[ -]
      6. Chemistry of make-up:[ -]
      7. Chemistry of facial treatments:[ -]
      8. Chemistry of rinses:[ -]
         a. Soaps and shampoos; and
         b. Detergents; and[ -]
      9. Chemistry of cold waving:[ -]
         (b) Scalp and hair treatments:[ -]
            1. Purpose and effects;
            2. Preparation and procedure;
            3. Use of cap; and
            4. Electricity and therapeutic ray; and
            5. Safety rules:[ -]
   (c) Shampoos and rinses:[ -]
      1. Importance of good shampoo;
      2. Purpose of effects;
      3. Required materials and implements;
      4. Brushing and drying;
      5. Types of shampoos;
Section 2. A school shall teach the students about the various supplies and equipment used in the usual salon practices.

Section 3. A school shall have the following charts or visual aids available for students' use:
1. Charts or visual aids showing anatomy of muscles of face and neck with special reference to the direction of muscle fibers and function of muscle or groups of muscles; and
2. Charts or visual aids showing anatomy of nails.

Section 4. A student shall receive not less than 1,800 hours in clinical class work and scientific lectures with:
1. 450 minimum lecture hours for science and theory;
2. 1,305 minimum clinic and practice hours; and
3. Forty-five (45) hours of applicable Kentucky statutes and administrative regulations.

Section 5. One (1) hour per week shall be devoted to the teaching and explanation of the Kentucky law as set forth in KRS Chapter 317A and the administrative regulations of the board.

Section 6. A school of cosmetology shall maintain and teach the following curriculum established in this section:
1. General theory, including Kentucky cosmetology law and applicable administrative regulations promulgated thereunder;
2. Clinical theory;
3. Lecturing theory;
4. Clinical and related theory class (freshman practice class on students or mannequins), 200 hours which shall include:
   1. Cold waves;
   2. Facials and make-up;
   3. Complete "S" formations or complete finger waves;
   4. Pin curl technique;
   5. Hair shaping;
   6. Hair styling techniques;
   7. Lash and brow tint and enhancements;
   8. Eyebrow arches;
   9. Nail technology;
   10. Scalp treatments;
   11. Shampooing;
   12. Hair coloring, bleaching, and rinsing (mixing and formulas);
   13. Heat Permanent;
2. The curriculum for junior and senior students shall be:
   1. Hair conditioning treatments;
   2. Scalp treatments;
   3. Hair shaping;
   4. Shampoos;
   5. Cold waves;
   6. Chemical hair relaxing (permanent wave);
   7. Complete "S" formation and complete finger waves;
   8. Pin curl techniques;
   9. Hair styles;
   10. Iron curling;
   11. Hair coloring and toning;
   12. Bleaches and frostings;
   13. Facials and make-up;
   14. Nail technology;
   15. Lash and brow tint and enhancements;
   16. Eyebrow arches;
   17. Color rinses (certified color);
   18. Wigging;
   19. Professional ethics and good grooming;
   20. Salesmanship;
   21. Reception desk and telephone answering;
   22. Recordkeeping;
   23. Dispensary (procedures for ordering supplies and retail merchandise);
   24. Personality development.
25. Salon management; and
26. Public relations.

Section 7. In addition to the regular course of instruction, a cosmetology school may have two (2) related lectures and demonstrations per month.

Section 8. Time not utilized in theory or clinic work shall be used for study periods or library work.

Section 9. A school shall furnish students text books that:
(1) Have been approved by the board; and
(2) Are in paper or electronic format, electronically or otherwise.

Section 10. A student of cosmetology shall not be permitted to work on the public until the student has completed 300 hours of instruction.

Section 11. A student of cosmetology shall be allowed a total of sixteen (16) hours for out-of-school activities pertaining to the profession of cosmetology per 1,800 hours, not to exceed eight (8) hours per day, if:
(1) it is reported within ten (10) days of the field trip or education show to the board office on the Certification of Cosmetology Field Trip * Hours form, or Certification of Cosmetology Student Education Show * Hours form, as appropriate; and
(2) the form is received in the board office within ten (10) days of the date of the field trip.

Section 12. A student of cosmetology shall be allowed a total of sixteen (16) hours for attending educational programs per 1,800 hours, not to exceed eight (8) hours per day, if it is:
(1) reported within ten (10) days of the field trip or education show to the board office on the Certification of Cosmetology Field Trip * Hours form, or Certification of Cosmetology Student Education Show * Hours form, as appropriate; and
(2) the form is received in the board office within ten (10) days of the date of the educational show.

Section 13. A copy of the Kentucky State Board of Hairdressers and Cosmetologists' statutes and administrative regulations shall be made available to all students.

Section 14. The nail technician curriculum shall include the following:
(1) Science and theory, 200 hours, which shall include:
(a) Equipment;
2. Sterilization;
3. Sanitation;
4. Chemistry and types of artificial nails;
5. Public and personal hygiene safety measures; and
6. Statutes and administrative regulations governing cosmetology and nail technology.
(b) Nail condition and manicure techniques.
(c) Hand and arm massage.
(d) Safety measures.
(e) Care of equipment.
(f) Removal of stains.
(g) Repair work including wraps and tips.
(h) Buffing.
(i) Application of lacquer; and
(j) Application of artificial nails.

Section 15. The course of study and curriculum for an apprentice instructor shall include as a minimum, for a total of 1,000 hours, the following:
(1) Orientation, fifteen (15) hours.
(2) Psychology of student training, fifty (50) hours.
(3) Introduction to teaching, thirty (30) hours.
(4) Good grooming and personality development, fifty (50) hours.
(5) Course outlining and development, forty (40) hours.
(6) Lesson planning, forty-five (45) hours.
(7) Teaching techniques (methods), eighty (80) hours.
(8) Teaching aids, audio-visual techniques, eighty (80) hours.
(9) Demonstration techniques, fifty-five (55) hours.
(10) Examinations and analysis, sixty (60) hours.
(11) Classroom management, forty-five (45) hours.
(12) Recordkeeping, twenty-five (25) hours.
(13) Teaching observation, sixty-five (65) hours.
(14) Teacher assistant, ninety (90) hours.
(15) Pupil teaching (practice teaching), 270 hours.

Section 16. An apprentice instructor shall be under the immediate supervision and instruction of a licensed instructor during the school day. An apprentice instructor shall not assume the duties and responsibilities of a licensed supervising instructor.

Section 17. All records of apprentice instructors' hours earned shall be recorded on the Monthly Attendance Report form supplied by the board office on or before the tenth day of each month.

Section 18. The board may permit an individual, a student, to enroll in a school for a special brush-up course in any of the following subjects:
(1) Permanent waving, and all chemical control.
(2) Nail technology, hand and arm massage, and application of artificial nails.
(3) All iron curls.
(4) Facials.
(5) Hair coloring and bleaching.
(6) Scalp massage.
(7) Hair shaping, trimming, and thinning.
(8) Science.
(9) Hair dressing and styling.

Section 19. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Certification Of Cosmetology Field Trip * Hours, §2003(2);
(b) Certification Of Cosmetology Student Education Show * Hours, §2003(3); and
(c) The Monthly Attendance Report Form, §2003(4).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
GENERAL GOVERNMENT CABINET
Kentucky Board of Hairdressers and Cosmetologists
(As Amended at ARRS, October 8, 2013)

201 KAR 12:083. Educational requirements.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.050, 317A.060, and 317B.020 require the board to promulgate administrative regulations governing the operation of schools of cosmetology and esthetics, including the proper education and training of students. This administrative regulation establishes proof of education and other enrollment requirements.

Section 1. (1) Any person enrolling in a school of [cosmetology] for a cosmetology, [or] nail technician, or esthetics course shall complete a ["Student Enrollment Application" for Kentucky Cosmetology School] provided by the board.

(2) The applicant shall furnish proof that the applicant has: [a] a high school diploma, unless the applicant is enrolled in a board approved cosmetology program in an approved Kentucky high school; [b] a General Educational Development (GED) diploma; or [c] Results from the Test for Adult Basic Education indicating a score equivalent to the twelfth grade of high school.

(3) The applicant shall provide with the application a passport style photograph taken within thirty (30) days before submitting the application completed two (2) years of high school or its equivalent.

(4) The required proof shall be any one (1) of the following:

(a) A transcript of subjects and grades showing the applicant has completed grade 10;
(b) Results from the Test for Adult Basic Education (TABE) indicating a score equivalent to tenth grade high school; or
(c) High school diploma or G.E.D. certificate.

Section 2. Any person enrolling in a school of cosmetology for the esthetics course shall complete the application for enrollment provided by the board. The applicant shall furnish proof that he or she has completed four (4) years of high school or its equivalent.

The required proof shall be any one (1) of the following:

(1) A high school diploma;
(2) A G.E.D. or
(3) Results from the Test for Adult Basic Education (TABE) indicating a score equivalent to 12th grade high school.

Section 3.(3) (1) The Student Enrollment Application, accompanied by the applicant's proof of education, shall be received by the board no later than ten (10) working days after the student's [stated] date of enrollment.

(2) A student shall not receive credit hours if the application is not received within the ten (10) day period.

(3) The school shall forward to the board the enrollment application and proof of education so that the board receives the information no later than ten (10) working days after the student date of enrollment.

(4) Failure of the school to timely forward the information to the board may result in suspension or revocation of the school's license or a fine of twenty-five (25) dollars a day for every day the application is late.

Section 3.(4) (1) A person shall not be permitted to enroll in a school of cosmetology for a brush-up course unless:

(a) The applicant holds a current license issued by this board; or
(b) The applicant has obtained special permission from the board.

(2) The applicant shall complete the [Student Enrollment Application][for enrollment].

Section 4.(5) Incorporation by Reference. (1) "Student Enrollment Application", January 30, 2013[for Kentucky Cosmetology School", 2003], is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, Chair
APPROVED BY AGENCY: July 9, 2013
FILED WITH LRC: July 15, 2013 at noon
CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

GENERAL GOVERNMENT CABINET
Kentucky Board of Hairdressers and Cosmetologists
(As Amended at ARRS, October 8, 2013)

201 KAR 12:088. Esthetic course of instruction.

RELATES TO: KRS 317B.020(1)(d), 317B.025
NECESSITY, FUNCTION AND CONFORMITY: KRS 317B.020 requires the board to promulgate administrative regulations establishing course work and conduct of school owners, instructors, estheticians, esthetic salons, and cosmetology schools conducting classes in esthetic practices; set the requirements for the proper education and training of students; and set the standard for the hours and courses of instruction in esthetic practices. This administrative regulation establishes requirements for the hours and courses of instruction for esthetician students.

Section 1. Definition. "Cosmetic resurfacing exfoliating procedures" means the application of cosmetic resurfacing exfoliating substances by a licensed practitioner[practitioners] for the purpose of improving the aesthetic appearance of the skin.

Section 2. The regular course of instruction for esthetician students shall consist courses relating to the two subject areas identified in this section of the following:

(1) The first area of courses shall relate to professional practices, which shall include:

(a) The esthetics profession:
1. Orientation;
2. History and evolution of skin care;
3. Esthetics vocabulary;
4. Ethics: personal and professional;
5. State law: and:
(b) Salon procedures:
1. Hygiene and grooming;
2. Responsibilities of an esthetician;
3. Standards and procedures;
4. Salesmanship;
5. Personality development; and
6. Customer relations and business developments.

(2) The second area of courses shall relate to science, theory and state and federal law relating to the practice, which shall include:

(a) Life sciences, anatomy and physiology of the skin:
1. Skin function;
2. Biochemistry; and
3. Layers of the skin;
(b) Body systems:
1. Skeletal;
2. Muscular; and
3. Circulatory;
4. Nervous;
5. Endocrine;
6. Immune;
7. Respiratory; and
8. Digestive;
9. Reproductive; and [j]
10. Integumentary; and [j]
(c) Bones, muscles and nerves of the face and skull; and [j]
(d) Chemistry; and [j]
1. Elements, compounds and mixtures; and [j]
2. Composition and uses of cosmetics for the skin and face; and [j]
3. Chemistry of makeup; and [j]
4. Chemistry of facial treatments and products; and [j]
(e) Bacteriology and sanitation; and [j]
1. Microorganisms; and [j]
2. Sanitation and sterilization; and [j]
3. State and federal requirements; and [j]
(f) Disorders and diseases; and [j]
1. Dermatological terms; and [j]
2. Lesions; and [j]
3. Common, contagious and other diseases; and [j]
4. Allergens; and [j]
5. Autoimmune diseases; and [j]
(g) Facials; and [j]
1. Products, supplies and set up; and [j]
2. Benefits, purpose and function; and [j]
3. Procedures including:
   a. Skin analysis; and [j]
   b. Consultation; and [j]
   c. Deep cleansing; and [j]
   d. Exfoliation; and [j]
   e. Extractions, including:
      (i) Comedone extractor; and [j]
      (ii) Light therapy; and [j]
      (iii) Brushes; and [j]
      (f) Use of steam and brush; and [j]
   g. Electrodes; and [j]
   h. Massage; and [j]
   i. Masks; and [j]
   4. Equipment and technological tools; and [j]
   a. Machines: use and safety; and [j]
   b. Electricity and light therapy; and [j]
   c. Microdermabrasion; and [j]
   5. Body treatments; and [j]
   a. Sanitation and hygiene; and [j]
   b. Cleansing, exfoliation, scrubs and wraps; and [j]
   c. Hydrotherapy; and [j]
   (h) Pharmacology; and [j]
   1. Over the counter and prescription drugs; and [j]
   2. Allergic reactions; and [j]
   3. State and federal requirements; and [j]
   (i) Methods of hair removal; and [j]
   (j) Make up application; and [j]
   1. Color theory; and [j]
   2. Facial shapes; and [j]
   3. Products, tools and equipment; and [j]
   4. Client consultation; and [j]
   5. Basic, corrective and camouflage application; and [j]
   6. Artificial eye lashes; and [j]
   7. Lash and brow tint; and [j]
   (k) Advanced skin care; and [j]
   1. Aging; and [j]
   2. Reactions to sun; and [j]
   3. Sensitive skin; and [j]
   4. Ethnic skin; and [j]
   5. Exfoliation; and [j]
   6. Alternative skin care; and [j]
   (l) Clinical skin care; and [j]
   1. Plastic and reconstructive surgery under the supervision of a medical doctor; and [j]
   2. Glycolic peels; and [j]
   a. Cosmetic resurfacing exfoliating substance and equipment, which includes cosmetic use of the following:
      (i) Thirty (30) percent alpha hydroxy acid (AHAs which include glycolic and lactic acids with a pH of three (3.0) or higher); and [j]
      (ii) Zero percent beta hydroxy acid (BHA which includes salicylic acid with a pH of three (3.0) or higher); and [j]
      (iii) Trichloroacetic acid (TCA) with levels less than twenty (20)
   percent; and [j]
(iv) Jessner's solutions (fourteen (14) percent salicylic acid, lactic acid, and two (2) percent resorcinol); and [j]
(v) Proteolytic enzymes (papain and bromelain); and [j]
b. Equipment and instruments that mechanically administer substances, including:
   (i) Brushing machines; and [j]
   (ii) Polyethylene granular scrubs; and [j]
   (iii) Loofah or textured sponges; and [j]
   (iv) Combs; and [j]
   (v) Lancets with blades less than 2mm; and [j]
   (vi) Microdermabrasion instruments, provided the manufacturer has established and substantiated product and equipment safety with the Federal Food and Drug Administration (FDA); and [j]
c. Glycolic peels exclude all other chemical and mechanical exfoliation/peeling procedures and substances, including:
   (i) Carboxyl acid (phenol); and [j]
   (ii) Products listed above that exceed the stated maximum levels or combinations thereof; and [j]
   (iii) Lancets when used to penetrate the stratum corneum or remove hair; and [j]
   (iv) All adulterated chemical exfoliating/peeling substances; and [j]
   (v) Devices that penetrate beyond the stratum corneum of the epidermis; and [j]
d. Cosmetic resurfacing exfoliating procedures; and [j]
3. Microdermabrasion; and [j]
a. The FDA lists microdermabrasion equipment as Class I devices intended for use by licensed practitioners trained in the appropriate use of such equipment; and [j]
Section 3. A student of esthetics shall not receive less than 1,000 hours in clinical and theory class work with:
1. First 150 hours
   (1) 350 minimum lecture hours for science and theory;
   (2) Fifty (50) hours of applicable Kentucky statutes and administrative regulations; and
   (3) 600 minimum clinic and practice hours.
Section 4. A student of esthetics shall have completed 150000 hours in clinical and related theory class work before
and providing services to the general public. Clinical practice
shall be performed on other students or mannequins during the first 150 hours.
Section 5. A school of cosmetology shall maintain and teach the
following curriculum established in this section; and [j]
(1) The curriculum for beginning students shall include:
   (a) Theory and related theory class, 100 hours, which shall include:
      1. General theory, including applicable Kentucky statutes and administrative regulations and applicable federal requirements; and [j]
   2. Clinical theory; and [j]
   3. Scientific lecturing theory; and [j]
   (b) Clinical and related theory class with clinical practice class
         on students or mannequins, 200 hours, which shall include:
            1. Skin analysis; and [j]
   2. Esthetic practices; and [j]
   3. Diseases and disorders of the skin; and [j]
   4. Electricity and light therapy; and [j]
   5. Sanitation and sterilization; and [j]
   6. Basic facial; and [j]
   7. Chemistry; and [j]
   8. Color theory and makeup; and [j]
   9. Introduction and safety of machines; and [j]
   10. Procedures for arching by tweezing; and [j] waxing or hair
   (2) The curriculum for students with more than 300 hours shall
   include theory and clinical practice as follows:
(a) Chemical peels - 100 hours
(b) Esthetic practices - 175 hours, which shall include:
1. Consultation
2. Skin analysis
3. Facial and body treatments
4. Disorders and diseases of the skin
5. Electricity and light therapy
6. Eyebrow arching by tweezing or waxing
7. Skin care machines - proper use and safety
8. Techniques of massage
9. Artificial eyelash application and enhancements
10. Lash and brow tinting, and enhancements
(c) Facial and body procedures with and without machines including disincrustation, ionization, all skin types, acne, body wraps - 125 hours
(d) Makeup application and artistry including corrective and camouflage - fifty (50) hours
(e) Removal of excess or unwanted hair by tweezing or waxing - twenty-five (25) hours
(f) Beautifying or cleansing of the body with preparations, antiseptics, tonics, lotions or creams - twenty-five (25) hours
(g) Providing preoperative and postoperative skin care under the immediate supervision of a licensed physician - seventy-five (75) hours
(h) Salon management - twenty-five (25) hours.

Section 6. Time not utilized in theory or clinic work and practice shall be used for study periods and library work to be counted toward the necessary number of hours to be completed as established in Sections 2, 3, and 4 of this administrative regulation.

GENERAL GOVERNMENT CABINET
Kentucky Board of Hairdressers and Cosmetologists
(As Amended at ARRS, October 8, 2013)

201 KAR 12:100. Sanitation standards.

RELATES TO: KRS 317A.060, 317B.020(3)
STATUTORY AUTHORITY: KRS 317A.130, 317B.020(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020(3) authorize the Kentucky State Board of Hairdressers and Cosmetologists to regulate the practice of cosmetology, nail technology, and esthetics in Kentucky and establish uniform standards for sanitation. This administrative regulation establishes sanitation standards for all facilities.

Section 1. General Sanitation. The entire licensed facility, including all equipment, employees, and implements contained in the facility, shall [therein must] be continually maintained in a sanitary manner [satisfactory to the board].

Section 2. Methods of Sanitizing. (1) Any implements to be used on the public shall be [properly] sanitized. Each method [and all methods] of sanitation shall be bacteriologically effective.

(2) A [all] commercially prepared sanitizing agent [agents] shall be used in accordance with the manufacturer's instructions.

Section 3. Disinfection of Implements and Spills: Blood and Body Fluids. (1) Each implement and surface [disinfectants are inactivated and ineffective when visibly contaminated with debris, hair, dirt, particulates or when heavily soiled; thus, implements and surfaces] shall first be thoroughly cleaned prior to disinfection.

(a) Disinfectants shall be prepared fresh daily and each time the [or more often if] solution becomes diluted or soiled.

(b) Contact Time. To clean a surface, it shall be left [leave] wet or completely immersed for ten (10) minutes or longer as required by the manufacturer for disinfecting against HIV, HBV, and all other viruses, bacteria, and fungi.

(2) All used implements shall first be cleaned of visible dirt, debris, or bodily fluids with warm soapy, detergent water and then disinfected by completely immersing in an appropriate disinfectant.

(a) All non-porous implements that come into contact with intact skin shall be thoroughly cleaned before immersion in an appropriate disinfectant. An appropriate disinfectant for objects that come into contact with intact skin shall be bleach.

1. An Environmental Protection Agency registered, hospital grade bactericidal (especially pseudomonacidal), virucidal, and fungicidal that is mixed and used according to the manufacturer’s directions; or
2. Household bleach in a ten (10) percent solution for ten (10) minutes.

(b) All non-porous implements which have come in contact with blood or body fluids shall be thoroughly cleaned before immersion in an appropriate disinfectant. An appropriate disinfectant shall include:

1. Environmental Protection Agency registered tuberculocides or products registered against HIV/HBV; or
2. Household bleach in a ten (10) percent solution for ten (10) minutes.

(c) For personal protection against blood-borne pathogens, cleanup shall [should always] be done wearing protective gloves and [also] gowns. [and] Eye protection shall be used for large spills.

(d) All implements that [which] have come in contact with blood or body fluids shall be disinfected by complete immersion in an appropriate disinfectant.

(3) Any non-porous surface that comes in contact with blood or body fluids shall first be cleaned with warm soapy, detergent water, and then an appropriate disinfectant shall be used.

(a) An appropriate disinfectant for surfaces that [which] have come in contact with blood or body fluids shall include:

1. Environmental Protection Agency registered tuberculocides or products registered against HIV/HBV; or
2. Household bleach in a ten (10) percent solution for ten (10) minutes.

(b) For personal protection against blood-borne pathogens, cleanup shall [should always] be done wearing protective gloves and [also] gowns. [and] Eye protection shall be used for large spills.

(4) Household bleach may be used as [is] an effective disinfectant for all purposes in a salon or school, with the [following] considerations listed in this subsection.

(a) Bleach solutions shall be mixed daily and used in a ten (10) to one (1) solution, nine (9) parts tap water and one (1) part bleach.

(b) Bleach shall be kept in a closed covered container and not exposed to sunlight.

(c) Bleach may produce eye irritation or mouth, esophageal, and gastric burns.

(d) Bleach is corrosive to metals.

(e) Bleach vapors might react with vapors from other chemicals, and therefore shall [should] not be placed or stored near other chemicals used in salons (i.e., acrylic monomers, alcohol, other disinfecting products), or near a flame.

(f) Used or soiled bleach solution shall be discarded every day by pouring the solution down a sink basin or toilet bowl.

(5) A bottle container other than the original manufacturer’s container used for application of appropriate disinfectant shall be properly labeled as to contents, percentage solution, and date made.

(6) Cleanup items from minor cuts shall be double bagged or placed in biohazard containers. A licensee shall [licensees should] consult with the local health department for directions about disposal.

(7) All Food and Drug Administration designated “medical devices” shall only be disinfected by appropriate Environmental
Section 1. Proper Protection of Neck. (1) [A|No] A[spatula][Spatulae] shall be made of wood or other material and shall be sanitized before being used again.

Section 2. Proper Laundering Methods. (1) All cloth towels, robes, and similar items shall be laundered in a washing machine with laundry detergent and chlorine bleach used according to the manufacturer’s directions for sanitation purposes.

Section 3. Personal Hygiene. (1) Every person licensed or permitted by the board shall thoroughly cleanse his or her hands with soap and water or an alcohol-based handrub immediately before serving each patron.

Section 4. Use of Powder. [All] Powder shall be dispensed from a shaker or similar receptacle and shall be applied with a disposable puff[s] or cotton pledge[pledges], or other disposable applicator[applicators].

Section 5. Use of Creams. (1) A cream or[All creams and] other semi-solid substance[substances] shall be removed from its container[containers] with a clean sanitized spatula.

Section 6. Use of Styptics. Styptics to arrest bleeding shall be kept from direct contact with the patient by means of a paper neck band or clean towel.

Section 7. Implements shall be disinfected and sanitized as follows:
(a) A ten (10) percent solution of Formalin shall be satisfactory for disinfection of all equipment. Formalin does not attack copper, nickel, zinc, or other metal substances.
(b) A seventy (70) percent solution of alcohol or bleach shall be an effective disinfectant for cleaning equipment.
(c) Any other liquid disinfectant approved by the Cabinet for Health Services and EPA are considered acceptable methods of dry disinfection provided labels and manufacturer’s directions are followed.

Section 8. Use of brush rollers shall be prohibited in any establishment licensed by this board.

Section 9. The following grading shall be used for the inspection of any salon or school of cosmetology:
- 100 percent = A
- 99 percent = A
- 98 percent = B
- 79 percent = B
- 70 percent = C
- Any standard of less than an “A” rating shall indicate failure to comply with the statutes and administrative regulations of the board.

BEA COLLINS, Chair
APPROVED BY AGENCY: July 9, 2013
FILED WITH LRC: July 15, 2013 at noon
CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

GENERAL GOVERNMENT CABINET
Kentucky Board of Hairdressers and Cosmetologists
(As Amended at ARRS, October 8, 2013)


RELATES TO: KRS 317A.130, 317B.020
STATUTORY AUTHORITY: KRS 317A.060, 317B.020
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020 require the board to promulgate administrative regulations governing the operation of any cosmetology, nail technology, or[and] esthetics school or[and] school[s] and salons and to protect the health and safety of the public. This administrative regulation establishes sanitation.
requirements for schools and salons.

Section 1. (1) All equipment used in a salon shall be maintained in a sanitary manner.

(a) Electrical equipment that provides circulating, whirlpool, or vacuum effects (for example, a microdermabrasion machine, facial machine, pedicure station, nail drill, or [and] body treatment equipment) shall be:

1. Cleaned and disinfected after each use; and
2. Flushed, cleaned, and disinfected on a bi-weekly schedule.
(b) A record of the [such] cleaning log shall be kept and made available upon any salon inspection.
(c) A bi-weekly cleaning shall include the use of a hospital grade disinfectant or ten (10) percent bleach solution that is circulated through the machine for the minimum time recommended by the manufacturer.

(3)(a) Heated electrical equipment, such as a thermal iron[janes], pressing comb, or stove, shall be [combs, and stoves are] sanitized by the heat source.
(b) Unheated parts of heated electrical equipment shall be cleaned and disinfected according to the manufacturer’s recommendations.
(c) Any other electrical equipment, such as clippers [or[and]] attachments, shall be cleaned and disinfected after each use by [using the following method;]

1. Removing [Remove] hair and all foreign matter from the equipment; and
2. Completely saturating the [saturate] clipper blade and attachment with an EPA-registered high-level disinfectant solution, spray, or foam used according to the manufacturer’s instructions.

Section 2. Rooms may be used for multiple purposes, such as massage and esthetics, if [are permissible as long as] all instruments, implements, and supplies are properly sanitized [Section 1. All implements, tools and equipment shall be cleaned and sterilized before using.]

Section 2. Combs or brushes shall not be used on more than one (1) person without first cleaning and sterilizing.

Section 3. Towels, linens, bed and chair coverings shall be changed after each use.

Section 4. All instruments shall be kept in a closed sterilizing container when not in use.

Section 5. All student kits shall contain an approved method of sterilization and shall be kept closed when not in use.

Section 6. All creams, lotions, tonics, shampoos, and other liquids shall be kept covered when not in use.

Section 7. Covered containers shall be supplied for disposal of waste.

Section 8. Floors, walls, furniture, and fixtures shall be kept clean at all times.

Section 9. All bowls and basins shall be kept clean at all times.

Section 10. All glass and other metallic electrodes shall be sterilized between patrons.

Section 11. (1) Treatment of any kind shall not be given to any person manifesting a physical sign of a suspected communicable disease except those excluded by the Americans with Disabilities Act, without written clearance by a medical physician licensed by the Kentucky Board of Medical Licensure.

(a) The immediate exclusion of the licensee or student from the beauty salon or cosmetology school;
(b) A written clearance by a medical physician licensed by the Kentucky Board of Medical Licensure.

Section 12. All creams shall be removed from the container by a disposable spatula or sterile spoon and any unused cream remaining thereon shall not be replaced in the container or used on any other person.

Section 13. Any comb, brush, implement, or other instruments that are dropped on the floor shall be washed, disinfected and placed in a sterilizer.

Section 14. Combs, brushes, tweezers, shears, razors, or other implements shall not be kept in the pockets of the students or licensees.

Section 15. Towels shall not be used more than once without being laundered. Towels intended for use on patrons shall not be dried on lines, radiators, or steam pipes used towels shall not be dipped into a receptacle containing hot water and used on patrons.

Section 16. Each licensed place of business shall provide an appropriate space in which to keep all linens sanitized.

BEA COLLINS, Chair
APPROVED BY AGENCY: July 9, 2013
FILED WITH LRC: July 15, 2013 at noon
CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

GENERAL GOVERNMENT CABINET
Kentucky Board of Hairdressers and Cosmetologists
(As Amended at ARRS, October 8, 2013)

201 KAR 12:120. School faculty.

STATUTORY AUTHORITY: KRS 317A.060(1), 317B.020
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.025 authorize the board to promulgate administrative regulations relating to the activities and responsibilities of instructors and apprentice instructors. This administrative regulation establishes the standards that shall be met by instructors and apprentice instructors.

Section 1. (1) A [any] person employed by a school for the purpose of managing, teaching, or [and] instruction[ ] shall be licensed as a cosmetologist instructor or esthetician instructor.
(2) A [Each] licensed instructor or [an] apprentice instructor[ ] shall keep a personal photograph posted with his or her license.

Section 2. A student[All students] shall be under the immediate supervision of a licensed instructor during a class[all classes and] study hours, or [and] practical student work.

Section 3. (1) A licensed cosmetologist, nail technician, or esthetician shall not render services in a school.
(2) An instructor or apprentice instructor[Instructors and apprentice instructors] shall render services only incidental to and for the purpose of instruction.

Section 4. An [Every] instructor [and apprentice instructor] employed in a school of cosmetology shall devote his or her [the] entire time during the school hours to that of instructing the students and shall not apply his or her time to that of private or public practice for compensation during school hours or permit students to instruct or teach other students in the absence of a teacher.
Section 5. (1) Except as provided in subsection (2) of this section, teaching shall not be done by a demonstrator [demonstrators] shall be prohibited, unless
(2) A[except that] properly qualified, licensed individual may demonstrate [demonstrating] individuals may demonstrate to the student[s] new process, preparation, or appliance [processes, new preparations, or new appliances] in the presence of a licensed instructor[s]. A demonstration may only [take place] in a licensed school. [Schools shall not permit more than one (1) demonstration in any calendar month.]

Section 6. All services rendered in a school on patrons shall be done by students only. Instructors may be allowed to teach and aid the students in performing the various services.

Section 7. An instructor or instructor[s] and apprentice instructor[s] in attendance shall, at all times, wear a clean, washable uniform[,] and an insignia or badge indicating that he or she is[they are] an instructor or apprentice instructor in the school.

Section 8. A school of cosmetology shall, within five (5) days after the termination, employment, or other change in faculty personnel, notify the board of that change.

Section 9. A school[s] enrolling an instructor shall maintain the following ratio: one (1) apprentice instructor to one (1) instructor.

Section 10. The following minimum faculty to student ratios shall be maintained at all times:

(1) [a] One (1) instructor for every twenty (20) esthetician students enrolled, which includes nail technician students; and
(2) [b] One (1) instructor for every twenty (20) esthetician students enrolled.

BEA COLLINS, Chair
APPROVED BY AGENCY: July 9, 2013
FILED WITH LRC: July 15, 2013 at noon
CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

GENERAL GOVERNMENT CABINET
Kentucky Board of Hairdressers and Cosmetologists
(As Amended at ARRS, October 8, 2013)

201 KAR 12:125. Schools’ student administrative regulations.

RELATES TO: KRS 317A.090, 317B.020(3)(b), (c), (d), (f), (g).
RELATES TO: KRS 317A.090, 317B.020(3)(b), (c), (d), (f), (g).
STATUTORY AUTHORITY: KRS 317A.060, 317B.020(2)(b), (c), (d), (f), (g).
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.090 and 317B.020 authorize the board to protect the health and safety of the public and to protect the general public and students enrolled in schools of cosmetology against misrepresentation, deceit, or fraud while seeking services or while enrolled. This administrative regulation establishes requirements for students and requirements for schools regarding students.

Section 1. A person student enrolled in a school of cosmetology shall not be permitted to receive a salary or commission from the school while enrolled as a student in the school.

Section 2. A student shall not smoke while providing services to patrons.

Section 3. A student shall not remain in the school to work on patrons upon completion of the required hours for the appropriate course of enrollment.

Section 4. (1) An apprentice instructor shall be considered a student.
(2) An apprentice instructor shall not be employed by the school where the apprentice instructor serves as an apprentice unless the apprentice instructor graduates, completes the school’s program, withdraws from the program, or is licensed prior to graduation, completion of the program, or licensure as an instructor. [After graduation from school, a student shall not be allowed to return to that school or any other school for further practice or work in the pay department without permission of the board].

Section 5. A school shall, at all times, display in a centralized conspicuous place the enrollment permits of all students enrolled.

Section 6. A student shall, at all times, display in a centralized conspicuous place the enrollment permits of all students enrolled.

Section 7. A student shall wear some kind of insignia, badge, cap, or marking on his or her uniform(uniforms) to indicate that he or she is a student in the school.

Section 8. A student shall wear a clean, washable uniform, coat, or smock while on school premises.

Section 9. A student shall be on time for all class studies and work.

Section 10. A student shall not leave during school hours without special permission from the manager.

Section 11. A student shall not operate any equipment in which there is a known operating hazard.

Section 12. Each student kit[kits] containing all equipment, tools, and implements shall remain on school premises until completion of the course of enrollment or the student’s withdrawal from the school.

Section 13. A student desiring to change from one (1) school to another shall:
(a) Notify the school in which the student is presently enrolled of the student’s withdrawal; and
(b) Complete a Student Enrollment Application for the new school by entering another school.

Section 14. A student shall comply with all rules of his or her school that, as long as those rules do not conflict with KRS Chapter 317A or 201 KAR Chapter 12, the administrative regulations of the board.

Section 15. An owner of a school shall include the school’s refund policy in school-student contracts.

Section 16. Each student may file a complaint with the [the] board concerning the school in which the student is enrolled. The information is clearly and concisely given and the complaint is signed by the complainant.

Section 17. Student Leave of Absence. (1) A student may use [is entitled to] one (1) leave of absence while enrolled in an 1,800 hour program. A request for a leave of absence shall:
(a) Be in writing from the student to the school;
(b) Not be for a duration longer than six (6) months; and
(c) Clearly denote the beginning and end dates for the leave of
Section 24. (1) A person completing hours in a licensed[an acceptable] school of cosmetology within a period of five (5) years from date of enrollment shall be given full credit by the board for hours completed.

(2) A person completing hours in a licensed[an acceptable] school of cosmetology within a period of five (5) years and one (1) day to ten (10) years from date of enrollment shall be given half credit by the board for hours completed.

(3) Credit for hours shall not be awarded by the board after ten (10) years from date of enrollment[.Any extension of this period of time may be granted at the discretion of the board].

BEA COLLINS, Chair
APPROVED BY AGENCY: July 9, 2013
FILED WITH LRC: July 15, 2013 at noon
CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

GENERAL GOVERNMENT CABINET
Kentucky Board of Hairdressers and Cosmetologists
(As Amended at ARRS, October 8, 2013)

201 KAR 12:150. School records.

RELATES TO: KRS 317A.060(1)
STATUTORY AUTHORITY: KRS 317A.060
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 authorizes the board to promulgate administrative regulations to set standards for the operation of schools and to protect the students. This administrative regulation establishes the requirements relating to the records kept, the retention requirements, and the information that is to be forwarded to the board.

Section 1. A daily attendance record based on the attendance of the student, including full-time[,] part-time, and those students and apprentice instructors, shall be kept by each school[the schools] and shall be available to the employees of the state board or to the members of the state board at all times.

Section 2. A school shall keep a daily record[records], approved and signed by the instructor, showing practical work and work performed on clinic patrons. Those records shall be available to the employees of the state board or to the members of the state board at all times.

Section 3. A detailed record shall be kept of all enrollments, withdrawals, and dismissals.

Section 4. All records shall be kept in a lockable fireproof file on the premises of the school and shall be available for inspection by the state board or its employees during hours of operation.

Section 5. The student permit and certification of hours completed shall be forwarded to the office of the board within ten (10) working days of the date of a student’s withdrawal, dismissal, or completion, or the closure of the cosmetology school.

Section 6. A cosmetology school shall be held fully responsible for the completeness, accuracy, and mailing of delivery to the state board office no later than the 10th of each month on forms that are incorporated by reference in 201 KAR 12:082 showing the total hours obtained for the previous month and the total accumulated hours to date for students enrolled. Only the hours recorded shall be submitted each month and that report shall not be amended without satisfactory proof of error.

Section 7. A copy of the students’ hours, provided to the office of the board, shall be posted monthly on a bulletin board in the school and shall[be] be available to the students and employees or agents of the board.
Section 2. (1) If [When] the board has grounds to discipline an applicant, licensee, or permittee, it may refuse to issue or renew a license, or revoke or suspend a license. The board may revoke or suspend such licenses as are issued upon the grounds set forth in KRS 317A.140.

(2) The notice shall inform the person/licensee/applicant of:
(a) The grounds upon which potential discipline is based;
(b) The person/licensee/applicant's right to request a hearing before the board;
(c) The right to present witnesses on his or her behalf; and
(d) The right to cross-examine any witnesses who may appear against him or her.

Section 3. Within ten (10) days of receipt of the board's notice, the licensee shall notify the board in writing if a hearing is requested. If the licensee does not request a hearing, the board may take final action and discipline by fine, refusal to issue or renew a license, revocation, or suspension of a license without a hearing. The board may also request informal or through mediation.

Section 4. The chairman of the board or the designated hearing officer shall preside over all hearings and shall have the authority to rule on all motions and objections, to establish the hearing procedures, and to admit or exclude testimony or other evidence.

Section 5. The rules of civil procedure and the strict rules of evidence shall not apply to hearings before the board. Unless varied by the presiding chairman or designated hearing officer, the order of proof shall be:
(1) Evidence and witnesses testifying on behalf of the board as to violations and grounds for discipline;
(2) Evidence and witnesses testifying on behalf of the licensee, permittee, or applicant;
(3) Rebuttal evidence and witnesses on behalf of the board;
(4) Closing statement or argument by the licensee, permittee, or applicant; and
(5) Closing statement or argument by the board.

Section 6. After the conclusion of the hearing and the board's consideration of the evidence, the board or the designated hearing officer shall prepare findings of fact, conclusions of law, and order. The findings of fact, conclusions of law, and order shall be reviewed by the board for final approval at the next regularly scheduled meeting of the board or as soon thereafter as possible. Following the board's final approval of the findings of fact, conclusions of law, and order, the licensee shall be notified of the board's decision.

Section 7. [Nothing shall prohibit] The board may attempt to resolve potential disciplinary matters informally or through mediation.

GENERAL GOVERNMENT CABINET
Kentucky Board of Hairdressers and Cosmetologists
(As Amended at ARRS, October 8, 2013)

201 KAR 12:190. Investigations and complaints.

RELATES TO: KRS 317A.140, 317A.145
STATUTORY AUTHORITY: KRS 317A.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.145 requires the board to receive and investigate complaints relating to a licensee's business or professional practices and illegal practices. This administrative regulation establishes the requirements relating to investigations and complaints.

Section 1. Definition. "Complaint" means any writing received by the board which contains the name of the complainant and alleges a violation of KRS Chapter 317A or 201 KAR Chapter 12 by a licensee relating to the licensee's business or professional practice.

Section 2. The board or other board personnel shall receive all complaints against any person licensed or salon licensed under the provisions of KRS Chapter 317A and 201 KAR Chapter 12 relating to the licensee's business or professional practices.

Section 3.(a) The board shall make available to the public its Complaint Form which shall[may] be used by any person filing a complaint against any licensee.

[Section 3. "Complaint" shall be defined as any writing received by the board which contains the name of the complainant and alleges violations of KRS Chapter 317A and 201 KAR Chapter 12 by any licensee, relating to the licensee's business or professional practice.]
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licensee’s business or professional practices] shall be investigated.

Section 5[6]. The board may, at any time, on its [their] own volition or on the basis of information available[, conduct an investigation or inspection and file a complaint against a [any] person or salon licensed under the provisions of KRS Chapter 317A and 201 KAR Chapter 12.

Section 6. Any complaint that, as defined in Section 3 of this administrative regulation, that is filed with the board, which alleges that a licensee or salon has violated a [statutory] provision of KRS Chapter 317A or 201 KAR Chapter 12 [an administrative regulation of the board], shall be sent to the licensee or salon before the complaint is placed on the board agenda. The licensee shall be provided [at least] ten (10) days after the complaint is mailed to file a written response to the complaint.

Section 7[8]. The complaint and the response, if any is received, shall be placed on the board agenda for consideration at the next board meeting, or as soon thereafter as is practicable, following receipt of the written response or the expiration of the ten (10) days provided for a response, whichever occurs first.

Section 8[9]. The board members shall review the complaint and any response received and shall take [such] action as it deems necessary.

Section 9[10]. Any board member[,] who has participated in the investigation of a complaint or who has substantial personal knowledge of facts concerning the complaint which could influence an impartial decision by the board member[,] shall disqualify himself or herself [themselves] from participating in the adjudication of the complaint.

Section 10. Incorporation by Reference. (1) “Complaint Form”, October 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, Chair
APPROVED BY AGENCY: July 9, 2013
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CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

GENERAL GOVERNMENT CABINET
Kentucky Board of Hairdressers and Cosmetologists
(As Amended at ARRS, October 8, 2013)

201 KAR 12:260. License fees, examination fees, renewal fees, restoration fees and miscellaneous fees.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.062[317A.162][2004 Ky. Acts ch. 96, sec. 5] requires the board to promulgate administrative regulations establishing a reasonable schedule of fees and charges for examinations, licenses, and renewal of licenses. This administrative regulation establishes fees relating to cosmetology and nail technology.

Section 1. The initial license fees shall be as follows:
(1) Apprentice cosmetologist - twenty-five (25) dollars;
(2) Cosmetologist - twenty-five (25) dollars;
(3) Nail technician - twenty-five (25) dollars;
(4) Apprentice instructor - thirty-five (35) dollars;
(5) Cosmetology instructor - fifty (50) dollars;
(6) Beauty salon - thirty-five (35) dollars;
(7) Nail salon - thirty-five (35) dollars;
(8) Cosmetology school – $1,500;
(9) Student enrollment permits – fifteen (15) dollars;
(10) School of cosmetology, transfer of ownership – $1,500;
(11) School manager change – $250;
(12) Threading facility permit – twenty-five (25) dollars; and
(13) Threading permit - twenty (20) dollars.

Section 2. The annual renewal license fees shall be as follows:
(1) Apprentice cosmetologist - twenty (20) dollars;
(2) Cosmetologist - seventy-five (75) dollars;
(3) Nail technician - seventy-five (75) dollars;
(4) Apprentice instructor - twenty-five (25) dollars;
(5) Cosmetology instructor - thirty-five (35) dollars;
(6) Beauty salon - twenty-five (25) dollars;
(7) Nail salon - twenty-five (25) dollars;
(8) Cosmetology school – $150;
(9) Threading facility permit – twenty-five (25) dollars; and
(10) Threading permit - twenty (20) dollars.

Section 3. Applications for examination required by KRS Chapter 317A shall be accompanied by an examination fee as follows:
(1) Apprentice cosmetologist - seventy-five (75) dollars;
(2) Cosmetologist - seventy-five (75) dollars;
(3) Nail technician - seventy-five (75) dollars;
(4) Cosmetology instructor – $100;
(5) Out-of-state cosmetologist – $120; and

Section 4. The fees for retaking an examination or any portion of an examination that an applicant has not successfully completed shall be as follows:
(1) Apprentice cosmetologist - thirty-two (32) dollars;
(2) Cosmetologist - thirty-two (32) dollars;
(3) Nail technician - thirty-two (32) dollars;
(4) Cosmetology instructor - fifty (50) dollars;
(5) Out-of-state cosmetologist - sixty (60) dollars; and
(6) Out-of-state cosmetology instructor – $100.

Section 5. The fee for the restoration of an expired license where the period of expiration does not exceed five (5) years from date of expiration, shall be as follows:
(1) Apprentice cosmetologist - seventy-five (75) dollars;
(2) Cosmetologist - seventy-five (75) dollars;
(3) Nail technician - seventy-five (75) dollars;
(4) Beauty salon - seventy-five (75) dollars;
(5) Nail salon - seventy-five (75) dollars; and
(6) Cosmetology school – $750.

Section 6. Miscellaneous fees shall be as follows:
(1) Demonstration permit/permits] for a guest artist[artists] - fifty (50) dollars;
(2) Certification of a license[licenses] - twenty (20) dollars;
(3) Duplicate license[license][licenses] - twenty-five (25) dollars;
(4) Reciprocity application – $100; and
(5) School manager change – $250[Inactive licenses for cosmetologist, nail technician and cosmetology instructors – twenty (20) dollars; and
(6) Continuing education provider application – $300.

BEA COLLINS, Chair
APPROVED BY AGENCY: July 9, 2013
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CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.
201 KAR 12:270. Threading practice.

RELATES TO: KRS 317A.010; 317A.050
STATUTORY AUTHORITY: KRS 317A.050
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.050 authorizes the board to promulgate administrative regulations regarding the practice of threading, the facilities in which the practice of threading may be performed, and applicable sanitation standards. This administrative regulation establishes the requirements for a threader permit, threading facility permit, and sanitation standards.

Section 1. (1) Each person who engages in the practice of threading shall obtain a threader permit from the board. The permit shall be renewed annually between July 1 and July 31 of each year.

(2) An applicant for a threader permit shall:
(a) Pay the requisite fee established by KRS 317A.050(14) or (19); and
(b) Complete the Threading Permit Application that includes the name, address, phone number, and email of the applicant.

(3) Each threader shall practice in a licensed salon or threading facility.

Section 2. (1) Each owner or operator of a kiosk or other stand-alone facility in which a person engages in the practice of threading shall obtain a threading facility permit from the board that shall be renewed annually between July 1 and July 31 of each year.

(2) An applicant for a threading facility permit shall:
(a) Pay the requisite fee established by KRS 317A.050(14) or (19); and
(b) Complete the Threading Establishment Application that includes the name, address, phone number, and email of the applicant.

(3) Each threading facility shall use permitted threaders in the facility.

(4) A threading facility that is not owned by a Kentucky licensed cosmetologist, esthetician, or threader shall appoint a manager who is licensed as a cosmetologist, esthetician, or threader.

Section 3. The board shall inspect any threading facility or salon in this state where threading is conducted.

Section 4. A threader or threading facility/Threads and threading facilities] shall comply with the sanitation requirements of KRS 317A.130, 201 KAR 12.100, and 201 KAR 12.101.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Threading Permit Application", February, 2013; and
(b) "Threading Establishment", November, 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, Chair
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CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

RELATES TO: KRS 150.175, 150.180, 150.280, 150.450, 150.485

STATUTORY AUTHORITY: KRS 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements under which live bait may be taken, transported, and sold relating to the taking of fish and wildlife including where the fish and wildlife may be taken. This administrative regulation establishes the conditions and provisions under which live bait may be taken, transported, and sold. It is necessary to protect the state's aquatic resources; to more clearly designate licenses needed to take and sell live bait, and to add a more effective method to take Asiatic Clam (Corbicula fluminea), a recently recognized live bait.

Section 1. Definitions. (1) "Asian carp" means:
(a) Bighead carp;
(b) Black carp;
(c) Grass carp; or
(d) Silver carp.
(2) "Live bait" means the condition the following organisms are in when taken, even though the organism may later be sold as a part no longer living:
(a) Live bait fishes;
(b) Crayfish;
(c) Salamanders;
(d) Frogs, except bullfrogs;
(e) Tadpoles;
(f) Native lampreys;
(g) Asiatic clams (Genus Corbicula); or
(h) Any aquatic invertebrate organism.
(3) "Live bait fishes" means rough fishes, except blackside dace, palezone shiner, relict darter, Cumberland darter, and tuxedo darter.

Section 2. Legal sources of live bait. (1) Live bait may be sold by a person possessing a valid:
(a) Live fish and bait dealer's license if the person purchases the live bait from a legal source as established in this section; or
(b) Commercial fishing license if the live bait is taken pursuant to the requirements of this section.
(2) Asiatic clams may be taken and sold as live bait by a person possessing a valid commercial musseling license.
(3) Live commercially harvested shad, herring, or Asian carp shall not be transported and sold as live bait.
(4) Dead shad, dead herring, dead Asian carp, or other live bait may be sold whole or in part, if taken pursuant to Section 3 of this administrative regulation.
(5) Legal sources of live bait shall include:
(a) Live bait hatched and reared in Kentucky by a person possessing a valid commercial fish propagation permit;
(b) Legal commercial live bait sources in states outside of Kentucky;
(c) A person selling Asiatic clams obtained from a legal brailing method, if the person possesses a valid commercial musseling license;
(d) A person selling Asiatic clams obtained by means of a tagged commercial bait rake pursuant to Section 3 of this administrative regulation, if the person possesses a valid commercial fishing license; or
(e) A person with a valid commercial fishing license who is selling dead shad, dead herring, dead Asian carp, or live bait, if taken pursuant to Section 3 of this administrative regulation.

Section 3. Legal methods of take. (1) A person shall not take live bait from any public waterway or water body for commercial purposes, except as established in this section.
(2) A person who holds a valid commercial fishing license may sell:
(a) Live bait that was taken with legally set commercial fishing gear;
(b) Dead shad and dead herring, if taken with a dip net of three feet or less or a cast net with a maximum diameter of twenty feet and possessing a maximum bar mesh of one (1) inch in the following bodies of water:
   1. Cumberland River below Barkley Dam;
   2. Kentucky River downstream of Lock Number Fourteen (14);
   3. Mississippi River;
   4. Ohio River; or
   5. Tennessee River;
   (c) Asiatic clams taken in legal commercial fishing waters pursuant to 301 KAR 1:150 with a tagged commercial live bait rake having the following specifications:
      1. A maximum width of twenty (20) inches;
      2. A maximum tine length of five (5) inches;
      3. A maximum distance in between tines of one (1) inch;
      4. A basket with a maximum:
         a. Width of twenty (20) inches;
         b. Length of ten (10) inches; and
         c. Height of eight (8) inches;
      5. A rigid handle with a maximum length of twenty (20) feet; and
      6. The rake does not contain a bridle that would allow dragging;
(3) Any mussel other than an Asiatic clam shall be returned to the water unharmed.
(4) A person shall not possess a commercial live bait rake in a boat that has a musseling trail aboard or attached to the boat.

Section 4. Other requirements. (1) A person, corporation, or other business entity transporting, selling, or possessing live bait for sale in Kentucky shall [is required to] hold a valid live fish and bait dealer's license and have in possession the license or exact copy thereof when transporting, selling, or holding live bait organisms in Kentucky.
(2) A live fish and bait dealer's license shall not be used in lieu of a fish propagation or transportation permit if these permits are also legally required.
(3) A person, corporation, or other business entity who transports live bait from one (1) state, through Kentucky, to another state without conducting any business in Kentucky shall not be required to have a live fish and bait dealer's license, but shall be required to have a valid Kentucky transportation permit.
(4) A person, corporation, or other business entity is not required to possess a live fish and bait dealer's license if selling live bait as food in establishments licensed by another state agency to sell resale or wholesale food products. [“Live bait” means minnows, shad, herring, crayfish, salamanders, all frogs, except bull frogs, all tadpoles, native lampreys, Corbicula and aquatic invertebrate organisms. Live bait refers to the condition of the animal when taken even though it may eventually be sold as a part no longer living.]

Section 2. Live bait may be sold by a licensed live fish and bait dealer if purchased from a recognized source as specified in this administrative regulation. Live bait can be sold by a licensed commercial fisherman if taken in accordance with this administrative regulation. Corbicula may be taken and sold as bait by a licensed mussel fisherman. The source of live bait is permitted if:
(1) The live bait is hatched and reared by a licensed propagator in standing private water (ponds or lakes) or commercial hatchery raceways within the boundaries of Kentucky.
entities who sell any of the organisms above mentioned for food in establishments licensed by another state agency to sell retail or wholesale food stuffs are not required to have a live fish and bait dealer license.

BENJY T. KINMAN, Deputy Commissioner
For DR. JONATHAN GASETT, Commissioner
ROBERT H. STEWART, Secretary
APPROVED BY AGENCY: August 7, 2013
FILED WITH LRC: August 12, 2013 at 4 p.m.
CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, October 8, 2013)

301 KAR 1:152. Asian Carp and Scaled Rough Fish Harvest Program.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990
STATUTORY AUTHORITY: KRS 150.025(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make those requirements apply to a limited area. This administrative regulation establishes the requirements for the department’s Asian carp harvest program.

Section 1. Definitions. (1) "Asian carp" means:
(a) Bighead carp;
(b) Black carp;
(c) Grass carp;
(d) Silver carp, bighead carp, black carp, or grass carp.
(2) "By-catch" means any fish that is not an Asian carp or scaled rough fish.
(3) "Program participant" means a commercial fisherman who is:
(a) Enrolled in the Asian Carp Harvest Program; and
(b) Fishing in restricted water.
(4) "Restricted water" means those areas, pursuant to 301 KAR 1:140, 1:150, and 1:155, where:
(a) Commercial fishing is prohibited; or
(b) Commercial fishing with gill or trammel nets is prohibited.
(5) "Scaled rough fish" means any scaled fish that is not an Asian carp or sport fish pursuant to 301 KAR 1:070.
(6) "Whip net set" means a gill or trammel net that is:
(a) Set to encircle and harvest Asian carp; and
(b) Always tended by a program participant while in the water.

Section 2. Qualifications. A commercial fisherman shall:
(1) Contact the department and request to be included in the program;
(2) Possess a valid Kentucky commercial fishing license;
(3) Have possessed a valid Kentucky commercial fishing license for at least three (3) consecutive years; and
(4) Have reported a harvest of at least 10,000 pounds of fish per year for a three (3) consecutive year period.

Section 3. Program Participant Requirements. A program participant shall:
(1) Obtain an agreement with a fish buyer to deliver a requested poundage of Asian carp;
(2) Call the department at 800-858-1549 at least forty-eight (48) hours in advance of the requested fishing date and provide the following information:
(a) The participant’s name;
(b) The fish buyer’s name and phone number;
(c) Date requested;
(d) The location in the restricted water to be fished; and
(e) The name or location of the boat ramp that will be used;
(2) Harvest a weight ratio of at least seventy-five (75) percent Asian carp to twenty-five (25) percent scaled rough fish over a one
(1) month period;
(3) (total) poundage of the Asian carp requested by the fish buyer.
(3) Only harvest Asian carp.
(4) Only fish:
(a) On dates approved by the department; and
(b) At a location approved by the department[; and
(c) When a department observer is present];
(4) Immediately notify the department if the participant changes
the:
(a) Fishing location in the restricted water body; or
(b) Boat ramp being used;
(5) Only use a whip net set with a minimum bar mesh size of
three and one-quarter (3.25) inches;
(6) Complete and submit to the department[Sign] a Daily
Harvest and Release Summary Card immediately after each day’s fishing;
(7) Be allowed to sell all harvested Asian carp and scaled
rough fish pursuant to Section 2 of this administrative regulation;
(8) Immediately release all by-catch;
(9) Report all harvest on a Monthly Report of Commercial Fish
Harvest form, pursuant to the requirements of 301 KAR 1:155; and
(10)(11) Harvest a weight ratio of at least seventy-five (75) percent Asian carp to twenty-five (25) percent scaled rough fish over a one
(1) month period; and
(11) Be suspended from the program:
(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in subsection (2)[(10)] of this section are not met; and
(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.

Section 4. Department Requirements. (1) The department shall:
(a) Maintain a list of program participants and their contact
information, which shall be:
1. Provided to known fish buyers; and
2. Updated at least weekly; and
(b) Review all restricted water fishing requests pursuant to the
requirements of Section 3 of this administrative regulation,[; and
(2) The department shall approve a qualified fishing request by
assigning:
(a) A department observer to each program participant;
(b) A fishing location and boat ramp to a program
participant[for a program participant and department observer],
except that no more than two (2) program participants shall be
assigned to the same one-half (1/2) mile section of water; and
(c) The time period when fishing may occur, not to exceed
three (3) consecutive day period.[; and
(3) A department observer shall:
(a) Contact the program participant for an arranged meeting
time and location;
(b) Be present during each approved fishing period by either:
1. Traveling in the participant’s boat, if allowed; or
2. Following the participant in a department boat;
(c) Monitor Asian carp harvest and release of by-catch during
each approved fishing period; and
(d) Complete a Daily Harvest and Release Summary Card.
(4) The department shall not approve a fishing request for the
following reasons:
(a) Higher than normal by-catch is likely to occur at that
location and time;
(b) Two (2) program participants have already been approved
for the same one-half (1/2) mile section of water at the same time; or
(c) A requested date falls on
1. Memorial Day;
2. Labor Day;
3. July 4; or
4. A Saturday or Sunday from April 1 through September 30;
or
(d) A department observer is unavailable on the requested
date].

Section 5. Program disqualification. A program participant
whose commercial fishing license becomes revoked or suspended
pursuant to 301 KAR 1:155 shall be disqualified from participating
in the Asian carp harvest program while that license is revoked or
suspended.

Section 6. Incorporation by Reference. (1) “Daily Harvest and
Release Summary Card”, 2011 Edition, is incorporated by
reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman’s Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, October 8, 2013)

301 KAR 2:049. Small game and fur bearer hunting and
trapping on public areas.

RELATES TO: KRS 150.010, 150.170, 150.370, 150.399,
150.400, 150.410, 150.990
STATUTORY AUTHORITY: KRS 150.025(1), 150.620
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply statewide or to a limited area. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes exceptions to statewide small game and furbearer regulations on public areas.

Section 1. Definitions. (1) “Adult” means a person who is at
least eighteen (18) years of age.
(2) “Upland bird” means a grouse or northern bobwhite.
(3) “Wildlife Management Area” or “WMA” means a tract of
land:
(a) Controlled by the department through ownership, lease,
license, or cooperative agreement; and
(b) That has “Wildlife Management Area” or “WMA” as part of
its official name.
(4) “Youth” means a person under the age of sixteen (16) by
the date of the hunt.

Section 2. This administrative regulation shall establish
exceptions to the statewide requirements established in 301 KAR
2:122, 2:251, and 3:010.

Section 3. On a Wildlife Management Area owned or managed
by the department:
(1) A person shall wear hunter orange clothing if a firearm is
allowed for deer hunting, as established in 301 KAR 2:172[3]
(2) The hunter orange clothing requirement in subsection (1) of this section shall not apply to a person hunting:
(a) Waterfowl;
(b) Raccoon or opossum at night;
(3) There shall be a free youth small game hunting week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may take small game without a hunting license; and
(4) There shall be a free youth trapping week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may trap without a trapping license.

Section 4. Exceptions on Specific Public Areas. (1) Barren River Wildlife Management Area.
(a) The WMA shall be considered to be entirely within the Eastern Zone, as established in 301 KAR 2:122.
(b) The area shall be closed to all hunting for four (4) consecutive days beginning on the third Friday in November except for archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.
(2) Beaver Creek WMA, including private inholdings.
(a) Grouse season shall be open from October 1 through December 31.
(b) Grouse season shall be open from October 1 through December 31.
(c) The area shall be closed to all other small game and furbearer hunting.
(3) Big South Fork National River and Recreation Area, McCreary County.
(a) Grouse season shall be open from October 1 through December 31.
(b) Northern bobwhite and rabbit seasons shall be closed after December 31.
(4) Cane Creek WMA, including private inholdings.
(a) Grouse season shall be open from October 1 through December 31.
(b) Northern bobwhite and rabbit seasons shall be closed after December 31.
(5) Cedar Creek Lake WMA.
(a) Grouse season shall be open from October 1 through December 31.
(b) Squirrel season shall coincide with the statewide season.
(c) The area shall be closed to all other small game and furbearer hunting.
(6) Clay WMA.
(a) The area shall be closed for four (4) consecutive days beginning on the first Friday in December to all hunting except for archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.
(b) Rabbit season shall be closed after December 31.
(c) Grouse and northern bobwhite hunting shall be restricted to quota hunt dates established in Section 5 of this administrative regulation.
(d) Pheasant may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.
1. Any person with a valid hunting license may take a pheasant.
2. The daily limit per hunter shall be three (3) birds of either sex.
(e) Quota fox hunting field trials.
1. There shall be a maximum of two (2) four (4) day events per calendar year.
2. Each event shall be limited to 250 participants.
3. The area shall be closed to nonparticipants.
4. A participant shall:
   a. Wear a laminated identification badge issued by the department during the event.
   b. Return the laminated badge at the close of the event.
(7) Curtis Gates Lloyd WMA.
(a) Northern bobwhite and rabbit seasons shall be closed after December 31.
(b) A person shall not allow a dog to be unleashed from April 1 until the third Saturday in August except if squirrel hunting.
(8) Dix River WMA.
(a) Northern bobwhite and rabbit seasons shall be closed after December 31.
(b) Grouse season shall be open from October 1 through December 31.
(c) Northern bobwhite and rabbit seasons shall be closed after December 31.
(9) Fleming WMA.
(a) Northern bobwhite and rabbit seasons shall be closed after December 31.
(b) Grouse season shall be open from October 1 through December 31.
10) Green River Lake WMA.
(a) The area shall be closed to all hunting for four (4) consecutive days beginning on the third Friday in November except for archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.
(b) Northern bobwhite and rabbit seasons shall be closed after December 31.
(c) Pheasant.
1. Beginning on the Tuesday following the pheasant quota hunt through December 31, any person with a valid hunting license may take a pheasant.
2. The daily limit per hunter shall be three (3) birds of either sex.
(d) The area shall be closed to grous hunting and trapping.
(11) Higgerson-Henry WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.
(12) Kiefer WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.
(13) Lake Cumberland WMA.
(a) Grouse season shall be open from October 1 through December 31.
(b) Northern bobwhite and rabbit seasons shall be closed after December 31.
(14) Mill Creek WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.
(15) Miller-Welch Central Kentucky WMA.
(a) Small game and furbearer hunting seasons shall be closed, except that squirrel season shall be open.
(b) A person shall not allow a dog to be unleashed:
1. From April 1 until the third Saturday in August.
2. On a Monday, Wednesday, or Friday during the remainder of the year, except:
   a. If a person is hunting squirrels during an open season; or
   b. If a person is participating in an authorized field trial.
(16) Mullin's WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.
(17) Nolin Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.
(18) Otter Creek Outdoor Recreation Area.
(a) Except as authorized by the department, a person shall not enter the area during a deer quota hunt without a valid quota hunt confirmation number.
(b) Northern bobwhite season shall be closed.
(c) Rabbit hunting season shall be from December 1 through December 31.
(d) Trapping season shall be from January 1 through the last day in February.
(e) A person who traps on the area shall:
1. First obtain prior authorization from the area manager; and
2. Only trap in department designated areas.
(f) Except during deer quota hunts, a person shall not use the following to take furbearers:
   1. A rifle;
   2. Ball ammunition; or
   3. Slug ammunition.
(g) A person shall not use a rimfire gun to take small game, except during a deer quota hunt.
(19) Paul Van Booven WMA. The area shall be closed to vehicle access from one (1) hour after sunset until one (1) hour before sunrise.
(20) Peabody WMA.
(a) Northern bobwhite hunting on the Sinclair Unit shall:
1. Have shooting hours between 7:30 a.m. and 3:00 p.m.; and
2. Be closed on Sunday.
(b) A northern bobwhite hunter on the Sinclair Unit shall:
1. Check in and check out at the Peabody WMA office; and
2. Visibly display a hunting log on the dashboard of the hunter’s vehicle.

(21) Pennyrile Forest WMA.
(a) Grouse season shall be open from December 1 through December 31.
(b) The daily limit shall be two (2).
(22) Pioneer Weapons WMA. A person shall not hunt with a breech-loading firearm.
(23) Robinson Forest WMA.
(a) Hunting shall not be permitted on the Main Block.
(b) The remainder of the WMA shall be open under statewide requirements.
(24) Taylorsville Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.
(25) Tradewater WMA.
(a) Grouse season shall be open from December 1 through December 31.
(b) The daily limit shall be two (2).
(26) West Kentucky WMA.
(a) A person shall check in daily at a designated check station prior to using an "A" tract.
(b) Northern bobwhite and rabbit seasons shall be closed after December 31 on Tracts 2, 3, 6, and 7.
(c) Northern bobwhite and rabbit seasons shall be open on Tracts 1, 4, 5, and "A" beginning one-half (1/2) hour before sunrise until 1:00 p.m. local time from January 1 through January 10, except if harvest limits are reached prior to January 10;
1. A hunter shall report harvest numbers and total hours hunted to the area supervisor on a daily basis.
2. If a tract is closed prior to January 10, a sign indicating closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.
(d) A person shall not:
1. Use a rifle, ball, or slug ammunition;
2. Operate a vehicle on Tract 6 from February 1 through April 16; or
3. Allow a dog to be unleashed from April 1 until the third Saturday in August, except while squirrel hunting.
(27) Yellowbank WMA.
(a) Northern bobwhite and rabbit seasons shall be closed after December 31.
(b) Pheasant may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.
(c) A person shall:
1. Possess a valid hunting license to take pheasant, unless exempt pursuant to KRS 150.170; and
2. Not take more than three (3) pheasants of either sex.

Section 5. Pheasant Quota Hunts. (1) There shall be a pheasant quota hunt on:
(a) Green River Wildlife Management Area for three (3) consecutive days beginning the third Friday in November.
(b) Clay Wildlife Management Area for three (3) consecutive days beginning the first Friday in December.
(c) Yellowbank Wildlife Management Area for three (3) consecutive days beginning on the second Friday in December.
(2) There shall be a one (1) day clean-up hunt immediately following each of the hunts for pheasant quota hunters drawn for that particular WMA.
(3) Hunt hours for each day shall be from 9:00 a.m. to 4:00 p.m.:
(a) Eastern time for the Green River Wildlife Management Area and Clay Wildlife Management Area hunts; and
(b) Central time for the Yellowbank Wildlife Management Area hunt.
(4) During a quota hunt or clean-up hunt, a person shall wear orange clothing as specified in 301 KAR 2:172.
(5) The daily bag limit per hunter shall be two (2) birds of either sex, except there shall be a daily bag limit of three (3) birds of either sex during the one (1) day clean-up hunt.
(6) Pheasant quota hunt procedures.
(a) A person selected for a pheasant quota hunt may hunt on the one (1) day clean-up hunt for that area.
(b) A person applying for a pheasant quota hunt shall:
1. Not apply more than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and
2. Not apply as a group of more than five (5) people.
(c) A person who is drawn to hunt shall pay the pheasant quota hunt permit fee established in 301 KAR 3:022, prior to the hunt.

Section 6. Northern Bobwhite and Upland Bird Quota Hunts. (1) There shall be one (1) day northern bobwhite quota hunts on one (1) tract of Peabody WMA on the following days:
(a) The fourth Saturday in November, which shall only be a youth-mentor hunt;
(b) The Tuesday following the fourth Saturday in November;
(c) The Tuesday following the third Saturday in December;
(d) The first Saturday in January;
(e) The second Saturday in January; and
(f) The Tuesday following the third Saturday in January.
(2) There shall be one (1) day upland bird quota hunts on Clay WMA on the following days:
(a) On the Wednesday following the first Saturday in November;
(b) The third Sunday in November;
(c) The second Sunday in December; and
(d) The third Tuesday in December.
(3) A person participating in a quota hunt shall:
(a) Only hunt from one-half (1/2) hour before sunrise to 2:00 p.m.:
(b) Wear hunter orange clothing pursuant to 301 KAR 2:172; and
(c) Not take more than four (4) northern bobwhite on a daily basis.
(4) A person who participates in an upland bird quota hunt:
(a) Shall not take more than four (4) grouse daily; and
(b) May take woodcock pursuant to the requirements established in 301 KAR 2:225.
(5) A person applying for a northern bobwhite or upland bird quota hunt shall:
(a) Not apply more than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and
(b) Not apply as a group of more than three (3) people.
(6) A person selected for a quota hunt shall only hunt the species identified on the permit.

Section 7. General Quota Hunt Requirements. (1) A person applying for a pheasant, northern bobwhite, or upland bird quota hunt shall:
(a) Call the toll-free number listed in the current Fall Hunting and Trapping Guide from a touch tone phone between September 1 and September 30;
(b) Enter each applicant’s Social Security number;
(c) Indicate a choice of days to hunt; and
(d) Pay a three (3) dollar application fee for each applicant prior to the drawing by:
1. Check;
2. Money order;
3. Visa; or
4. MasterCard.
(2) A person, prior to participating in a quota hunt, shall be required to show:
(a) A department-issued quota hunt permit;
(b) A valid Kentucky hunting license or proof of exemption; and
(c) A hunter education card, if required.
(3) A person or group participating in a northern bobwhite or upland bird quota hunt shall submit a hunting log within seven (7) days after the hunt.
(4) A youth-mentor quota hunt party shall have a minimum of one (1) youth as a member of the party.
(5) A person shall comply with all quota hunt requirements or be ineligible to apply for any other quota hunt during the following year, except for an elk quota hunt.
(6) A youth shall only apply as part of a party that has at least one (1) adult.
(7) The department may extend the application deadline if
technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(8) A quota hunt applicant who is not selected and applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(9) A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(10) A person shall forfeit all accumulated points if, in a given year, the person does not apply for the hunt in which points were earned.

Section 8. Dog Training Areas on Wildlife Management Areas.

(1) A club or group may request that a dedicated dog training area be authorized by the department on a specific WMA.

(2) The department shall authorize a dog training area if:

(a) The department approves a suitable location for the dog training area; and

(b) A signed memorandum of understanding is entered into with the club or group.

(3) The following conditions shall apply for each dog training area on a WMA:

(a) All northern bobwhite quail to be used in training shall be banded with aluminum leg bands and individually placed in the dog training area;

(b) Dog training areas shall remain open to all other legal WMA uses;

(c) A person shall comply with all dog training area requirements pursuant to 301 KAR 2:041, unless otherwise stated in the memorandum of understanding;

(d) Unleashed dogs shall be allowed within the boundaries of the dog training area year-round, except for the following days:

1. May 15 through August 15;
2. Youth statewide turkey season; and
3. Statewide waterfowl season.

(e) Released northern bobwhite quail with aluminum leg bands, chukar, pheasant or pigeons may be harvested on legal dog training days; and

(f) Immediately prior to dog training, a person shall:
1. Walk and examine the entire dog training area to ensure that no wild northern bobwhite quail are present; and
2. Place released birds in the training area.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner

BOBET R. STEWART, Secretary

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Section 4. Shooting Hours. A person shall not take a migratory game bird except during the times established in this section. (1) If hunting dove on WMA land, a person shall hunt:
(a) Between 11 a.m. and sunset during the September and October portion of the season, as established in Section 2 of this administrative regulation; and
(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.
(2) If hunting dove on private land, a person shall hunt:
(a) Between 11 a.m. and sunset on September 1; and
(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.
(3) Other species listed in this administrative regulation shall be taken between one-half (1/2) hour before sunrise and sunset.

Section 5. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:
(1) Longer than three and one-half (3 1/2) inches; or
(2) Containing:
(a) Lead shot;
(b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21;
(c) Shot larger than size "T".

Section 6. Hunter Orange. A person shall be exempt from hunter orange requirements pursuant to 301 KAR 2:132 and 2:172 if:
(1) Hunting waterfowl or doves; or
(2) Accompanying a person hunting waterfowl or doves.

Section 7. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) A person shall not:
(a) Hunt wood duck or teal on an area closed to waterfowl hunting as established in 301 KAR 2:222;
(b) Hunt in an area marked by a sign as closed to hunting; or
(c) Enter an area marked by a sign as closed to the public.
(2) A person hunting dove on any of the following areas shall only use or possess nontoxic shot approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21:
(a) Ballard WMA;
(b) Boatwright WMA;
(c) Doug Travis WMA;
(d) Duck Island WMA;
(e) Kaler Bottoms WMA;
(f) Kentucky River WMA;
(g) Ohio River Islands WMA;
(h) Sloughs WMA;
(i) South Shore WMA;
(j) Yatesville Lake WMA; and
(k) A WMA wetland management unit that is posted by sign.
(3) At Ballard WMA, a person shall not hunt:
(a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or
(b) Woodcock.
(4) In the Swan Lake Unit of Boatwright WMA, a person shall not hunt:
(a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or
(b) Woodcock.
(5) At Miller Welch - Central Kentucky WMA, a person shall not hunt:
(a) Dove or snipe after October 13; or
(b) Woodcock.
(6) At Grayson Lake WMA, a person shall not hunt:
(a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;
(b) On Deer Creek Fork; or
(c) On Camp Webb property or the state park, except for youths drawn for any department quota dove hunt on Camp Webb property (the quota dove hunt on Camp Webb property on the first Saturday in September).
(7) At Land Between the Lakes National Recreation Area, a person shall not hunt a migratory game bird between the last Saturday in September and November 30.
(8) At West Kentucky WMA, a person shall not hunt Canada geese during the September season.
(9) At Yatesville Lake, the following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:
(a) The Greenbrier Creek embayment; and
(b) The lake area north of the mouth of the Greenbrier Creek embayment to the dam, including the island.
(10) At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
ROBERT H. STEWART, Secretary
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ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, October 8, 2013)

405 KAR 8:010. General provisions for permits.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 and 350.465 require the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation establishes provisions[provides] for permits to conduct these operations, including[—The administrative regulation provides] when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of the permits, review of outstanding permits, revisions of permits, amendments, renewals, transfers, assignments, sales of permit rights, administrative and judicial review, and procedures relating to improvidently issued permits.

Section 1. Applicability. Excluding coal exploration operations, this administrative regulation shall apply to applications, actions
Section 2. General Requirements. (1) Permanent program permits required. A person shall not engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit pursuant to 405 KAR Chapter 8:050(a)(2) for the area to be affected by the operations.

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations shall file a complete and accurate application for a permanent program permit that shall comply fully with applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, and shall not begin the operations until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit pursuant to 405 KAR Chapter 8:050(a) Section 21 of this administrative regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted pursuant to 405 KAR Chapter 8:050(a) prior permanent program permits.

1. An application for the transfer, sale, or assignment of rights granted pursuant to 405 KAR Chapter 8:050(a) a permit may be submitted.

2. The actual transfer, sale, or assignment of permit rights shall not take place until written permission has been granted by the cabinet.

(e) Amendment of permanent program permits. A permittee may apply for an amendment to a permit pursuant to 405 KAR Chapter 8:050(a) Section 23 of this administrative regulation, but shall not begin surface coal mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

(3) Compliance with permits. A person engaging in surface coal mining and reclamation operations pursuant to 405 KAR Chapter 8:050(a) a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet and the applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by KRS and 405 KAR:


(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as established in Section 8(6) and (7) of this administrative regulation and, if necessary, by any other measures, the cabinet and interested parties deemed appropriate.

Section 4. Preliminary Requirements. (1) A person desiring a permit shall submit to the cabinet a Preliminary Application, MPA-00.

(2) The Preliminary Application shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area and adjacent areas; and the areas of land to be affected, including, for example, locations of the coal seam or seams to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds.

(a) Areas delineated on the map shall be physically marked at the site; and

(b) Pursuant to KRS Chapter 350 and 405 KAR Chapters 7 – 24, personnel of the cabinet shall conduct, within fifteen (15) working days after the filing of the Preliminary Application, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state, or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. (1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form, and content required by the cabinet, in accordance with KRS 350.060(5) and (6), including a copy to be filed for public inspection under Section 8(8) of this administrative regulation.

(b) The application and copies shall be prepared, assembled, and submitted in the number, form and manner prescribed by the cabinet for the area to be affected by the operations.

(2) General filing requirements for permanent program permit applications.

(a) A person engaging in surface coal mining and reclamation operations pursuant to 405 KAR Chapter 8:050(a), and who is not the owner of a mining permit, may apply for an amendment to a permit pursuant to 405 KAR Chapter 8:050(a).

(b) Pursuant to 405 KAR Chapter 8:050(a), an application for an amendment to a permit shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.

(d) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.

(e) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.

(f) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.

(g) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.

(h) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.

(i) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.

(j) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.

(k) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.

(l) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.

(m) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.

(n) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.

(o) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.

(p) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.

(q) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.

(r) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.

(s) Pursuant to 405 KAR Chapter 8:050(a), an amendment to a permit may be submitted at any time after which the person may submit a permit application.
be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

(a) Names of persons or organizations [that][which] collected and analyzed the data;
(b) Dates of the collection and analyses; and
(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address, and position of officials of each private or academic research organization or governmental agency that provided information that has been made a part of the application regarding land uses; soils; geology; vegetation; fish and wildlife; water quantity and quality; air quality; and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either himself or some other person who will serve as agent for service of notices and orders.

1. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number.

2. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may authorize a person to submit application modifications to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the applicant.

(6) General requirements for maps and plans.

(a) If [any of the] Information marked on the preliminary map required pursuant to [subsection] Section 4 of this administrative regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this administrative regulation.

(b)1. Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series.

2. Maps of the permit area and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map.

3. A map of scale larger than 400 feet to the inch shall be provided by the applicant if the cabinet determines the larger scaled map is needed to adequately show mine site details.

4. The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) If a map or drawing is required to be certified by a qualified professional engineer, as defined by KRS 322.010(3), the map or drawing shall bear the seal and signature of the engineer as required by KRS 322.340, and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with an application shall be prepared by or under the direction of a qualified professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS 322.340 and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by the fees established in this administrative regulation. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing the permit.

(2) An applicant shall submit an application fee of $2,500 for an original application or $1,750 for an amendment.

(3) An applicant shall also submit an additional seventy-five (75) dollars for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. An acreage fee shall not be required for surface areas overlying underground or auger workings that will not be affected by surface operations and facilities.

(4) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. A permit application shall not be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or his authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation as established in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after the date the:

1. [The date the] Application is submitted to the cabinet; or

2. [The date the] Applicant receives the notification from the cabinet pursuant to [subsection] Section 13(2) of this administrative regulation that the application has been deemed administratively complete and ready for technical review.

(b) The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

(c) The final consecutive weekly advertisement shall clearly state that it is the final advertisement, and that written objections to the application shall may be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices. [satisfactory to the cabinet] In accordance with this section that shall consist of an affidavit from the publishing newspaper certifying the dates, place, and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be as established of a form specified in subsection (5) of this section.

(5) The advertisement shall contain, at a minimum, the following information:

(a) The name and business address of the applicant;
(b) A map or description that shall:
1. Clearly show or describe towns, rivers, streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;
2. Clearly show or describe the exact location and boundaries of the proposed permit area;
3. State the name of the U.S. Geological Survey 7.5 minute quadrangle map that contains the area shown or described; and
4. Show the north arrow and map scale, if a map is used.
(c) The location where a copy of the application is available for public inspection pursuant to [subsection] subsection (8) of this section;
(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted pursuant to Section 9 of 405 KAR 24:040, Sections 9, 10, and 11 of this administrative regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except if public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 7:060, Section 2(6); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

(f) A statement, if the application includes a request for an experimental practice pursuant to Section 7:060, indicating that an experimental practice is requested that identifies the regulatory requirement for which a variance is requested; and

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted pursuant to Section 9 of this administrative regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including:
   1. Planning agencies;
   2. Sewage or water treatment authorities; and
   3. Water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas;

(b) All federal and Kentucky governmental agencies that have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operations and that are a part of the permit coordination process required by Section 3 of this administrative regulation; and

(c) Those agencies with an interest in the particular proposed operation including:
   1. The USDA Soil Conservation Service State Conservationist;
   2. The local U.S. Army Corps of Engineers district engineer;
   3. The National Park Service;
   4. Kentucky and federal fish and wildlife agencies; and
   5. The state historic preservation officer.

(8) In accordance with Section 12 of this administrative regulation, the cabinet shall, upon receipt of the application:

(a) Make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed; and

(b) Provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided pursuant to Section 8(6) and (7) of this administrative regulation with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) These comments or objections shall be submitted to the cabinet within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this administrative regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection pursuant to Section 8(8) of this administrative regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified pursuant to Section 8 of this administrative regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this administrative regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection pursuant to Section 8(8) of this administrative regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state, or local government agency or authority to be notified pursuant to Section 8 of this administrative regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the person requesting at the conference;

(b) State if the person requesting desires to have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the cabinet pursuant to Section 8(1) of this administrative regulation.

(2) If a permit conference has been requested in accordance with subsection (1) of this section, then the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section.

(3) The conference shall be conducted according to the following:

(a) If requested pursuant to subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, pursuant to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a person requesting the conference in a reasonable time prior to the conference, the cabinet may arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(d) The requirements of 405 KAR 7:091 and 7:092 shall not apply to the conduct of the conference.

1. The conference shall be conducted by a representative of the cabinet, who shall have authority to accept oral or written statements and any other relevant information from any party to the conference.

2. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties.

3. The record shall be maintained and accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

(4) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference shall not be held.

(5) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required pursuant to 405 KAR 24:040, Section 2(6) on proposed
relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet. (1) General availability.
   (a) The cabinet shall make an application for a permit, revision, amendment, or renewal of a permit or an application for transfer, assignment, or sale of permit rights available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur. The application shall be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempted from disclosure pursuant to KAR subsection (3) of this section.
   (b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.
   (c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office upon the changes being submitted to the Division of Mine Permits.

(2) Information pertaining to coal seams, test borings, core samples, and soil samples in applications shall be made available for inspection and copying to any person with an interest that is or may be adversely affected.

(3) Confidentiality.
   (a) The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information.
   (b) Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application.
   (c) If a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:092, Section 9.

(d) Confidential information shall be limited to the following:
   1. Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal that are potentially toxic in the environment; and
   2. Information on the nature and location of archaeological resources on public land and Indian land as required pursuant to 36 U.S.C. 470aa - mm.

   (a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this administrative regulation, concerning approval of, requiring modification of, or concerning rejection of the application.
   (b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

   (2)(a) Administrative completeness determination.
   1. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application.
   2. If the application is incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies that render the application incomplete.
   3. The applicant shall submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incompleteness.
   4. If, after ten (10) working days, the cabinet determines that the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.
   (b) An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied. A determination that an application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application. Within the time periods established (set forth in) Section 16 of this administrative regulation, the cabinet shall either notify the applicant:
   (a) Notify the applicant of the cabinet's decision to issue or deny the application; or
   (b) Notify the applicant in writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) Review of violations.
   (a) The cabinet shall not issue a permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, 30 U.S.C. 1201 - 1238 and 30 C.F.R. 700 - 955, KRS Chapter 350 and 405 KAR Chapters 7 - 24, any other state's laws or administrative regulations pursuant to SMCRA, or any other law, rule, or administrative regulation referred to in this subsection. The denial of the application shall be based on available information concerning:
      1. Failure-to-abate cessation orders issued by OSM, Kentucky, or any other state;
      2. Unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state;
      3. Delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and 405 KAR Chapters 7 - 24, any other state's laws or administrative regulations pursuant to SMCRA; or
      4. Bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected;
      5. Delinquent abandoned mine reclamation fees; and
      6. Unabated violations of federal, Kentucky, and any other state's laws, rules and administrative regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation.

   (b) In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and administrative regulations pursuant to SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except if evidence to the contrary is established (set forth in) Section 16 of this section, the cabinet shall either:
      1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or
      2. Establish for the cabinet that the applicant, or any person who owns or controls the applicant, before issuance of the permit, to either:
         a. Set forth in the permit application, or if the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.
      c. If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:
         a. Set forth in the permit application, or if the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.

(5) Review of violations. (a) The cabinet shall either:
      1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or
      2. Establish for the cabinet that the applicant, or any person who owns or controls the applicant, before issuance of the permit, to either:
         a. Set forth in the permit application, or if the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.
      c. If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:
         a. Set forth in the permit application, or if the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.

(6) Review of violations. (a) The cabinet shall either:
      1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or
      2. Establish for the cabinet that the applicant, or any person who owns or controls the applicant, before issuance of the permit, to either:
         a. Set forth in the permit application, or if the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.
      c. If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:
         a. Set forth in the permit application, or if the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.

(7) Review of violations. (a) The cabinet shall either:
      1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or
      2. Establish for the cabinet that the applicant, or any person who owns or controls the applicant, before issuance of the permit, to either:
         a. Set forth in the permit application, or if the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.
      c. If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:
         a. Set forth in the permit application, or if the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.
outcome of an appeal described in paragraph (a)2 of this subsection, shall be conditionally issued.

(6) The cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and 405 KAR Chapters 7 - 24 of a nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or administrative regulations, a permit shall not be issued. Before a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:092, Section 8.

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new information submitted under 405 KAR 8:030, Sections 2(11) and 3(4), or 405 KAR 8:040, Sections 2(11) and 3(4).

Section 14. Criteria for Application Approval or Denial. An[Ne] application for a permit, revision (as applicable), or amendment of a permit shall not be approved unless the application affirmatively demonstrates that the cabinet finds, in writing, on the basis of information established in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and accurate and in compliance with all requirements of KRS Chapters 350 and 405 KAR Chapters 7 through 24.

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished in accordance with the mining and reclamation plan contained in the application;

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed pursuant to the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area;

(4) The proposed permit area is:
   (a) Not included within an area designated unsuitable for surface coal mining operations under 405 KAR 24:030;
   (b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;
   (c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2) or (3);
   (d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and
   (e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040, Section 2(5);

(5) The proposed operations will not adversely affect any publicly-owned parks or any places included on the National Register of Historic Places, except as provided for in 405 KAR 24:040, Section 2(4); and

(6) The cabinet has taken into account the effect of the proposed operations on properties listed and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that no additional protection measures are necessary;

(7) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required pursuant to 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2); and

(8) With regard to current violations, the applicant has either:
   (a) Submitted the proof required by Section 13(4)(a) of this administrative regulation, or
   (b) Made the demonstration required by Section 13(4)(b) of this administrative regulation;

(9) The applicant has paid all reclamation fees from previous and existing operations as required by 30 C.F.R. 870, or has entered into a payment schedule approved by OSM. If the applicant has entered into a payment schedule approved by OSM, a permit may be issued only if it includes a condition that the permittee comply with the approved payment schedule;

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR Chapters 16 and 18;

(11) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use plan;

(12) The applicant may reasonably be expected to submit the performance bond or other equivalent guarantee required pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531-1544); and

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3;

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining;

(15) The cabinet has made all specific approvals required pursuant to 405 KAR Chapters 16 through 20;

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531-1544).

(17) The applicant has not forfeited any bond pursuant to KRS Chapter 350. If the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land;

(18) The applicant has not had a permit revoked, suspended, or terminated pursuant to KRS Chapter 350. If the applicant has had a permit revoked, suspended, or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her;

(19) The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property; and

(20) The surface coal mining operation will not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as established by the cabinet that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her;

(21) For a proposed remining operation that the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7, or 405 KAR 18:190, Section 5, the applicant has demonstrated to the satisfaction of the cabinet that the site of the operation will be a previously mined area as defined in those sections.
Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. An application for a permit, revision, or amendment that proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall not be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information established set forth in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The cabinet shall take action on applications within the following time periods as appropriate:

(a) Except as provided for in paragraph (b) of this subsection, for a complete and accurate application submitted pursuant to Section 2(2)(a), (b), (d), and (e) of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

(b) Except as provided in paragraph (b) of this subsection, for a complete and accurate application submitted pursuant to Section 2(2)(c) of this administrative regulation of a major revision as provided in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

(c) For a complete and accurate application submitted under Section 2(2)(c) of this administrative regulation for a minor revision as provided in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application, the timeframes for review shall be as follows:

(i) Fifteen (15) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation;

(ii) Thirty (30) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation for minor revisions that require full cost bonding calculations.

(b) Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the fifteen (15) working-day period available to the department within fifteen (15) working days after the notice of administrative completeness under Section 13(2) of this administrative regulation. Periods of temporary withdrawal under Section 13(3)(b) of this administrative regulation shall not be counted against the fifteen (15) working-day period available to the cabinet.

(c) If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time periods established set forth in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing, and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities:

(a) The applicant;

(b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county and the chief executive officer of any municipality in which the permit area lies.

This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

(e) The regional office manager of the Division of Mine Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet decides to approve the application, it shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of its decision in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet, pursuant to KRS 350.060(1)(a), only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions pursuant to KRS 350.060(16) of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall have commenced surface mining operations if construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet pursuant to this subsection shall be specifically established set forth in the permit, and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this administrative regulation; 405 KAR 7:060, Section 3; 405 KAR 8:050, Sections 4, 6, and 7; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall constitute knowledge and acceptance of the conditions established set forth in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter if the conditions have or have not been established set forth in the permit.

(1) General. The following general conditions shall apply to a permit issued by the cabinet:

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24;

(b) The permittee shall conduct all surface coal mining and reclamation operations as established described in the approved application, except to the extent that the cabinet otherwise directs in the permit that specific actions be taken; and

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted pursuant to 405 KAR 405
KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit, and that are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to:

(i) Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

(ii) Be accompanied by private persons for the purpose of conducting a federal inspection if the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including:

(i) Accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

(ii) Immediate implementation of measures necessary to comply; and

(iii) Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and that prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

(i) In accordance with any measures established[specified] in the permit as necessary to prevent significant, imminent environmental harm that may affect the health or safety of the public; and

(ii) Utilizing any methods established[specified] in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 C.F.R. 870 for coal produced pursuant to[under] the permit for sale, transfer, or use, in the manner required by that subchapter.

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted pursuant to[under] the permit or after an order for cessation and immediate compliance is issued pursuant to[under] 405 KAR 12:020, Section 3, for operations conducted pursuant to[under] the permit, except if a stay of the order is granted and remains in effect, the permittee shall either notify the cabinet in writing that there has not been[been no] change since the immediately preceding submittal of the information or submit to the cabinet the following information, current to the date the order was issued:

(a) Any new information needed to correct or update the information previously submitted to the cabinet by the permittee pursuant to[under] 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3); or

(b) If not previously submitted, the information required from a permit applicant by 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3).

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued pursuant to 405 KAR Chapter 8[under this chapter] during the term of the permit.

(i) This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7.

(ii) Issued permits shall be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) [After the review required by subsection (1) of this section, or at any time] The cabinet may, by order, require revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:092, Section 8.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations established[described] in the existing application and approved pursuant to[under] the current permit.

(b) If a revision is required by an order issued pursuant to[under] Section 19(4) of this administrative regulation;

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued;

(d) As otherwise required pursuant to[under] 405 KAR Chapters 7 through 24.

(2) Major revisions.

(a) Except as provided in subsections (3)(f) and (6) of this section, a revision shall be deemed a major revision if the proposed change is of such scope and nature that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest that may be adversely affected by the proposed change. Major revisions shall include:

1. A change in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. A variance to approximate original contour requirements;

4. Construction or relocation of a road, if the construction or relocation could adversely affect the interests of persons other than the surface owner;

5. A change that may adversely affect significant fish and wildlife habitats or endangered species;

6. A proposed experimental practice;

7. A change that may cause a major impact on the hydrologic balance;

8. An incidental boundary revision that affects a new watershed; and

9. An incidental boundary revision that includes a diversion of a perennial stream.

(b) A major revision shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this administrative regulation; and shall be submitted on forms prescribed by the cabinet pursuant to KRS Chapter 350 and 405 KAR Chapters 7 - 24. In addition to the requirements of Section 8(5) of this administrative regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) A revision that is not determined by the cabinet under subsection (2) of this section to be a major revision, or that is not an operator change revision under subsection (6) of this section, shall be a minor revision and shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this administrative regulation, except that a minor field revision described in paragraph (d) of this subsection shall not be subject to the
administrative completeness determination of Section 13(2) of this administrative regulation, and the time frame for review in Section 16(1) of this administrative regulation shall begin at the time of application submittal.

(b) If [the cabinet determines that] a proposed minor revision is actually a major revision pursuant to [during the administrative completeness determination] Section 13 of this administrative regulation, the cabinet shall so inform the applicant and return the application.

(c) The cabinet shall notify, in writing, those persons that [the cabinet determines] could have an interest or may be adversely affected by the proposed change. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(d) A minor field revision shall be reviewed and processed in accordance with this section by the appropriate regional office of the department. The following shall be a minor field revision, unless the number of persons that potentially could have an interest or may be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine that the proposed revision is a major revision and it shall not be processed pursuant to [under this paragraph].

1. Proposals for minor relocation of underground mine entries if:
   a. There are no structures or renewable resource lands [pursuant to [under paragraph (b) of the definition in 405 KAR 8:001(103) "renewable resource lands"] overlying the area;
   b. There is no proposed change to the permit boundary; and
   c. The proposed new location is on the same face-up area and coal seam as originally permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

2. A proposal for retention of a concrete platform or a small building if:
   a. There is no proposed change to the previously approved postmining land use; and
   b. The application contains a notarized letter from the surface owner requesting retention of the structure;

3. A proposal to leave roads as permanent, except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining pursuant to 405 KAR 24:040. Section 2, regardless of if a previous waiver or approval has been granted. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator does not have responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.

4. A proposal to increase the diameter of a culvert used as a road crossdrain, not including a culvert used for a stream crossing, if the proposed culvert is the same type of pipe as the previously approved culvert;

5. A proposal to install an additional culvert used as a road crossdrain (not including a culvert used for a stream crossing), if the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and if it is the same type of pipe as the nearest downstream crossdrain;

6. A proposal for a minor relocation of an on-bench sediment control structure (dugouts only) in order to locate the structure at a low spot on the same bench on which initially proposed, if:
   a. The drainage area to the structure shall remain the same as the original design;
   b. The proposed location shall not cause short-circuiting of the structure; and
   c. There is no proposed change to the permit boundary;

7. A proposal to retain diversions of overland flow (not including stream diversions) as permanent facilities if:
   a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversion; and
   b. The diversion has previously been designed to the standards for permanent diversions;

8. A proposal for relocation of topsoil storage areas if:
   a. There is no proposed change to the permit boundary; and
   b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

9. A proposal to substitute a plant species if:
   a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;
   b. The proposed species will serve the equivalent function of the original species with respect to the previously approved reclamation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and
   c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted;

10. A proposal to utilize hydroseeding for trees instead of planting trees or tree seedlings if:
    a. Hydroseeding is an appropriate method for the tree species being established; and
    b. [No] change in tree species is not involved unless concurrently approved pursuant to [under subparagraph 9 of this paragraph];

11. A proposal to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed;

12. A proposal to retain small depressions in the reclaimed area;

13. A proposal required by the cabinet to increase frequency of air blast monitoring;

14. A proposal required by the cabinet to increase frequency of air pollution monitoring;

15. A proposal to employ more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls;

16. A proposal to add a portable coal crusher if:
   a. The crusher and associated conveying equipment are a completely portable, trailer mounted unit;
   b. The equipment shall be utilized to crush coal only from the permit area on which it is proposed to be located;
   c. The operation shall not generate coal mine waste;
   d. There is no proposed change to the permit boundary; and
   e. The equipment shall always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there shall be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds;

17. A proposal to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated;

18. A proposal to relocate an explosive storage area within the existing permit area in accordance with 27 C.F.R. 555.206, 555.218, 555.219, and 555.220, and 30 C.F.R. 77.1301(c);

19. Approval for minor relocation of a support facility such as a conveyor, hopper, and a coal stockpile if:
   a. There is no proposed change to the permit boundary; and
   b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

20. A proposal for a modification of a shared facility if that modification has already been approved in a revision for one (1) of the permitees by the Division of Mine Permits and no additional performance bond was required for the initial revision;

21. A proposal to add a hopper to a permitted area if:
   a. There is no proposed change to the permit boundary; and
   b. The proposed location was previously permitted as a
22. A proposal to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills;
23. A proposal to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 - 24.
24. A proposal for an incidental boundary revision for a minor off-permit disturbance if:
   a. The total acreage of the minor off-permit disturbance is no more than one (1) acre combined per proposal;
   b. The cumulative acreage limitation in subsection (5) of this section is not exceeded;
   c. The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish or wildlife, an area that may contain threatened or endangered species, or an area designated as unsuitable for mining pursuant to 405 KAR Chapter 24;
   d. The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;
   e. There is no structure such as an excess spoil disposal fill, a coal mine waste disposal fill or impoundment, or a water impoundment involved;
   f. The surface owner of the area to be permitted is a surface owner of a disturbed area pursuant to the existing permit; and
   g. An additional performance bond in the amount of $5,000 has been filed by the permittee.
25. Except as provided in clauses a. through e. of this subparagraph, a proposal to remove a sedimentation pond previously approved as a permanent impoundment if the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. A proposal to remove a sedimentation pond shall not be processed as a minor field revision if the:
   a. Structure has a hazard classification of B or C;
   b. Impoundment is a developed water resource land use;
   c. Removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;
   d. Impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland if no other nearby source of water is available to the livestock); or
   e. Impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values;
26. A proposal to approve an exemption from the requirement to pass drainage through a sedimentation pond for a disturbed area that, due to unexpected field conditions, will not drain to an approved sedimentation pond if:
   a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;
   b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;
   c. The disturbed area is one (1) acre or less;
   d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes, and establishment of a quick growing temporary vegetative cover;
   e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and
   f. The application contains a MRP map certified by a professional engineer showing the location of the disturbed area and the drainage area clearly; and
27. A proposal to use the Reclamation Advisory Memorandum #124 reclamation practice on sites where the permittee is required to establish trees and shrubs as part of the approved reclamation plan if there is a letter of consent from the property owner.
28. Proposed minor revisions that only seek to change the engineering design of impoundments and diversions of overland flow if no change in permit boundary is involved shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation.
   1. Within ten (10) days the cabinet shall process the application and provide a written notice stating the application has been determined to be subject to this paragraph and is being forwarded to technical review.
   2. The time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of this notice.
   (f) An incidental boundary revision shall be deemed a minor revision if it:
      1. Does not exceed ten (10) percent of the relevant surface or underground acreage in the original or amended permit area;
      2. Is contiguous to the current permit area;
      3. Is within the same watershed as the current permit area;
      4. Is required for an orderly continuation of the mining operation;
      5. Involves mining of the same coal seam or seams as in the current permit;
      6. Involves only lands for which the hydrologic and geologic data and the probable hydrologic consequences determination in the current permit are applicable;
      7. Does not involve a property on which mining is prohibited pursuant to KRS 350.085 and 405 KAR 24:040, unless a waiver has been obtained, or that has been designated as unsuitable for mining pursuant to KRS 350.085 and 405 KAR 24:030, or is a property eligible for listing on the National Register of Historic Places;
      8. Does not involve any of the categories of mining in 405 KAR 7:060 and 405 KAR 8:050 unless the current permit already includes the relevant category;
      9. Does not constitute a change in the current method of mining; and
   (g) Shall be reclaimed in conformity with the current reclamation plan.
   (4) An extension to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved pursuant to this section.
   (5) Size limitations for incidental boundary revisions.
      (a) For surface mining activities, an incidental boundary revision shall not exceed ten (10) percent of the acreage in the original or amended permit area and shall not exceed twenty (20) acres.
      (b) For underground mining activities and auger mining, an incidental boundary revision for a surface operation and an incidental boundary revision for underground workings shall be determined separately.
      1. For surface operations, an incidental boundary revision shall not exceed the greater of two (2) acres or ten (10) percent of the acreage of surface operations in the original or amended permit area and shall not exceed twenty (20) acres.
      2. For underground workings, an incidental boundary revision shall not exceed ten (10) percent of the acreage of underground workings in the original or amended permit area and shall not exceed twenty (20) acres.
      (c) Cumulative incidental acreage added by successive incidental boundary revisions shall not exceed the limitations in this subsection. Acreage added by incidental boundary revisions prior to a permit amendment shall not be counted toward cumulative incidental acreage after the amendment.
   (6) Operator change revisions.
(a) This subsection shall apply to all operator changes that do not constitute a transfer, assignment, or sale of permit rights.

1. The permit number, the name and business address of the permittee, the geographic location of the permit area, the names and business addresses of the current approved operator and the proposed operator, and any commenters on the application, of its proposed operator, and any commenters on the application, of the cabinet approved in the permit shall submit a complete and accurate application for approval of the change. [The application shall be on forms provided by the cabinet.]

(c) The application shall include:

1. The permit number, the name and business address of the permittee, the telephone number of the permittee, and the identifying number assigned to the permittee by the cabinet;

2. The name, business address, and telephone number of the operator approved in the permit, and the identifying number, if any, assigned to the approved operator by the cabinet;

3. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 2(1) through 4(8) of 405 KAR 8:030 and 405 KAR 8:040, and Sections 2(11) through (13) of those administrative regulations shall also apply; and

4. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 3(1) through 3(5) of those administrative regulations shall also apply.

(d) The application shall be verified under oath by the permittee and the proposed operator in the manner required pursuant to Section 9 of this administrative regulation.

(e) On or after the date the application has been submitted to the cabinet, the application shall be advertised in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

1. The advertisement shall be entitled “Notice of Intention to Mine” and shall be as established[as a form specified] in Section 8(5) of this administrative regulation.

2. A copy of the advertisement and proof of publication shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication. The advertisement shall include:

a. The permit number;

b. The geographic location of the permit area;

c. The name and business address of the permittee;

d. A statement that the permittee proposes to change the operator approved in the permit;

e. The names and business addresses of the currently approved operator and the proposed operator;

f. The cabinet address to which written comments may be sent pursuant to under Section 17 of this administrative regulation.

g. The time available for submission of the comments.

(f) A person whose interests are or may be adversely affected by the cabinet's decision on the proposed operator change, including an officer of a federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days after the date of publication of the advertisement. [The cabinet shall provide a written acknowledgment of receipt to all applicants and all persons submitting written comments.]

(g) The cabinet shall approve or disapprove the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator pursuant to Section 13(4) of this administrative regulation; and

2. Meets the other applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(h) If the cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its decision to approve or deny the application within fifteen (15) working days after the close of the public comment period pursuant to paragraph (f) of this subsection.

2. The period of temporary withdrawal shall not be counted against the fifteen (15) working day period available to the cabinet. If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time period established[as prescribed] in this paragraph, then the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing, and conference procedures.

(7) Fees. An application for a revision shall include a basic fee except that a minor field revision and an operator change revision shall not have a basic fee.

(a) The fee for a revision shall be $750 for a major revision and $750 for a minor revision.

(b) If the revision application proposes an incidental boundary that would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application. An acreage fee shall not be required for a surface area overlying underground workings that will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to 405 KAR Chapter B[his chapter] shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications.

[a] An application for renewal of a permit shall be submitted within the time established[as prescribed] by Section 2(2)(b) of this administrative regulation. Renewal applications shall be submitted on form MPA-09, Application for Renewal of a Mining Permit, and in accordance with this section, and shall include:

[4.] The name and address of the permittee, the term of the renewal requested and the permit number;

[b] A copy of the proposed newspaper notice and proof of publication of same pursuant to Section 8 of this administrative regulation;

[c] Evidence that liability insurance pursuant to Section 10:030, Section 4, shall be provided by the applicant for the proposed period of renewal;

[d] A renewal fee of $750;

[e] Evidence that the performance bond shall continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

[f] Any additional, updated, or revised information required to demonstrate compliance with KRS Chapter 350 and 405 KAR Chapters 7 - 24.

(3) An application for renewal shall be subject to the requirements of Sections 8 through 11, 13, and 16 of this administrative regulation.

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this administrative regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established pursuant to Section 17 of this administrative regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being satisfied;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards pursuant to Section 19 of this chapter.

KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that a performance bond required for the operations shall continue in effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet pursuant to this administrative regulation has not been provided by the applicant; or
6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.
(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.
(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, any persons who were parties to any informal conference held on the permit renewal, and to the field office director of the Office of Surface Mining Reclamation and Enforcement.
(d) Any person having an interest that is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review establised[set-forth] in Section 24 of this administrative regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. A transfer, assignment, or sale of the rights granted pursuant to [under] any permit issued pursuant to KAR Title 405 shall not be made without the prior written approval of the cabinet, in accordance with this section.
(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:
(a) Provide a complete and accurate application, on forms provided by the cabinet, for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession. Additionally, the following information shall be provided:
1. The name and address of the existing permittee and the permit number;
2. A brief description of the proposed action requiring approval;
3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10; and
4. A processing fee of $750;
(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent pursuant to subsection (3) of this section; and
(c) Obtain sufficient performance bond coverage that shall ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.
(3) Public participation. Any person whose interests are or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.
(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:
(a) Is eligible to receive a permit in accordance with the criteria established[specified] in Section 14 of this administrative regulation;
(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which shall ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred and that is at least equivalent to the bond of the existing permittee; and
(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and
(d) Meets all requirements necessary[any other requirements specified by the cabinet in order] to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24,
(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.
(6) Permit reissuance. After receiving the notice establised[described] in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the completion of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.
(7) Rights of successor. All rights and liabilities pursuant to[under] the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit pursuant to[under] KRS 350.130(3).
(8) Requirements for new permits for persons succeeding to rights granted pursuant to[under] a permit. A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee. A successor in interest seeking to change the conditions of mining or reclamation operations or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

Section 23. Amendments. (1) Except for an incidental boundary revision, an extension to an area covered by a permit shall not be approved, as establised[set-forth] in Sections[under Section] 20 (permit revisions) or [Section]21 (permit renewals) of this administrative regulation.
(2) An extension shall be made by application for another permit.
(b) If the permittee desires to add the new area to his existing permit in order to have existing areas and new areas under one (1) permit, the cabinet shall amend the original permit, if the applicant complies with procedures and requirements applicable to an application for an original permit in accordance with KAR Title 405, but the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits pursuant to[under] KAR Title 405.
(2) A fee for an amendment[amendments] to existing permits shall be submitted to the cabinet as establised[specified] in Section 6(2) of this administrative regulation.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision, or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee, or any person with an interest that may be adversely affected may request a hearing on the reasons for the final decision. The request shall be in accordance with 405 KAR 7:032, Section 8.
(b) Any applicant or any person with an interest that may be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to:
(a) [Have the right to] Judicial review as provided in KRS 350.0301 and 350.0305 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or
(b) [Have the right to] An action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits establised[specified] in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

Section 25. Improvidently Issued Permits. (1) Permit review. If the cabinet has reason to believe that it improvidently issued a
surface coal mining and reclamation permit, the cabinet shall review the circumstances under which the permit was issued, using the criteria in subsection (2) of this section. If the cabinet finds that the permit was improvidently issued, the cabinet shall comply with subsection (3) of this section.

(2) Review criteria. The cabinet shall find that a surface coal mining and reclamation permit was improvidently issued if:

(a) Pursuant to[Under] the violation review criteria of the cabinet upon permit issuance: 1. The cabinet should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or 2. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; (b) The violation, penalty, or fee: 1. Remains unabated or delinquent; and 2. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and (c) If the permittee was linked to the violation, penalty, or fee through ownership or control, pursuant to[Under] the violations review criteria of the regulatory program upon permit issuance, an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or if the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

(3) Remedial measures. If the cabinet, pursuant to[Under] subsection (2) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improperly issued, the cabinet shall use one (1) or more of the following remedial measures:

(a) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee; (b) Impose on the permit a condition requiring that in a specified period of time the permittee or other person responsible abate the violation or pay the penalty or fee; (c) Suspend the permit until the violation is abated or the penalty or fee is paid; or (d) Rescind the permit pursuant to[Under] subsection (4) of this section.

(4) Rescission procedures. If the cabinet, pursuant to[Under] subsection (3)(d) of this section, elects to rescind an improvidently issued permit, the cabinet shall serve on the permittee a notice of proposed suspension and rescission that includes the reasons for the finding of the cabinet pursuant to[Under] subsection (2) of this section and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed ninety (90) days the permit automatically shall become suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the cabinet finds, that: 1. The finding of the cabinet pursuant to[Under] subsection (2) of this section was erroneous; 2. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency; 3. The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or 4. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee; (b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations pursuant to[Under] the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the cabinet; and (c) Right to request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing. A formal hearing shall be in accordance with[under] 405 KAR 7.092, Section 9.

Section 26. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Preliminary Application", MPA-00, August 2010; (b) "Permittee Information for a Mining Permit", MPA-01, August 2010; (c) "Operator Information for a Mining Permit", MPA-02, August 2010; (d) "Technical Information for a Mining Permit", MPA-03, June 2013; (e) "Surface Owner's Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.B, November 1991; (f) "Disinterested Third Party Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.C, November 1991; (g) "Update of Permittee or Operator Information", MPA-05, August 2010; (h) "Change of Corporate Owners, Officers or Directors", MPA-06, August 2010; (i) "Application to Transfer a Mining Permit", MPA-07, June 2013; (j) "Revision Application to Change Operator", MPA-08, August 2010; (k) "Application for Renewal of a Mining Permit", MPA-09, August 2010; (l) "[Application for a Coal Marketing Deferment", MPA-10, August 2010; (m) "Minor Field Revision Application Form", SME 80, revised August 2010; and (n) "Reclamation Advisory Memorandum #124, Restoration Initiative", March 1997.

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LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 3, 2013
FILED WITH LRC: July 3, 2013 at 4 p.m.
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ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, October 8, 2013)

405 KAR 10:001. Definitions for 405 KAR Chapter 10.


NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation defines[provides for the definition of] certain essential terms used in 405 KAR Chapter 10.

Section 1. Definitions. (1) "Acquisition" means the purchase, lease, or option on the land for the purpose of conducting or allowing through resale, lease, or option the action of conducting surface coal mining and reclamation operations.

(2) "Active Acre" means an acre of land or fraction thereof, permitted and bonded for surface disturbance pursuant to[Under] a surface coal mining permit as of July 1, 2013. Active acre...
does[shall] not include:
(a) Acreage contained in a permit for which the entire permit area has not been initially disturbed by the permittee after permit issuance;
(b) Acreage contained in a permit, or increment thereof, that has completed initial reclamation and received a minimum of a Phase 1 bond release;
(c) Undisturbed acreage completely released from liability as a result of a bond release or bond reduction;
(d) Acreage of a permit that is permitted and bonded for underground acreage only.
(3) "Actuarial soundness" is defined by KRS 350.500(1).
(4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation, or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.
(5)(2) "Administrator" or "bond pool administrator", as used in 405 KAR 10:200, means the cabinet employee named by the secretary to assist the commission and to perform certain administrative functions in connection with the bond pool, as required by KRS 350.715. (2)(3) "Affected area" means any land or water area which is used, or intended to be used, to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:
(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;
(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and
(c) There is substantial (more than incidental) public use.
(6)(4) "Applicant", as used in 405 KAR 10:014, means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations pursuant to KRS Chapter 350 and all applicable administrative regulations.
(7)(5) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755. (6) "Cabinet" is defined in KRS 350.01010.
(9) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.
(10) "Coal mined and sold" means coal severed or removed as a result of surface coal mining operations and subsequently sold, transferred, or used by the permittee or operator.
(11)(9) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.
(12)(10) "Commission" or "bond pool commission" means the body established at KRS 350.705. (11) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.
(13)(12) "Day" means calendar day unless otherwise specified to be a working day.
(14)(13) "Department" means the Department for Natural Resources.
(15) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.
(16) "Dormancy fee" means the annual fee established in KRS 350.518(2)(d).
(17)(15) "FDIC" means Federal Deposit Insurance Corporation.
(18)(16) "Federal lands" means any lands, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.
(19) "Full-cost bonding" means performance bonds that have been submitted by a permittee for its surface coal mining operation permits in lieu of participation and membership in the Kentucky Reclamation Guaranty Fund.
(20)(17) "Historically used for cropland means mean that:
(a) Has been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the: 1. Application or
2. Acquisition of the land for the purpose of conducting surface coal mining and reclamation operations;
(b) Would likely have been used as cropland for any five (5) years or more out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; or
(c) The cabinet determines, on the basis of additional cropland history of the surrounding land and the land under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion(18) "Historically used for cropland."
(a) "Historically used for cropland" means lands that have been used as cropland for any five (5) years or more out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and
(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland."
(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland," as described below:
1 lands that would likely have been used as cropland for any five (5) years or more out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and
2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion
(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.
(23)(19) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the
retention of water, sediment, or waste.

(24) “KRGF” means the Kentucky Reclamation Guaranty Fund.

(25) “KRS” means Kentucky Revised Statutes.

(26) “KAR” means Kentucky administrative regulations.

“Land use” means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

“Member” means a permittee in the Kentucky Reclamation Guaranty Fund.

“Non-production fee” means the annual fee established in KRS 350.518(2)(e).

(27) “Month of operation,” as used in 405 KAR 10:200, means a calendar month in which a duty exists to reclaim a disturbed area for which a permit was issued under KRS Chapter 350. It is not necessary that coal extraction occur during the month.

(28) “Notice of noncompliance and order for remedial measures” means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon inspection and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(29) “Operations” is defined in KRS 350.010(6).

(30) “Operator” is defined in KRS 350.010(7).

“Opt-out” means the decision by a permittee to not participate in the KRGF and to provide full-cost bonding pursuant to the provisions of the Kentucky Reclamation Guaranty Fund (405 KAR 10:070). The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of the provisions of the Kentucky Reclamation Guaranty Fund Program (405 KAR 10:200), KRS 350.595, and KRS 350.521(KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(31) “Performance bond” means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(32) “Permit” means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(33) “Permit area” means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under the permit.

(34) “Person” is defined in KRS 350.010(9).

“Person having an interest which is or may be adversely affected” or “person with a valid legal interest” shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

“Prime farmland” means those lands which are defined by the Secretary of Agriculture in 7 C.F.R. 657 and which have been “historically used for cropland” as that phrase is defined above.

“Reclamation” is defined in KRS 350.010(12).

“Secretary” is defined in KRS 350.010(11).

“SMCRA” means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

“Surety bond” means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

“Surface coal mining and reclamation operations” is defined in KRS 350.010(3).

“Surface coal mining operations” is defined in KRS 350.010(1).

“Suspended solids” or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA’s regulations for waste water and analyses (40 C.F.R. 136).

“Ton” means 2000 pounds avoirdupois (.90718 metric ton).

“Topsoil” means the A and E soil horizon layers of the four (4) master soil horizons.

“U.S. EPA” means United States Environmental Protection Agency.

“Voluntary Bond Pool” is defined by KRS 350.500(5).

“Willfully” and “willful violation” mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in
Section 1. Bonding Requirements. (1) An applicant shall not disturb surface acreage or extend an underground shaft, tunnel, or operation prior to receipt of approval from the cabinet of a performance bond covering an area to be affected by surface operations and facilities.

(2) After an application for a new, amended, revised, or renewed permit to conduct surface coal mining and reclamation operations has been approved pursuant to 405 KAR Chapter 8, but before the permit is issued, the applicant shall file with the cabinet, on a form prescribed and furnished by the cabinet, a performance bond payable to the cabinet.

(a) The applicant shall file the Performance Bond, Form SME-42, for an operation on land other than federal lands, or the Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F, for an operation on federal land.

(b) The performance bond shall be conditioned upon compliance with all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the provisions of the reclamation plan, and the permittee shall cover all surface coal mining and reclamation operations to be conducted within the permit area or increment thereof until all reclamation requirements of 405 KAR Chapters 7 through 24 have been met.

(c) The amount, duration, type, conditions, and terms of the performance bond shall conform to the requirements of this administrative regulation.

(3) A permit shall not be revised or amended to include additional area unless the liability of the current permit is extended to cover the entire permit area or increment as revised or amended, and the liability of the supplemental bond covers the entire permit area as revised or amended. Unless these conditions are met with respect to the bond, the additional area shall be permitted as a separate increment of the current permit area or pursuant to a new permit.

(4) A rider to the applicable performance bond, confirming coverage of the revision, shall be submitted by the applicant if a revision to a permit does not change the acreage of the permit area or increment but:

(a) Adds a coal washer, a crush and load facility, a refuse pile, or a coal mine waste impoundment to the existing permit;

(b) Alters the boundary of a permit area or increment.

Section 2. Terms and Conditions of Performance Bond. (1) The performance bond shall be in an amount determined by the cabinet as established in Sections 6, 7, and 8 of this administrative regulation.

(2) The performance bond shall be payable to the cabinet.

(3) The performance bond shall be conditioned upon faithful performance of all of the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the conditions of the permit and shall cover the entire permit area or the incremental area as the cabinet has approved pursuant to Section 4(2) of this administrative regulation.

(4) The duration of the bond shall be for a time period established in Section 9 of this administrative regulation.

(5) Surety bonds shall be subject to the following conditions:

(a) The cabinet shall not accept the bond of a surety company unless the bond shall not be cancelable by the surety at any time for any reason.

1. Surety bond coverage for permitted lands not disturbed shall be cancelled only with the written approval of the cabinet, provided the surety gives written notice to both the permittee and the cabinet of the intent to cancel prior to the proposed cancellation.

a. The cancellation notice shall be by certified mail.

b. Cancellation shall not be effective for lands subject to bond coverage that are affected after receipt of notice, but prior to approval by the cabinet.

c. The cabinet shall approve a cancellation only if a replacement bond has been filed by the permittee, or if the permit area has been reduced by revision to the extent that the remaining bond amount, after cancellation, is sufficient to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with Section 10 of this administrative regulation.

2. The cabinet shall advise the surety, within thirty (30) days after receipt of a notice to cancel bond, if the bond may be cancelled on an undisturbed area.

(b) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(c)1. The surety shall give prompt notice to the permittee and the cabinet of a notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging violations of regulatory requirements that could result in suspension or revocation of the surety's license to do business.

2. In the event the surety becomes unable to fulfill its obligations pursuant to the bond, the surety shall promptly provide written notice to the permittee and the cabinet.

3. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without proper bond coverage and shall promptly notify the cabinet.

a. Nothing in this paragraph shall relieve the permittee of responsibility pursuant to the permit or the surety of liability on the permittee's [sic] bond.

b. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days.

c. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan.

d. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted.
e. If an acceptable bond has not been posted by the end of the period allowed, the cabinet shall suspend the permit until an acceptable bond is posted.

(d) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth of Kentucky.

(6) Collateral bonds may include cash deposits with the cabinet, certificates of deposit, or letters of credit. Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(a) The cabinet or its authorized agent shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as established in 405 KAR Chapter 10.

(b) The cabinet shall require that certificates of deposit be assigned to the cabinet or its authorized agent in writing, through the submittal of Escrow Agreement Form SME-64, and the assignment evidenced on the books of the bank issuing such certificates.

(c) The cabinet shall not accept an individual certificate of deposit unless it is issued by a FDIC or FSLIC insured financial institution, and the cabinet shall not in any circumstance accept a denomination in excess of the maximum insurable amount as determined by FDIC or FSLIC.

(d) The cabinet shall require the issuer of certificates of deposit to waive all rights of setoff or liens that it has or might have against those certificates.

(e) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the cabinet upon an offering of collateral.

(f) The cabinet shall require the applicant to deposit sufficient amounts of certificates of deposit, so as to assure that the cabinet will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this chapter.

(7) A letter of credit shall be subject to the following conditions:

(a)1. The letter shall only be issued by a bank organized or authorized to do business in the United States.

2. A letter of credit issued by a non-Kentucky lending institution shall be confirmed by an approved Kentucky lending institution.

(b) A letter of credit shall be irrevocable.

(c) The letter shall be payable to the cabinet upon demand and receipt from the cabinet of a notice of forfeiture issued in accordance with 405 KAR 10:050, or in the event the bank wishes to terminate the letter on its expiration date, the cabinet may draw upon demand. The Irrevocable Standby Letter of Credit, Form SME-72, and the Confirmation of Irrevocable Letter of Standby Credit, form SME-72-A, shall be submitted to the cabinet, as necessary.

(d)1. The issuer shall give prompt notice to the permittee and the cabinet of notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging violations of regulatory requirements that could result in suspension or revocation of the issuer’s charter or license to do business.

2. In the event the issuer becomes unable to fulfill its obligations pursuant to the letter of credit, notice shall be given immediately to the permittee and the cabinet.

3. Upon the incapacity of an issuer by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the cabinet.

a. Nothing in this paragraph shall relieve the permittee of responsibility pursuant to the permit or the issuer of liability on the letter of credit.

b. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days.

c. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan.

d. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted.

(e) If an acceptable bond has not been posted by the end of the period allowed, the cabinet shall suspend the permit until acceptable bond is posted.

(8) If a permittee chooses to combine two (2) or more bonds for one (1) permit area or increment, the bonds may be accompanied by a schedule, acceptable to the cabinet and agreed to by all parties, which sets forth the agreed distribution of bond amounts to be released or reduced pursuant to 405 KAR 10:040 and Section 10 of this administrative regulation, respectively. If no schedule is submitted, the cabinet may release equal percentages of each bond.

(9) Permit specific bonds posted by members of the Voluntary Bond Pool on existing permits shall be deemed in compliance with the Kentucky Reclamation Guaranty Fund shall be released in their entirety upon successfully achieving reclamation Phase I bond release in accordance with 405 KAR 10:040, Section 2(4)(a).

Permit specific bonds posted by members of the Voluntary Bond Pool on new permits after the establishment of the Kentucky Reclamation Guaranty Fund shall be released in equal percentages at each reclamation phase with the Kentucky Reclamation Guaranty Bond.

Section 3. Types of Performance Bond. (1) The cabinet shall approve performance bonds of only those types established in this section.

(2) The performance bond shall be a:

(a) Surety bond;

(b) Collateral bond;

(c) Bond filed pursuant to the provisions of the Kentucky Reclamation Guaranty Fund, KRS 350.518;

(d) Bond filed by the Voluntary Bond Pool; or

(e) Combination of the [above]bond types listed in paragraphs (a) through (d) of this subsection.

(3) Bonds filed by the Voluntary Bond Pool prior to its repeal in 2013 Ky. Acts ch. 78, Section 12, shall be deemed valid and convey the same legal right as bonds issued by the KRGF. The amount, duration, conditions, and terms of bonds issued by the Voluntary Bond Pool shall be deemed in compliance with the requirements of this administrative regulation.[Combination of the above bonding types; or

(d) Bond filed pursuant to the provisions of the Kentucky Bond Pool Program, 405 KAR 10:200, KRS 350.595 and 350.700 through 350.755].

Section 4. Bonding Methods. The method of performance bonding for a permit area shall be selected by the applicant and approved by the cabinet prior to the issuance of a permit, and shall consist of one (1) of the following methods:

(1) Method “S” - single area bonding. A single area bond shall be a bond that covers the entire permit area as a single undivided area, for which the applicant shall file the entire bond amount required by the cabinet prior to issuance of the permit.

(a) Liability pursuant to the bond shall extend to every part of the permit area at all times.

(b) Except as provided in Section 9(2) of this administrative regulation regarding extended bond liability, there shall not be a reduction of all or part of a bond issued by the KRGF. The amount, duration, conditions, and terms of bonds issued by the Voluntary Bond Pool shall be deemed in compliance with the requirements of this administrative regulation.

(2) Method “T” - incremental bonding. Incremental bonding shall be a method of bonding in which the permit area shall be divided into individual increments, each of which is bonded separately and independently, and for which bonds shall be filed as operations proceed through the permit area.

(a) The permit area shall be divided into distinct increments subject to approval by the cabinet.

1. Each increment shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation operations by the cabinet become necessary.

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2. If the approved postmining land use is of such nature that successful implementation of the postmining land use capability depends upon an area being integrally reclaimed, then that area shall be contained within a single increment.

3. These increments shall be clearly identified on maps submitted in the permit application pursuant to 405 KAR Chapter 8, and the applicant shall describe the approximate time schedule for beginning operations in each increment.

(b) Prior to issuance of a permit, the applicant shall file with the cabinet the full bond amount required by the cabinet for the first increment or increments of the permit area to be disturbed, which shall not be less than the minimum bond required for the permit area required pursuant to Section 7 of this administrative regulation.

(c) The permittee shall not engage in surface coal mining and reclamation operations on an increment of the permit area unless the full bond amount required by the cabinet has been filed with the appropriate regional office of the department for that increment, the cabinet has verified the validity of the bond, and written authorization to conduct surface coal mining and reclamation operations on that increment is issued by the administrator of the regional office. Credit shall not be given for reclamation on other increments.

(d) The boundaries of each increment shall be physically marked at the site in a manner approved by the cabinet pursuant to 405 KAR 16:030.

(e) The bond amount for an increment shall be released or forfeited independently of another increment of the permit area, and liability pursuant to the performance bond shall extend only to the increment expressly covered by the bond. A single bond amount may be filed to cover more than one (1) increment, in which case the increments so covered shall be treated as a single increment.

(f) Except as provided in Section 9(2) of this administrative regulation regarding extended bond liability, there shall not be a release of bond for completion of a phase of reclamation on part of an increment until that phase of reclamation has been successfully completed on the entire increment.

(g) If the bond for an increment is completely released pursuant to 405 KAR 10:040, the increment shall be deleted from the permit area.

Section 5. Substitution of Bonds. (1) The cabinet may allow permittees to substitute existing surety or collateral bonds for equivalent surety or collateral bonds, in which case the liability that has accrued against the permittee on the permit area or increment is transferred to such substitute bonds.

(2) The cabinet shall not release existing performance bonds until the permittee has submitted and the cabinet has approved acceptable substitute performance bonds. A substitution of performance bonds pursuant to this section shall not constitute a release of bond pursuant to 405 KAR 10:040.

(3) The cabinet may refuse to allow substitution of bonds if an action for revocation or suspension of the permit covered by the bond is pending or if there is a pending action for forfeiture of the bond.

Section 6. Determination of Bond Amounts. (1) In determining the bond amount, the cabinet shall estimate the cost to the cabinet if the cabinet had to perform the reclamation, restoration, and abatement work required of a person who conducts surface coal mining and reclamation operations pursuant to KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit, except as provided in subsection (4) of this section. This amount shall be based on:

(a) The estimated costs submitted by the permittee in accordance with 405 KAR 8:030, Section 24(4), and 405 KAR 8:040, Section 24(4);

(b) The additional estimated costs to the cabinet that may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration, and abatement work;

(c) All additional estimated costs necessary, expedient, and incident to the satisfactory completion of the requirements identified in this section;

(d) An additional amount based on factors of cost changes during the previous five (5) years for the types of activities associated with the reclamation to be performed; and

(e) Other cost information required or available to the cabinet.

(2) If the reclamation cost calculated submitted in a permit application is higher than the minimum bond or bond calculated by the cabinet, the higher calculation shall be used in any issued permit.

(3) The cabinet shall review the bonding amounts identified in Sections 7 and 8 of this administrative regulation at a minimum of every two (2) years to determine if the amounts are adequate due to inflation and increases in reclamation costs.

(4) Full cost bonding participants shall provide the cabinet a cost estimate that reflects the costs of reclamation to the cabinet in accordance with the requirements of 405 KAR 10:080, Section 3.

Section 7. Minimum Bond Amount. The minimum amount of the bond for surface coal mining and reclamation operations at the time the permit is issued or amended shall be:

(1) $75,000 for the entire surface area under one (1) permit;

(2) $75,000 for incrementally bonded permits, subject to Section 4(2) of this administrative regulation;

(3) $50,000 for a permit or increment operating on previously mined areas, as defined in of 405 KAR 8:001, Section 1(86), to be evaluated by the cabinet; or

(4) $10,000 for underground mines that have only underground operations.

Section 8. Bonding Rate of Additional Areas. Areas of a surface coal mine and reclamation operation shall be bonded at the following rates for a permit issued by the Division of Mine Permits:

(1) Coal haul roads, other mine access roads, and mine management areas shall be bonded at $2,500 per acre and each fraction thereof.

(2) Refuse disposal areas shall be bonded at a minimum rate of $7,500 per acre and each fraction thereof.

(3)(a) An embankment sediment control pond shall be bonded at a rate of $10,000 per acre and each fraction thereof, with each pond being measured separately, if the pond is located off-bench and located downstream and outside the proposed mining or spoil storage area.

(b) This rate may be applied to partial embankment structures as necessary to meet the requirements of Section 6(1) of this administrative regulation.

(4) Coal preparation plants shall be bonded at the base acreage rate, in accordance with subsection (6) of this section, in addition to the costs associated with demolition and disposal costs relating to concrete, masonry, steel, timber, and other materials associated with surface coal mining and reclamation operations.

(5) Operations on previously mined areas, as defined in 405 KAR 8:001, Section 1(86), shall be bonded at rate of $2,000 per acre and each fraction thereof.

(6) All areas of surface coal mining and reclamation operations not otherwise addressed in subsections (1) through (5) of this section shall be bonded at the rate of $3,500 per acre and each fraction thereof.

(7)(a) For permits that have been identified as a producer of long-term treatment drainage, the cabinet shall calculate an additional bond amount based on the estimated annual treatment cost, provided by the permittee and verified by the cabinet, multiplied by twenty (20) years.

(b) The cost estimate shall be subject to verification and acceptance by the cabinet. The department shall use its own estimate for annual treatment costs if the department cannot verify the accuracy of the permittee’s estimate.

(c) In lieu of this calculation, the permittee may submit a remediation plan to be approved by the cabinet for the areas deemed to be producing substandard drainage.

1. The remediation plan shall demonstrate that substandard
discharge shall be permanently abated by land reclamation techniques prior to phase II bond release.

2. If the department rejects the plan, the permittee shall submit the additional acid mine drainage bond previously established in this section.

Section 9. Period of Liability. (1) Liability pursuant to performance bond applicable to an entire permit area or increment thereof shall continue until all reclamation, restoration, and abatement work required of persons who conduct surface coal mining and reclamation operations pursuant to requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the provisions of the permit have been completed, and the permit or increment terminated by release of the permittee from further liability in accordance with 405 KAR 10:040.

(2) In addition to the period necessary to achieve compliance with all requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit, including the standards for the success of revegetation as required by 405 KAR 16:200 and 405 KAR 18:200, the period of liability pursuant to a performance bond shall continue for a period of five (5) years beginning with the last year of augmented seeding, fertilizing, irrigation, or other work.

(a) The period of liability shall begin again upon augmented seeding, fertilizing, irrigation, or other work required or conducted on the site prior to bond release.

(b) Isolated and clearly defined portions of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval by the cabinet.

(c) These areas shall be limited in extent, and not constitute a scattered, intermittent, or checkerboard pattern of failure.

(d) Access to the separated areas for remedial work may be included in the area pursuant to extended liability if necessary.

(3) If the cabinet approves a long-term intensive agricultural postmining land use in accordance with 405 KAR 16:210, augmented seeding, fertilization, irrigation, or other husbandry practices normally associated with the approved postmining land use shall not require restarting the five (5) year period of liability.

(4) The bond liability of the permittee shall include only those actions that the permittee is required to take pursuant to the permit, including completion of the reclamation plan in a manner that the land will be capable of supporting a postmining land use approved pursuant to 405 KAR 16:210. Actions of third parties beyond the control and influence of the permittee and for which the permittee is not responsible pursuant to the permit shall not be covered by the bond.

Section 10. Adjustment of Amount. (1) The amount of the performance bond liability applicable to a permit or increment shall be adjusted by the cabinet if the:

(a) Acreage in the permit area or increment is either increased or decreased; or

(b) Cabinet determines that the cost of future reclamation, restoration, or abatement work has changed. If it is determined that an adjustment pursuant to this paragraph is necessary, the cabinet shall:

1. Notify the permittee, the surety, and any person with a property interest in collateral who has previously requested such a notification in writing; and

2. Provide the permittee an opportunity for an informal conference on the adjustment. The requirements of 405 KAR 7:091 and 7:092 shall not apply to the conduct of the conference.

(2) The amount of the performance bond liability applicable to a permit or increment may be adjusted by the cabinet upon application by the permittee under 405 KAR 8:010, Section 20, to delete acreage from the permit area or increment thereof if the acreage has not been affected by the surface coal mining and reclamation operation. The provisions of 405 KAR 10:040, Section 2(3), shall apply. A reduction due to such a deletion of acreage shall not constitute a bond release and shall not be subject to the procedures of 405 KAR 10:040, Section 1.

(3) The cabinet may grant reduction of the required performance bond amount if the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the cabinet to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. The request shall not be considered as a request for partial bond release subject to the procedures of 405 KAR 10:040, Section 1.

(4) The cabinet shall refuse to approve a reduction of the performance bond liability amount if an action for revocation or suspension of the permit covered by the bond is pending, if there is a pending action for forfeiture of the bond, or if the permittee is currently in violation of 405 KAR Chapters 7 through 24 on that permit or increment.

Section 11. Supplemental Assurance. (1) If alternative distance limits or additional pits are approved pursuant to 405 KAR 16:020, Section 2, the applicant shall submit to the cabinet supplemental assurance in the amount established in this section. This supplemental assurance shall be for the purpose of assuring the reclamation of the additional unreclaimed disturbed area and shall be in addition to the performance bond required pursuant to 405 KAR Chapter 10. The applicant shall submit supplemental assurance on the cabinet form, Supplemental Assurance, SME-42 (SA). This form shall be accompanied by the Escrow Agreement form (for use with Supplemental Assurance form only), SME-64 (SA).

(a) The supplemental assurance shall not be subject to the bond release requirements of 405 KAR 10:040, but shall be returned in accordance with the requirements of this section.

(b) The requirements of Sections 2, 3, and 5 of this administrative regulation and 405 KAR 10:035 and 10:050 shall apply to supplemental assurance.

Single seam contour mining. For single seam contour operations subject to 405 KAR 16:020, Section 2(3), the amount required shall be $150,000 per 1,500 feet, or any portion thereof, of additional distance approved for the first pit pursuant to 405 KAR 16:020, Section 2(3). If an additional pit or pits are approved, the amount shall be $150,000 per 1,500 feet, or any portion thereof, including the first 1,500 feet of each additional pit.

(3) Multiple seam contour mining. For multiple seam contour mining operations subject to 405 KAR 16:020, Section 2(4), the amount required shall be $150,000 per 1,500 feet, or any portion thereof, of additional distance approved for the first additional multiple seam operation pursuant to 405 KAR 16:020, Section 2(4). If additional multiple seam operations are approved, the amount shall be $150,000 per 1,500 feet, or any portion thereof, including the first 1,500 feet of each additional multiple seam operation.

(4) Mountaintop removal. If a mountaintop removal operation begins by mining a contour cut around all or a portion of the mountaintop, that contour portion shall require the same supplemental assurance established in subsection (2) of this section.

(5) Area mining. The amount required shall be $150,000 for any four (4) spoil ridges, or any portion thereof, of additional distance approved for the first pit pursuant to 405 KAR 16:020, Section 2(1). If an additional pit or pits are approved, the amount shall be $150,000 for any four (4) spoil ridges, or any portion thereof, including the first four (4) spoil ridges of each additional pit.

(6) Return of supplemental assurance. Supplemental assurance shall be returned to the person that submitted it upon:

(a) Application to the cabinet for the return; and

(b) Inspection and documentation (including photographs) by the cabinet verifying that the area for which the supplemental assurance was submitted has been backfilled and graded (or in the case of mountaintop removal, the associated highwall has been eliminated by mining operations).

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

(a) "Performance Bond, Form SME-42", June 2013; 1999;

(b) "Irrevocable Standby Letter of Credit, Form SME-72", July 1994;

(c) "Confirmation of Irrevocable Standby Letter of Credit, Form SME-72-A", July 1994;

(d) "Supplemental Assurance, SME-42 (SA)", July 1994;
(e) "Escrow Agreement (for use with Supplemental Assurance form or SME-64 (SA))", July 1994;
(f) "Escrow Agreement, Form SME-64", October 2008;
(g) "Remining Issues and Procedures, Reclamation Advisory Memorandum No. 154", May 2012; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 3, 2013
FILED WITH LRC: July 3, 2013 at 4 p.m.
CONTACT PERSON: Michael Mullins, Regulation Coordinator,
#2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Office of the Reclamation Guaranty Fund
(As Amended at ARRS, October 8, 2013)

405 KAR 10:070. Kentucky reclamation guaranty fund.


NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to ensure bonds are adequate to perform reclamation in the event of forfeiture. This administrative regulation establishes [provides] information related to the operation of the Kentucky Reclamation Guaranty Fund, classification of permits, reporting and payment of fees, and penalties.

Section 1. Classification of Mine Permit Types. (1) The commission shall review and assign classification of mine types pursuant to KRS 350.509(1)(e) for the purposes of assessing the fees, and penalties.

(a) Surface coal mining operations containing activities defined in 405 KAR 8:001, Section 1(125), for which coal removal is ongoing on a regular or intermittent basis in accordance with an approved permit;
(b) Underground coal mining operations containing activities defined in 405 KAR 8:001, Section 1(135), for which coal removal is ongoing on a regular or intermittent basis in accordance with an approved permit;
(c) Combined surface and underground mining operations containing activities defined in both 405 KAR 8:001, Section 1(125) and 1(135), for which coal removal is ongoing on a regular or intermittent basis in accordance with an approved permit;
(d) Non-production permits include operations approved for mining support, maintenance and other facilities, or operations or activities pursuant to KRS 350.010(1), but do not include permitted coal removal operations, as established [described] in paragraphs (a), (b), and (c) of this subsection; or
(e) Dormant permits, including expired permits, which shall include [the following]:
1. Permits for which all coal removal operations are complete, but an initial release of performance bond has not been granted, pursuant to 405 KAR 10:040, Section 2;
2. Permits in temporary cessation, pursuant to 405 KAR 16:010, Section 7, and 405 KAR 18:010, Section 5;
3. Permits for which a deferment has been granted, pursuant to 405 KAR 16:020, Section 5(1); and
4. Permits in paragraphs (a), (b), and (c) of this subsection that report no production in a quarter.

(2) Upon initial disturbance of an issued permit or resumption of coal production operations following a period of temporary cessation or deferment, pursuant to 405 KAR 16:020, Section 5(1), the permittee shall notify the ORGF within ten (10) days of the initial disturbance or resumption on Kentucky Reclamation Guaranty Fund Notification of Permit Activity, Form RGF-3. The suspension provisions of Section 4(2) of this administrative regulation shall apply for failure to provide notification to the ORGF.

(a)ember production records submitted pursuant to Section 2 of this administrative regulation;
(b) Issued permits;
(c) Cabinet inspection records;
(d) Permit, license, and other records on file with the Kentucky Office of Mine Safety and Licensing, and the U.S. Mine Safety and Health Administration; and
(e) Any other permittee documents and records as deemed necessary by the Commission, pursuant to KRS 350.509(7).

(3) The commission shall assign classifications, pursuant to KRS 350.509(1)(e), utilizing the following information:

(a) Permits subject to KRS 350.518(2)(e) and (f) shall be exempt from the requirements of 405 KAR 10:090.

Section 2. Member Production Records, Fee Reporting, and Payments. (1) Each permittee in the Kentucky Reclamation Guaranty Fund shall:

(a) Report coal production from each permitted surface coal mining operation on a quarterly basis for coal mined and sold, beginning January 1, 2014;
(b) Maintain records on a quarterly basis that report the tonnage of coal mined and sold for each permit.

1. Coal producing permits shall be assigned a classification by the commission in accordance with Section 1 of this administrative regulation.

2. Tonnage shall be reported based on the weight of coal at the time of sale.

3. Coal mined and sold from permits that combine surface and underground operations shall report both underground and surface production separately;

(c) Retain records of coal mined and sold for a period of six (6) years from the end of the quarter in which a report was due; and
(d) Provide records necessary to substantiate the accuracy of reports and payments upon the request of the ORGF.

(2) Reporting of tonnage and payment of fees shall be recorded on the Kentucky Reclamation Guaranty Fund Quarterly Fee Report, RGF-1, for each permit for which coal was mined and sold during the previous quarter or has coal reserves available to be mined. The reporting of tonnage shall be accompanied by the fee required in 405 KAR 10:090.

(a) The reporting and payment period shall be quarterly with the first quarterly reporting period being January 1[2][1] through March 31[2][1]. The report shall be submitted, and fees shall be received, no later than the 30th day of the month following the end of a reporting period.

1. A permittee shall submit all reports and payments for permits issued with the same permittee name on one (1) form.

2. The report shall be submitted even if the member has no coal mined and sold during the reporting period.

3. Reports are not required to be submitted for permits that have expired and a permit renewal is not being pursued, or for permits that have achieved at least a phase I bond release for the entire permit area.

(b) Payments received by the fund after the 30th day of the month following the reporting quarter, non-payment of fees, or underpayment of fees shall be subject to the penalty provisions of Section 4(1) of this administrative regulation.

Section 3. Non-production and Dormancy Fees and Payments. (1) Beginning January 1, 2014 permittees in the KR GF are required to pay non-production and dormancy fees to the KRGF for...
surface coal mining permits not subject to the tonnage fees in 405 KAR 10:090.

(a) Non-production and dormancy fees shall not apply to
permits or increments that have been granted phase I bond
release, have not been initially disturbed by the permittee after
permit issuance, or contain underground acreage only.

1. Payment of the non-production and dormancy fees shall be
in four (4) quarterly installments.

2. For non-production permits issued and not initially disturbed,
the non-production annual fee shall be assessed for the calendar
quarter after initial disturbance and be pro-rated for the remaining
quarters of the calendar year.

(b) Permits that are used exclusively for coal preparation and
processing operations, loading activities, disposal of refuse
operations, coal haulage and access roads, mine maintenance and
other support facilities, and other permits not subject to the
tonneage fees in 405 KAR 10:090, Section 1, as determined by
the commission shall pay the non-production fee of ten (10) dollars per
acre.

(c) Any permits, or expired permits, not subject to the ten (10)
dollar non-production fee in paragraph (b) of this subsection, and
the tonnage fees in 405 KAR 10:090, Section 1, shall pay a
dormancy fee of six (6) dollars per acre.

(d) The commission shall evaluate a permit that may meet
multiple classifications and assign the permit a classification for
assessment of fees.

(e) Members provided written notice to the ORGF that they
will opt-out of the fund and subsequently post full cost
performance bonds prior to April 30, 2014 on all permits held by
the member, shall not be subject to the fees listed in paragraphs
(b) and (c) of this subsection.

(2) Non-production and dormancy fees shall be assessed to
each eligible permit based on the total bonded acreage, or fraction
thereof, on record with the DNR as of January 1 of each calendar year. Permits that have coal production and pay tonnage fees in accordance with Section 2 of this administrative regulation in each calendar quarter shall not be subject to the payment of dormancy fees assessed pursuant to subsection (1)(c) of this section. A permittee who receives an assessment notification for dormancy fees in accordance with subsection (1)(c) of this section, and does not report coal mined and sold in a calendar quarter, shall pay the dormancy fee for that quarter.

(a) Payment of the non-production and dormancy fees shall be
made in four (4) separate equal quarterly installments beginning with
the January 1 through March 31 quarter, 2014 quarter. Members shall be allowed to prepay the entire annual dormancy and non-production fees in a lump sum prior to April 30 of each calendar year. Fees received from prepayments shall not be refundable to the member.

(b) The ORGF shall notify each member on or before January 31
of each calendar year those permits that are classified and subject to
dormancy or non-production fees. The notification shall include the
permit classification, total bonded acreage subject to assessment for
each permit, and the quarterly payment amount due by permit.

(c) A permittee shall be allowed thirty (30) calendar days after
receipt of the initial assessment each year to provide written notice to
the ORGF to contest the assessed dormancy or non-production fees.

1. The written notice shall include an explanation of the nature of
the contest, the documentation relied upon by the permittee, and
the specific permit and increments where the alleged error exists.
2. The ORGF shall review the information provided by the
permittee and provide a response in writing of its decision to retain or
modify the assessment.

3. The permittee shall not be subject to penalties for late
payment if a decision is not issued by the ORGF prior to the payment due date.

(d) Quarterly installment payments shall be received in the
ORGF no later than the 30th day of the month following the previous
calendar quarter on the Kentucky Reclamation Guaranty Fund
Quarterly Fee Report, RGF-1.

(e) Late payment or non-payment of fees shall subject members
to penalties in Section 4(1) of this administrative regulation.

(f) All payments shall be in the form of a check, cashier’s check,
certified check, money order, or electronic funds transfer, and be
deposited into the Kentucky State Treasurer;

Section 4. Penalties. (1) Non-payment of Fees and Initial Assessments.

(a) Permittees shall be subject to penalties of five (5) percent of
the original fee for each month or fraction thereof expiring between
the due date and the date on which the payment is submitted for the
failure to submit the following records and fees:

1. Quarterly production records within thirty (30) days of the end
of the reporting quarter;
2. Payment of required tonnage records within thirty (30) days of the end
of the reporting quarter;
3. Non-production fees within thirty (30) days of the end of the reporting
quarter;
4. Dormancy fees within thirty (30) days of the end of the reporting
quarter;
5. Initial capitalization assessments within thirty (30) days of the
date of receipt of notice.

(b) Upon a determination by the ORGF that a permittee has
underreported production or underpaid the amount due in any
reporting quarter, the permittee shall submit the corrected information or payment within ten (10) days of notification that the report or payment is deficient or insufficient.

(c) A penalty of five (5) percent of the fee shall be assessed for
the underpayment of tonnage fees if the payment is not received
within ten (10) days of notification.

(d) Penalties for late payment, underpayment, or non-payment of
fees or initial assessments shall be at a minimum of $100.

(e) Payments of fees, penalties, or initial assessments that are
more than thirty (30) days in arrears shall render the permittee
subject to permit suspension pursuant to 405 KAR 12:020.

(2) Defrauding the commission. Any permittee submitting
fraudulent production reports, misidentifying the method of coal
production to obtain a lower fee payment, withholding documentation
requested by the commission, or otherwise attempting to defraud the
fund or commission shall be subject to permit suspension by the
cabinet upon receipt of notification by the commission.

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

(a) “Kentucky Reclamation Guaranty Fund Quarterly Fee Report”, RGF-1, June 2013; and
(b) “Kentucky Reclamation Guaranty Fund Notification of Permit Activity”, Form RGF-3, June 2013.

(2) This material may be inspected, copied, or obtained, subject
to applicable copyright law, at the Kentucky Department for Natural
Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday
to Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 3, 2013
FILED WITH LRC: July 3, 2013 at 4 p.m.
CONTACT PERSON: Michael Mullins, Regulation Coordinator
#2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-6968, email Michael.Mullins@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Office of the Kentucky Reclamation Guaranty Fund
(As Amended at ARRS, October 8, 2013)

405 KAR 10:080. Full-cost bonding.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064,
350.093, 350.095, 350.100, 350.110, 350.151, 350.465,
350.515(5)
STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064,
NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter
350 authorizes the cabinet to promulgate administrative regulations
to ensure bonds are adequate to perform reclamation in the event
of forfeiture. KRS 350.515(5) **authorizes members** to provide full-cost bonds in lieu of maintaining membership in the fund. This administrative regulation **establishes information for providing information to** members that elect to provide full-cost bonds rather than remain in the Kentucky Reclamation Guaranty Fund.

Section 1. Applicability. This administrative regulation applies to permittees electing to provide full-cost bonds to the cabinet in lieu of participation in the Kentucky Reclamation Guaranty Fund.

Section 2. Decision to Opt-out. (1) Pursuant to KRS 350.515(5), a member may elect to opt-out of the Kentucky Reclamation Guaranty Fund and provide a full cost bond.

(2) A member joining the KRGF after July 1, 2013, shall declare the decision to opt-out on the Technical Information for a Mining Permit, Form MPA-03, incorporated by reference in 405 KAR 8:010, Section 26. This subsection shall not apply to those permits issued pursuant to 405 KAR 8:010, Section 22.

Section 3. Full-Cost Reclamation Bonding Estimate. (1) The requirements of 405 KAR 10:015, Section 7 and Section 8(7); 405 KAR 16:060, Section 8; 405 KAR 18:060, Section 12; and 405 KAR 18:210, Section 3, shall apply to the calculation of the estimate. The provisions of 405 KAR 10:015, Section 11, shall not apply to calculating a full-cost bonding reclamation estimate.

(2) Production fees shall be assessed as established in paragraphs (a) through (c) of this subsection:

(a) Surface coal mining operations shall pay seven and fifty-seven hundredths (7.57) cents per ton of coal.

(b) Underground coal mining operations shall pay three and fifty-seven hundredths (3.57) cents per ton of coal.

(c) Permits consisting of surface and underground coal mining operations shall be assessed the tonnage fees in accordance with the predominant method of coal extraction during the quarterly reporting period.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 3, 2013
FILED WITH LRC: July 3, 2013 at 4 p.m.
CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(As Amended at ARRS, October 8, 2013)

601 KAR 9:200. Registration and titling of rebuilt or salvage motor vehicles.

RELATES TO: KRS 186A.115, 186A.170(1)(b), 186A.510-186A.515, 186A.530(11), 186A.550, 186A.560, 186A.590

STATUTORY AUTHORITY: KRS 186A.510(11), 186A.530(11), 186A.550

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.530 requires the Transportation Cabinet to issue a certificate of title with a brand printed on the face of the title if the vehicle has been rebuilt or has a branded certificate of title from another jurisdiction. KRS 186A.530(11) **requires the Transportation Cabinet to promulgate administrative regulations regarding the administration of the title branding procedure, which requires certain procedures and requirements for the manner in which salvage titles and rebuilt brands on vehicles previously declared unrebuildable by another state are differentiated from other salvage titles and rebuilt brands. KRS 186A.550 requires the cabinet to promulgate administrative regulations in accordance with federal law that establish a uniform method of titling salvage and rebuilt vehicles.**

The administrative regulation as it exists (and the procedures for the Transportation Cabinet to follow in issuing the certificate of title and printing a brand on the face of the motor vehicle title. The administrative regulation also establishes the procedures for registration and titling of a rebuilt motor vehicle that have been assembled from parts of wrecked or salvage motor vehicles
Section 1. Definition. “Confidential inspection” means an inspection of a distinguishing number assigned and permanently affixed to a vehicle or vehicle component, such as an engine or transmission or other severable portion of a vehicle, and not readily viewable by general observation.

Section 2. Application for a Kentucky Salvage Title. (1) A Kentucky salvage title shall be issued for a wrecked or damaged vehicle if the total estimated cost of repair exceeds seventy-five (75) percent of the retail value of the vehicle.

(2) An applicant for a salvage title shall submit an Application for Kentucky Certificate of Title or Registration, TC Form 96-182, to the county clerk accompanied by a minimum of six (6) photographs showing the damage to the vehicle.

(3) If a vehicle with a salvage certificate of title issued pursuant to KRS 186A.520 is transferred within Kentucky or if a vehicle with similar title from another jurisdiction is transferred into Kentucky, the new certificate of title shall be another salvage certificate of title until the owner of the motor vehicle has successfully gone through the process established in Section 4(3) of this administrative regulation.

(4) An application for a certificate of title shall be rejected by the Transportation Cabinet if there is a lien against the vehicle recorded in the Automated Vehicle Information System or Kentucky Automated Vehicle Information System.

(5) An application for a salvage or rebuilt title shall not be processed through “speed title” as established in KRS 186A.170(1)(b).

Section 3. Vehicles from Other Jurisdictions. (1) If when the owner of a motor vehicle with a title from another jurisdiction applies for a Kentucky motor vehicle title, or a title and registration, the county clerk receiving the application shall enter the following information relating to brands into the Automated Vehicle Information System or Kentucky Automated Vehicle Information System:

(a)(4) If the brand on a foreign motor vehicle title relates to prior damage to and repair of a motor vehicle, the Kentucky title, if issued, shall bear the notation “rebuilt vehicle”.

(b)(2) If a vehicle title bears both a “rebuilt” brand and a “water damaged” brand as established in subsection (1) of this section and a “wrecked or salvaged vehicle” brand as established in subsection (2)(2), the Kentucky title shall bear the notation “rebuilt vehicle water damaged”. If the title of a vehicle bears a brand relating to the previous usage of the motor vehicle but not to damage to the motor vehicle, the Kentucky certificate of title shall not be branded.

(2) If a vehicle with a salvage certificate of title issued pursuant to KRS 186A.520 is transferred within Kentucky or when a vehicle with similar title from another jurisdiction is transferred into Kentucky, the new certificate of title shall be another salvage certificate of title until the owner of the motor vehicle has successfully gone through the process set forth in Section 3 of this administrative regulation.

Section 4. Application for Title of Rebuilt Motor Vehicle. (1) An owner of a motor vehicle that has been assembled from parts of wrecked or salvaged vehicles may apply for registration and title. If the owner applies for registration and title, the motor vehicle shall comply with the equipment and safety requirements of KRS Chapter 189. After a motor vehicle which has been assembled from parts of wrecked or salvaged vehicles and if the motor vehicle complies with all equipment and safety requirements of KRS Chapter 189, the owner may apply for registration or title of the motor vehicle.

(2) An application for registration and title of a motor vehicle that has been assembled from parts of wrecked or salvaged motor vehicles shall be accompanied by the following:

(a) A completed Application for Kentucky Certificate of Title and Registration, TC Form 96-182. The form required by KRS 186A.060. Vehicle Transaction Record. This form, TC 96-182 effective in July 1994, is incorporated by reference as part of this administrative regulation and shall contain an inspection certificate issued by a certified inspector in accordance with KRS 186A.115.

(b) A completed Form TC 96-215. Affidavit of Motor Vehicle Assembled from Wrecked or Salvaged Motor Vehicles, TC Form 96-215[revised February, 1986. This form is incorporated by reference as a part of this administrative regulation];

(c) A minimum of six (6) photographs showing the damage to the motor vehicle;

(d) An address where the motor vehicle may be examined;

(e) An assigned certificate of title; or

(f) A notarized affidavit that explains the ownership of the vehicle including information relating to brands into the Automated Vehicle Information System or Kentucky Automated Vehicle Information System.

(3) If an insurance company has been issued a salvage certificate of title because the motor vehicle has not been through the titling process since the enactment of KRS Chapter 186A in 1986, a notarized affidavit fully explaining ownership of the vehicle which includes the following:

1. Length of time the vehicle was owned by the current owner, which shall be a minimum of five (5) years;

2. Where and from whom the vehicle was purchased;

3. When and where the vehicle was last registered or licensed;

4. A statement that there are no liens against the vehicle; or

5. A descriptive, notarized labor statement of repairs made and parts replaced;

6. A notarized statement that there are no liens against the vehicle; or

7. A descriptive, notarized labor statement of repairs made and parts replaced;

8. A notarized affidavit that explains the ownership of the vehicle including information relating to brands into the Automated Vehicle Information System or Kentucky Automated Vehicle Information System.

(4) When an insured vehicle is paid for by an insurance company and the vehicle owner does not have a certificate of title, the vehicle owner applies for registration and title. If the vehicle owner does not have a certificate of title because the motor vehicle has not been through the titling process since the enactment of KRS Chapter 186A in 1986, a notarized affidavit fully explaining ownership of the vehicle which includes the following:

1. Price and serial number of each part purchased;

2. A Statement of why there is no longer a license plate for the rebuilt motor vehicle;

3. A separate federal odometer disclosure statement if unavailable on either the Application for Title or Registration of the back of the certificate of title. An Odometer Disclosure Statement, TC Form 96-5 may be used; and

4. A title issued pursuant to KRS 186A.530(2) bearing the notation “rebuilt vehicle”.

Section 5. Insurance Companies. (1) If an insured motor vehicle is paid for by an insurance company and the insurance company becomes the lawful owner of a stolen motor vehicle, the insurance company shall make application in the name of the company for a regular title.

(2) If the motor vehicle is subsequently recovered and damage to the motor vehicle meets the requirements of a salvage vehicle as established in KRS 186A.520[set forth in KRS 186A.338], the insurance company shall make an application for a salvage certificate of title.

(3) If an insurance company has been issued a salvage certificate of title for a vehicle recovered in a theft, but the motor vehicle certificate of title presents the rebuilt motor vehicle for registration and titling.
vehicle does not meet the requirements for a salvage vehicle established in KRS 186A.520, an insurance company may apply to the Transportation Cabinet, Division of Motor Vehicle Licensing, for a regular certificate of title. The Division is located on the 2nd and 3rd floors of the State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-5301. The business hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

RICHARD S. TAYLOR, Acting Commissioner
MIKE HANCOCK, Secretary
D. ANN DANGELO, Office of Legal Services
APPROVED BY AGENCY: September 12, 2013
FILED WITH LRC: September 13, 2013 at noon
CONTACT PERSON: D. Ann Dango, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, October 8, 2013)


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(6)(3) authorize the commission [Authority] to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the horses. KRS 230.802(1) establishes the Kentucky Standardbred Breeders’ Incentive Fund. KRS 230.802(2)(b) authorizes the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund [EO 2008-668]. Effective July 1, 2008, established the Kentucky Horse Racing Commission and transferred all authority, functions, and responsibilities of the Kentucky Horse Racing Authority to the Commission. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, criteria for the distribution of moneys from these funds, mandatory criteria for races, and the administration of purses and payments in these races.

Section 1. Definitions. (1) “Commission” means the Kentucky Horse Racing Commission.
(2) “Final” means the race following a series of preliminary legs established to determine the divisional champion of each racing division of the Sires Stakes Program.
(3) “Kentucky-bred” means for the purposes of this administrative regulation, a standardbred horse that is:
(a) Foaled out of a standardbred mare that is registered with the commission and is a resident of Kentucky as provided in this administrative regulation; and
(b) Sired by a standardbred stallion that meets the requirements of this administrative regulation.
(4) “Kentucky-bred fillies and colts” means the series of races held annually in Kentucky for two (2) year old standardbred fillies and colts, both trotting and pacing, sired by standardbred stallions standing within Kentucky at the time of conception and funded in whole or in part by the Kentucky Standardbred Development Fund or the Kentucky Standardbred Breeders’ Incentive Fund.
“KSBF” means the Kentucky Standardbred Breeders’ Incentive Fund; or “KSBIF” means the trust and revolving fund as set out in KRS 320.802.

“KSDSF” means the Kentucky Standardbred Development Fund; or “KSDFE” means the trust and revolving fund as set out in KRS 320.770.

“KSBDF” means the Kentucky Standardbred Development Fund.

“KSBIF” means the Kentucky Standardbred Breeders’ Incentive Fund; or “KSBFE” means the trust and revolving fund as set out in KRS 320.802.

“USTA” means the United States Trotting Association.

Section 2. (1) An owner, lessee, stallion manager, or syndicate manager of a standardbred stallion residing in Kentucky who desires to use the stallion for breeding purposes and to have his progeny eligible for breeding purposes and to have his progeny eligible under the US Trotting Association and the Kentucky Standardbred Breeders’ Incentive Fund (the “KSBF” or “KSBIF”) shall register the stallion with the commission by December 31st of the year of conception of the horse sought to be registered by July 1 of the following breeding season with the Kentucky Horse Racing Commission. Standardbred stallions not registered in Kentucky do not need to register with the commission. (2) All standardbred stallions shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency whether residing in Kentucky or not.

(a) A registered stallion that has never sired a foal shall be registered in any breeding season prior to his first breeding. (3) A stallion shall be registered on the KSBF/KSBIF Stallion Certificate of Eligibility Form, KHRC 215-2, [7/13]. Standardbred Stallion Certificate, KHA, 300-2 (KSBIF). A stallion owner may appoint an authorized agent to complete the KSBF/KSBIF Stallion Certificate of Eligibility Form, KHRC 215-2, [7/13]. by completing and filing with the commission the KSBF/KSBIF Authorized Agent Form, KHRC 215-3, [7/13].

(b) A registered stallion that satisfies the provisions of this section shall be considered a registered stallion for purposes of this administrative regulation.

(3) A(4) Except as provided by paragraph (b) of this subsection, any stallion that is a foal, other than the first born to a mare (donor or recipient) in each calendar year produced by any method, including embryo/ovum transplant (ET), shall be eligible for harness racing in Kentucky.

(4) Any future offspring of foals ineligible for racing under this section shall be ineligible for harness racing in Kentucky.

Section 4. Registration Renewal Fees. (1) The registration of a stallion that remains in the state for more than one (1) breeding season shall be renewed annually.

(2) The “Standardbred Stallion Certification of Eligibility Renewal” form shall be filed by July 1 of the breeding season. (3) The annual renewal fee for registration of stallions to the Kentucky Standardbred Development Fund shall be:

(a) One (1) full advertised stud fee for a stallion with an annual book of twenty-five (25) or more mares; and (b) Twenty (20) percent of the stud fee or a minimum of $200 for a stallion with an annual book of twenty-four (24) or less mares

(4) The annual stallion renewal fee shall follow the gait of the season.

(5) Stallion fees shall be due on or before October 1 of the year the renewal form is filed.

(6) If a stallion was nominated to the KSDSF, the renewal fee shall be paid on or before the October 1 deadline regardless of whether mares are bred to the nominated stallion.

Section 5. An owner, lessee, stallion manager or syndicate manager of a standardbred stallion registered with the Commission shall, by October 1 of each calendar year, submit the stallion registration fee, as set forth in Sections 3 and 4 of this administrative regulation, and a report of each stallion, listing the mares bred by each stallion during the preceding twelve (12) months.

Section 3(6). (1) In order to qualify for the Kentucky Sire Stakes, a foal shall be a two (2) or three (3) year old Kentucky-bred, the product of the mating of a mare with a Kentucky registered and resident stallion.

(b) Except as provided by paragraph (b) of this subsection, only a foal that is (a) a foal, other than the first born to a mare (donor or recipient) in each calendar year produced by any method, including embryo/ovum transplant (ET), shall be eligible for harness racing in Kentucky.

(c) This rule shall not apply to Natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare shall also be eligible.

(3) Any future offspring of foals ineligible for racing under this section shall be ineligible for harness racing in Kentucky.

Section 4(2). (1) If the commission determines that a registration is incorrect, or an application for registration, renewal of registration, or transfer of a registered stallion or mare contains false or misleading information, or that an owner, lessee, stallion manager, manager, or syndicate manager of a registered stallion or registered mare has failed to furnish information the commission has requested relating to the registration or renewal of a stallion or mare, the commission shall:

(a) Temporarily suspend or deny the registration of the stallion or mare; and

(b) Summon the person who committed a violation listed in this subsection, and any person who has knowledge relating to the violation, to appear before the commission at a hearing pursuant to 811 KAR 1:105.

(2) After the hearing, the commission shall determine whether the violation was willful.

(a) If the commission finds the violation was willful, the agreement for the breeding season.

(b) If the commission finds the violation was not willful, the commission may:

(1) Issue a warning letter to the violator;

(2) Issue a fine to the violator;

(3) Place the violator on probation for a specified period of time;

(4) Temporarily suspend or deny the registration of the stallion or mare; and

(5) Do any other act the commission deems appropriate.
commission shall do one (1) or more of the following, based on the degree of seriousness of the willful violation:
1. [Officially] Deny the registration;  
2. [Officially] Suspend the registration;  
3. [Officially] Revoke the registration; or  
4. Bar the owner, lessee, stallion manager, manager, or syndicate manager who willfully committed the violation from further registering stallions or mares to the KSDF and KSBIF.

(b) If the commission finds the violation was not willful, the commission shall rescind the temporary denial, suspension, or revocation of the registration.

(3) If a person summoned by the commission fails to respond to the summons, the commission:
(a) Shall suspend or deny the registration of the stallion;  
(b) Shall notify the person in writing of the action taken by the commission; and  
(c) May bar the person, lessee, stallion manager, manager, or syndicate manager who committed the violation from further registering stallions or mares to the KSDF and KSBIF based on the degree of seriousness of the violation.

Section 5.[Officially] An owner, lessee, stallion manager, manager, or syndicate manager of a stallion or mare eligible for the KSDF and KSBIF shall be responsible for:
(1) The registrations and records of the farm; and  
(2) Complying with the requirements of the KSDF and KSBIF.

Section 6. A participant in a Kentucky Sires Stakes race shall:
(1) Be a two (2) or three (3) year old Kentucky-bred [the product of the mating of a mare with a Kentucky registered and resident stallion]; and  
(2) Maintain eligibility for the KSDF and KSBIF.

Section 8.[Officially] Each race shall be a one mile dash.

Section 9.[Officially] Post positions for the final and all preliminary legs shall be an open draw with two (2) horses drawn for the final race that are designated as "also eligibles" under Section 10(6) of this administrative regulation.

Section 10.[Officially] Eligibility for the Final. (1) A horse that does not start in at least one (1) of the preliminary legs scheduled shall not be eligible for the final.

(2) A horse that enters a preliminary leg that does not fill and is not raced shall receive credit toward fulfilling the minimum starting requirements set forth in subsection (1) of this section and toward determining tiebreaker status as set forth in subsection (5)(b) of this section.

(3) A horse that has been scratched from an event that is raced shall not receive credit toward meeting the starting requirements set forth in subsection (1) of this section.

(4) A horse, in order to start in the final, shall be declared at the host track where the race is being held on or before the time posted on the track condition sheet.

Section 11.[Officially] For each horse declared to race in a preliminary leg, there shall be a declaration fee of one (1) percent of the total purse.

Section 12.[Officially] All horses shall be on the gate for the final race.

Section 13.[Officially] (1) There shall not be more than:
(a) Ten (10) starters in each final race on a mile track; and  
(b) Eight (8) horses on a one-half (1/2) or five-eighths (5/8) mile track.

(2) All horses shall be on the gate for the final race.

Section 14.[Officially] (1) For each horse declared to race in a preliminary leg, there shall be a declaration fee of $500. If a preliminary leg splits into two or more divisions, the declaration fee shall be $500 per division. For each horse declared to race in the final, there shall be a declaration fee of one (1) percent of the total purse.

(2) The declaration fee shall be due to the racing association at
the time of declaration and payable one (1) hour prior to post time of the race.

(3) Purses for the KSDF and KSBIF[Kentucky Standardbred Development Fund] shall consist of money from:

(a) Nominating fees;
(b) Sustaining fees;
(c) Stallion fees;
(d) Declaration fees; and
(d)(ii) Added money from the Commonwealth of Kentucky.

(4)(a) Distribution of revenue for Kentucky Sires Stakes races shall be reviewed and addressed annually, not later than December 15 of each calendar year, by an advisory panel consisting of at least one (1) representative from each of the following:

1. The[Kentucky Horse Racing] commission;
2. The Kentucky Harness Horsemans’s Association;
3. The host racetrack;
4. The Kentucky Standardbred Breeders Association and any other recognized standardbred breeding association organized in Kentucky; and
5. The owner of a stallion registered to the KSDF and KSBIF[Kentucky Standardbred Development Fund].

(b) The final determination regarding distribution of revenue shall be made by the[Kentucky Horse Racing] commission.

Section 15[20]. (1) The total number of horses entered shall determine the number of divisions of the preliminary legs that shall be required.

(2) Preliminary legs shall be split into divisions as follows:

(a) One (1) mile track:
   1. Twelve (12) horses or less entered - one (1) division race.
   2. Thirteen (13) to twenty (20) horses entered - two (2) divisions.
   3. Twenty-one (21) to thirty (30) horses entered - three (3) divisions.
   4. Thirty-one (31) to forty (40) horses entered - four (4) divisions.
   5. Forty-one (41) to fifty (50) horses entered - five (5) divisions.
   6. Fifty-one (51) to sixty (60) horses entered - six (6) divisions.
   7. If the need exists for seven (7) or more divisions of preliminary legs[eliminations], eligibility to the final shall be determined in a manner consistent with the published conditions.

(b) One-half (1/2) and five-eighths (5/8) mile track:
   1. Nine (9) to ten (10) horses entered - one (1) division.
   2. Eleven (11) to sixteen (16) horses entered - two (2) divisions.
   3. Seventeen (17) to twenty-four (24) horses entered - three (3) divisions.
   4. Twenty-five (25) to thirty-two (32) horses entered - four (4) divisions.
   5. Thirty-three (33) to forty (40) horses entered - five (5) divisions.
   6. Forty-one (41) to forty-eight (48) horses entered - six (6) divisions.
   7. If the need exists for seven (7) or more divisions, eligibility to the final shall be determined in a manner consistent with the published conditions.

Section 16[21]. (1) Gait shall be specified by the owner of the horse, by the first two (2) year old payment.

(2) Change of gait:
   (a) May be made at the time of declaration at the track; and
   (b) Sustaining payments shall remain in the funds of the original gait specified.

(3) A horse shall not race on both gaits in the same year.

Section 17[22]. A race shall be raced in separate divisions as follows:

(1) Colt/gelding/ridgelng divisions; and
(2) Filly divisions.

Section 18[23]. (1) The purses awarded for all races shall be distributed on the following percentage basis:

(a) 50-25-12-8-5: five (5) starters or more;
(b) 50-25-15-10: four (4) starters;
(c) 60-30-10; three (3) starters;
(d) 65-35; two (2) starters; and
(e) 100: one (1) starter.

(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky pari-mutuel tracks.

(3) In addition to the purses set forth in subsection (1) of this section, $25,000 shall be awarded in each division of the finals to the owner of the stallion or stallions(stallions) residing in Kentucky that sired the first, second, or third place finisher, as follows:

(a) First place: $15,000;
(b) Second place: $7,500; and
(c) Third place: $2,500.

Section 19[24]. (1) If circumstances prevent the racing of an event, and the race is not drawn, all funds that have been allocated to the division in each of the preliminary legs or the final shall be refunded and pro-rated to the owners of the horses eligible at the time of cancellation.

(2) The eligible horses shall include only horses that made the payments required by Section 25[20] of this administrative regulation.

(3) The added monies provided by the Commonwealth of Kentucky for use in the KSDF and KSBIF[Kentucky Standardbred Development Fund] shall be disbursed by December 15 of each calendar year in accordance with the formula created by the panel as set out in Section 14[14][18][4] of this administrative regulation.

Section 20[25]. Starters shall declare in at each track on or before the time specified and advertised by the association conducting the event.

Section 21[26]. (1) Any horse declared into Kentucky Sires Stakes races shall:

(a) Show at least one (1) charted race line with no breaks within thirty (30) days prior to the day of the race; and
(b) Have satisfied the following time requirements:
   1. On a track larger than five-eighths (5/8) of a mile:
      a. A two (2) year old trotter shall have been timed in 2:08 or faster;
      b. A two (2) year old pacer shall have been timed in 2:06 or faster.
      c. A three (3) year old trotter shall have been timed in 2:09 or faster;
      d. A three (3) year old pacer shall have been timed in 2:07 or faster.
   2. On a five-eighths (5/8) mile track:
      a. A two (2) year old trotter shall have been timed in 2:09 or faster;
      b. A two (2) year old pacer shall have been timed in 2:05 or faster.
      c. A three (3) year old trotter shall have been timed in 2:06 or faster;
      d. A three (3) year old pacer shall have been timed in 2:05 or faster.
   3. On a one-half (1/2) mile track:
      a. A two (2) year old trotter shall have been timed in 2:06 or faster;
      b. A two (2) year old pacer shall have been timed in 2:04 or faster.
      c. A three (3) year old trotter shall have been timed in 2:09 or faster;
      d. A three (3) year old pacer shall have been timed in 2:06 or faster.
   4. On a one-half (1/2) mile track:
      a. A two (2) year old trotter shall have been timed in 2:07 or faster;
      b. A two (2) year old pacer shall have been timed in 2:05 or faster.
      c. A three (3) year old trotter shall have been timed in 2:08 or faster.
      d. A three (3) year old pacer shall have been timed in 2:06 or faster.
   5. A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a
      change of gait.
   6. A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a
      change of gait.
   7. A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a
      change of gait.
   8. A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a
      change of gait.
   9. A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a
      change of gait.
   10. A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a
      change of gait.

Section 22[27]. (1) At a scheduled meeting of the commission,
the commission:
(a) Shall establish the distribution of funds for stakes races for the upcoming year; and
(b) Shall authorize expenditures at a time it designates.
(2) The racing dates for KSDF and KSBIF stakes shall be issued after the track has established its race dates.

Section 23[28]. The KSDF or KSBIF [Kentucky Standardbred Development Fund] shall provide a trophy for each event, and the program that provides the trophy shall purchase the trophy out of its fund [which will be paid out of KSDF funds].

Section 24[29]. (1) After payment of the nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year. The KSDF/KSBIF Stallion Certificate of Eligibility Form, KHRC 215-1.[7/13] (Kentucky Sire Stakes Nomination Form, KHRA 300-1) shall be filed with the commission along with the nomination and sustaining fees.

(2) The two (2) year old March 15 payment shall be made in order to remain eligible to the KSDF and KSBIF as a three (3) year old.

Section 25[30]. Nomination and sustaining payments shall be made to the KSDF [Kentucky Standardbred Development Fund] in U.S. funds by a money order or a check drawn on a U.S. bank account.

Section 26[31]. (1) Yearlings shall be nominated by May 15 of their yearling year, except as provided in subsection (4) of this section.

(2) For yearlings sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, the nomination fee shall be forty (40) dollars per yearling. For yearlings sired by a standardbred stallion not residing in Kentucky, the nomination fee shall be $140 per yearling.

(3) Nominated horses shall be registered with the USTA [A nomination also shall be accompanied by a photocopy of the United States Trotting Association or Standardbred Canada, or other appropriate international harness racing governing agency and shall] must be properly identified to the satisfaction of the commission at the time of the nomination [registration certificate]. Identification shall be determined by the official registration maintained by the USTA, Standardbred Canada, or other appropriate international harness racing governing agency.

(4) If a horse is not nominated during its yearling year, the horse may be nominated prior to March 15 of its two (2) year old year if:
(a) For horses sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, a nomination fee of $500 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section;
(b) For horses sired by a standardbred stallion not residing in Kentucky, a nomination fee of $600 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section.

(5) Sustaining payments shall be as follows:
(a) TWO (2) YEAR OLD PAYMENTS

<table>
<thead>
<tr>
<th>Month</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>March</td>
<td>$300</td>
</tr>
<tr>
<td>April</td>
<td>$300</td>
</tr>
<tr>
<td>May</td>
<td>$300</td>
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</tbody>
</table>

(b) THREE (3) YEAR OLD PAYMENTS

<table>
<thead>
<tr>
<th>Month</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>February</td>
<td>$300</td>
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<tr>
<td>March</td>
<td>$300</td>
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<tr>
<td>April</td>
<td>$300</td>
</tr>
</tbody>
</table>

Section 27[32]. The commission, during any given year, may provide for separate early closing events for Kentucky-bred horses both two (2) and three (3) year-old standardbreds that are Kentucky-sired.

Section 28[33]. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form,[7/13] KHRC 215-1.[7/13] Kentucky Sire Stakes Nomination Form, KHRA 300-1.[7/13]"
(c) "KSDF/KSDBKSDF/KSBIF Authorized Agent Form,[7/13] KHRC 215-3.[7/13] "Standard Authorization Agent Form, KHRA 300-3.[7/13]"
(d) "KSDF/KSBIF Mare Certificate of Eligibility Form,[7/13] KHRC 215-4.[7/13] "Standard Stallion Certification of Eligibility Renewal 300-4.[7/13]"

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511; Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the KHRC/KHRA Web site at http://khrc.ky.gov/ [www.khrs.ky.gov].

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, October 8, 2013)

811 KAR 1:220. Harness racing at county fairs.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.398 authorizes the commission to promulgate administrative regulations as may be necessary for the conduct of county fairs. This administrative regulation establishes conditions, races, purses, and payments in races conducted at county fairs in which funds for purses are provided by the commission, and regulates eligibility for participation in harness racing at county fairs.

Section 1. Definitions. (1) "Individual" means a natural person, at least eighteen (18) years of age, but does not include any corporation, partnership, limited liability company, trust, [er], estate, association, joint venture, or any other group or combination acting as a unit.

(2) "Individual or Person domiciled in Kentucky" means:
(a) An individual who has his permanent residence in Kentucky;
(b) [An individual who has his permanent residence in Kentucky and]
(c) "An individual who has his permanent residence in Kentucky or"
(d) [A person engaged in business in Kentucky who has registered to do business in Kentucky] or any other group or combination acting as a unit.

Section 2. (1) The commission shall determine all questions of
in determining questions of domicile, the commission shall weigh:

(a) The eligibility factors set forth in Section 3 of this administrative regulation; and

(b) Factors which indicate domicile and intent, including:

1. The amount of time the individual spends in Kentucky each year as compared to the amount of time spent elsewhere;
2. Whether the individual or person owns real estate in Kentucky;
3. Whether the individual is registered to vote in Kentucky;
4. Whether the person is organized under Kentucky law;
5. The permanent residence of the individual or principal place of business of the person, as indicated by the records of the commission and the United States Trotting Association; and
6. Whether the individual has a Kentucky automobile driver's license.

Section 3. Eligibility. A horse is eligible to participate in a stake race at a county fair if:

(1) The horse is:

(a) A two (2) or three (3) year old that is sired by a stallion that was registered with the Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders’ Incentive Fund as provided in 811 KAR 1:215 at the time of conception;
(b) A two (2) or three (3) year old whose dam was partially or wholly owned by an individual or person domiciled in Kentucky at the time of conception; or
(c) A two (2) or three (3) year old that is owned by an individual or person domiciled in Kentucky;

(2) An owner of the participating horse is a current member of the Kentucky Colt Racing Association, Inc.;

(3) An owner of the participating horse holds a current license with the commission; and

(4) The trainer and driver of the participating horse hold a current license with the commission in order to qualify to participate in a stake race at a county fair.

(1) The participating horse shall be either a two (2) or three (3) year old standardbred that is the product of the mating of a mare with a Kentucky Standardbred Development Fund registered stallion;

(2) An owner of the participating horse shall be a current member of the Kentucky Colt Racing Association, Inc.;

(3) An owner of the participating horse shall be currently licensed by the commission; and

(4) The trainer and driver of the participating horse shall be currently licensed by the commission.

Section 4. (1) A fair shall have a safe and adequate track, and the entire track, including start and finish lines, shall be visible to judges and spectators.

(2) The track shall be inspected and approved by a representative of the commission.

Section 5. A track shall have a hub rail or pylons approved by the commission.

Section 6. (1) A fair shall have safe and adequate stalls for participating horses.

(2) If permanent stalls are not available, either on or off the fairgrounds, tents or other tie-in type stalls may be used.

(a) Except as provided by paragraph (b) of this subsection, a county fair shall not charge stall rent for horses racing at the fair.

(b) [County Fairs. However,] A county fair may charge stall rent if the fair is held on with the exception of state-owned property.

Section 7. (1) The Kentucky Colt Racing Association county fair fee shall be as follows:

(a) A nomination fee of fifty (50) dollars per horse due before February 15 of the year in which the fair is being conducted;
(b) A sustaining fee of $200 per horse due before April 15;
(c) A starting fee of fifty (50) dollars per horse, per fair, due at the time of entry to the fair; and
(d) A twenty-five (25) dollar fee per horse for starting in an overnight race, due at the time of entry to the fair.

(2) A $200 payment shall be due at the time of entry for a horse eligible for the fair finals.

Section 8. (1) The Kentucky Colt Racing Association shall submit to the commission, at least sixty (60) days prior to the opening of a race meeting, a written list of racing officials and applicable employees.

(2) At a county fair, there shall be at least one (1) presiding judge approved by the commission in the judges’ stand. In addition, at a meeting in which races are charted, the association member shall provide both a licensed charter and licensed clerk of the course.

(3) A fair shall use licensed United States Trotting Association judges to preside over the racing.

(4) The judges shall review the ownership of any horse that is entered in order to ensure the horse’s eligibility to race.

(5) The judges may determine the validity for racing purposes of any lease, transfer, or agreement pertaining to ownership of a horse and may call for adequate evidence of ownership at any time.

(6) The judges may declare a horse ineligible to race if the ownership or control of the horse is in question.

Section 9. (1) A fair shall use a licensed starter with adequate equipment.

(2) A sustaining fee of $200 per horse due before April 15; within sixty (60) days prior to the opening of a race meeting, a written list of racing officials and applicable employees.

(3) To provide purses for overnight racing events; and

(4) To promote fair racing as otherwise needed.

(2) A fair shall, upon request, make a full accounting of the entry fees to the commission.

Section 10. (1) The entry fees established in Section 2 of this administrative regulation shall be collected by a fair and used:

(a) To pay racing officials;
(b) To provide purses for overnight racing events; and
(c) To promote fair racing as otherwise needed.

(2) A fair shall, upon request, make a full accounting of the entry fees to the commission.

Section 11. A fair shall apply to the commission for a license to conduct a harness racing event and for approval of funds by December 15 of the year prior to the year of the event. At the time of application, the request for pari-mutuel wagering shall be included.

Section 12. A fair shall have the right to change the order of its program and to postpone or cancel an event due to bad weather or unavoidable cause. If a race is canceled because of lack of entries, entry fees shall be refunded.

Section 13. An early closing event, and all divisions of that event, shall race a single heat at a distance of one (1) mile and shall be contested for a purse approved by the commission annually.

Section 14. There shall not be more than nine (9) starters in any race. If a race is divided into divisions, the purse shall be divided so that each division races for an equal portion of the purse. The purses shall be divided as follows:

(1) Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;
(2) Four (4) starters - fifty (50) percent, twenty-five (25) percent, fifteen (15) percent, and ten (10) percent;
(3) Three (3) starters - fifty-five (55) percent, thirty (30) percent, and fifteen (15) percent;
(4) Two (2) starters - sixty-five (65) percent and thirty-five (35) percent; and
(5) One (1) starter - 100 percent.

Section 15. (1) Points shall be awarded in an early closing race, and any division of an early closing race, as follows:

(a) First place finisher - fifty (50) points;
(b) Second place finisher - twenty-five (25) points;
(c) Third place finisher - twelve (12) points;
A horse that is declared in and then is the subject of a same procedure shall be used for the allocation of points if there is a dead-heat of three (3) or more horses.

Section 16[14]. A horse shall not be allowed to compete in more than one (1) race at any fair.

Section 17. In order for a horse, for whom the nomination fee has been paid, to remain eligible to race at a county fair after there has been a transfer of ownership, the following payments shall be required:

1. $300 if on the track less than one (1) hour before the start of a race;
2. An additional $600 thereafter if the same horse is used by the commission veterinarian for drug testing.
3. The winning horse at a fair race and any other horse or horses as selected by the judges; and
4. The three-quarters (3/4) marker; and
5. A county fair track holding races for purses.

Section 21[19]. A current negative Coggins test shall be required for each horse racing at a fair.

Section 20[22]. A fair shall provide a trophy or blanket to the winner of the fastest heat or division.

Section 22[21]. An early closing race shall be contested by the委員會 for the Kentucky Colt Racing Association at its annual October meeting preceding the racing year.

Section 23[20]. The deadline for entries at a fair shall be set by the Kentucky Colt Racing Association at its annual October meeting preceding the racing year.

Section 24[21]. A county fair track holding races for purses shall provide a printed program available to the public containing the following information for:

1. Non pari-mutuel [non pari-mutuel] tracks:
   a. Horse's name and sex;
   b. Color and age of horse;
   c. Sire and dam of horse;
   d. Owner's name and colors;
   e. Driver's name;

   f. Trainer's name; and
   g. Summary of starts in purses races, earnings, and the best win time for the current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race; and

2. Pari-mutuel tracks:
   a. Horse's name and sex;
   b. Color and age of horse;
   c. Sire and dam of horse;
   d. Owner's name;
   e. Driver's name and colors;
   f. Trainer's name;
   g. Summary of starts in purses races, earnings, and best win time for the current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race;

h. At least the last six (6) performance and accurate chart lines. An accurate chart line shall include:
1. Date of race;
2. Location of race;
3. Size of track if other than a one-half (1/2) mile track;
4. Symbol for free-legged pacers;
5. Track condition;
6. Type of race;
7. Distance;
8. The fractional times of the leading horse including race times;
9. Post position;
10. Position of the one-quarter (1/4) marker, the one-half (1/2) marker, and the three-quarters (3/4) marker;
11. Stretch with lengths behind leader;
12. Finish with lengths behind leader;
13. Individual time of the horse;
14. Closing dollar odds;
15. Name of the driver;
16. Names of the horses that placed first, second, and third by the judges; and
17. Standard symbols for breaks and park-outs shall be used if applicable;
(i) Indicate drivers racing with a provisional license; and
(j) Indicate pacers that are racing without hobbles.

Section 25[22]. Payments. Nomination and sustaining payments shall be made to the Kentucky Colt Racing Association. Entry fees shall be paid to the fair for which the entry is taken.

Section 26[23]. A person or association that violates a provision of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:095[Section 4.1].

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Kentucky Health Benefit Exchange
(As Amended at ARRS, October 8, 2013)

900 KAR 10:010. Exchange Participation Requirements and Certification of Qualified Health Plans and Qualified Dental Plans.

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18022, 18031, 18042, 18054, 45 C.F.R. Parts 155, 156
STATUTORY AUTHORITY: KRS 194A.050(1)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of the Kentucky Health Benefit Exchange, has responsibility to administer the state-based
American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to the certification of a qualified health plan to be offered on the Kentucky Health Benefit Exchange, pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Definitions. (1) "Actuarial value" means the percentage of the total allowed costs of benefits paid by a health plan.

(2) "Affordable Care Act" or "ACA" means the Patient Protection and Affordable Care Act, Public Law 111-148, enacted March 23, 2010 as amended by the Health Care and Education Reconciliation Act, Public Law 111-152, enacted March 30, 2010.

(3) "Agent" is defined by KRS 304.9-020(1).

(4) "Annual open enrollment period[except for the initial open enrollment period]" is defined by 45 C.F.R. 155.410(e).

(5) "Benefit year" means a calendar year for which a health plan provides coverage for health benefits.

(6) "Catastrophic plan" means a health plan that is described in and meets the requirements of 45 C.F.R. 156.155.

(7) "Certificate of authority" is defined by KRS 304.1-110(f).

(8) "Certification" means a determination by the Kentucky Health Benefit Exchange that a health plan or a stand-alone dental plan has met the requirements established in Sections 2 through 19(20)[12] of this administrative regulation.

(9) "Child-only plan" means an individual health policy that provides coverage to an individual under twenty-one (21) years of age and meets the requirements of 45 C.F.R. 156.200(c)(2).

(10) "Consumer Operated and Oriented Plan" or "CO-OP" means a private, non-profit health insurance issuer established in Kentucky, and licensed pursuant to 806 KAR 14:007.

(11) "Dental Insurer" means an insurer defined by KRS 304.17C-010(4), which offers a limited health service benefit plan for dental services.

(12) "Department of Health and Human Services" or "HHS" means the U.S. Department of Health and Human Services.

(13) "Department of Insurance" or "DOI" is defined by KRS 304.1-050(2).

(14) "Enrollee" means an eligible individual enrolled in a qualified health plan.

(15) "Essential community provider" means either a:

(a) Provider determined and approved by HHS as an essential community provider for the Commonwealth of Kentucky; or

(b) Regional community services program for mental health or individuals with an intellectual disability established pursuant to KRS 210.370 through KRS 210.480, operating in Kentucky, and licensed pursuant to 902(900) KAR 20:091.

(16) "Essential community provider category" means a provider as described in §2Chapter 7: Instructions for the Essential Community Providers Application Section, as incorporated by reference in this administrative regulation.

(17) "Essential health benefits" means benefits as identified by 42 U.S.C. 18022 and approved by the Secretary of HHS for the Commonwealth of Kentucky.

(18) "Health plan" is defined by 42 U.S.C. 18021(b)(1).

(19) "Health plan form" or "form" means an application, policy, certificate, contract, rider, endorsement provider agreement or related editing arrangement filled in accordance with 806 KAR 14:007.

(20) "Indian" is defined by 25 U.S.C. 450b(d).

(21) "Individual exchange" means the Kentucky Health Benefit Exchange that serves the individual health insurance market.

(22) "Individual market" is defined by KRS 304.17A-
Section 2. QHP Issuer General Requirements. In order for an issuer to participate in the KHBE beginning January 1, 2014, the issuer shall:

1. Hold a certificate of authority and be in good standing with the Kentucky Department of Insurance;
2. Be authorized by the office to participate on the KHBE;
3. By April 1 of each year, submit Form KHBE-C1, Issuer Participation Intent Form, a nonbinding notice of intent to participate in the exchange during the next calendar year;
4. Enter into a participation agreement with the office[KHBE];
5. Offer KHBE certified QHPs in the individual exchange or the SHOP exchange;
6. Comply with benefit design standards as established in 45 C.F.R. 156.20;
7. Provide coverage of the essential health benefits or the stand-alone pediatric dental essential health benefit is offered in the KHBE in accordance with 45 C.F.R. 155.1065, essential health benefits excluding pediatric dental essential health benefits;
8. Implement and report on a quality improvement strategy or strategies consistent with the standards of 42 U.S.C. 18031(g);
9. Comply with applicable standards described in 45 C.F.R. Part 153:
10. For the individual exchange, offer at least a:
   a. QHP with a silver metal level of coverage;
   b. QHP with a gold metal level of coverage;
   c. Child-only plan; and
   d. Catastrophic plan;
11. For the SHOP exchange, offer at least a:
   a. QHP with a silver metal level of coverage; and
   b. QHP with a gold metal level of coverage;
12. For the individual and SHOP exchange, offer no more than four (4) QHPs within a specified metal level of coverage. For the purposes of establishing the number of QHPs offered in a metal level, the office[KHBE] shall consider the same plan offered with dental benefits and offered without dental benefits as one (1) QHP;
13. Not discriminate, with respect to a QHP, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation;
14. Assume that the non-discrimination requirements in 42 U.S.C. 300gg-5 are met;
15. If participating in the small group market, comply with KHBE processes, procedures, and requirements established in accordance with 42 C.F.R. 155.705 for the small group market;
16. Allow a participating agent to:
   a. Enroll individuals, employers, and employees in QHPs offered on the exchange;
   b. Enroll qualified individuals in a QHP in a manner that constitutes enrollment through the KHBE; and
   c. Assist individuals in applying for advance payments of premium tax credit and cost sharing reductions; and
17. (a) Offer a QHP in a statewide service area, except as allowed under paragraph (b) of this subsection; or
   (b) Offer a QHP in a service area less than statewide if:
      1. A QHP is available statewide;
      2. The issuer’s service area includes one (1) or more counties;
      3. The issuer’s service area is approved by the DOI; and
      4. The issuer’s service area is established in a nondiscriminatory manner without regard to:
         a. Race;
         b. Ethnicity;
         c. Language;
         d. Health status of an individual in a service area; or
         e. A factor that excludes a high utilizing, high cost, or medically-underserved population; and
18. Comply with the requirements of KRS Chapter 304.

Section 3. QHP Rate and Benefit Information. (1) A QHP issuer shall:
   a. Comply with the provisions of 45 C.F.R. 156.210 and KRS 304.17A-095(4);
   b. Submit to DOI through the SERFF system:
      1. Form filings in compliance with KRS 304.14-120 and applicable administrative regulations promulgated thereunder;
      2. Rate filings in compliance with KRS 304.17A-095 and applicable administrative regulations promulgated thereunder; and
   c. Implement and report on a quality improvement strategy or strategies consistent with the standards established in subsection (1) of this section.
   d. For a rate increase, post the justification prominently on the QHP issuer’s Web site.
   e. A CO-OP, multi-state plan, and qualified dental plan shall comply with the requirements established in subsection (1) of this section.

Section 4. QHP Certification and Recertification Timeframes. (1) The office[KHBE] shall take final action on the request for:
   a. Certification no later than September 30 for the following plan year;
   b. Recertification of QHPs no later than September 31 for the following plan year.
   c. A QHP not certified by September 30 or recertified by September 31 shall not be offered on the exchange at any time during the following calendar year.

Section 5. Transparency in Coverage. (1) A QHP issuer shall provide the following information to the office in accordance with the standards established by subsection (2) of this section:
   a. Claims payment policies and practices;
   b. Periodic financial disclosures;
   c. Data on enrollment;
   d. Data on disenrollment;
   e. Data on the number of denied claims;
   f. Data on rating practices;
   g. SBC;
   h. Information on cost-sharing and payments for out-of-network coverage; and
   i. Information on enrollee rights under Title I of the Affordable Care Act.
   (2) A QHP issuer shall:
      a. Submit, in an accurate and timely manner, to be determined by HHS, the information described in subsection (1) of this section to the KHBE, HHS, and DOI; and
      b. Provide public access to the information described in subsection (1) of this section.
   (3) A QHP issuer shall ensure that the information submitted under subsection (1) of this section is provided in plain language as the term is defined by 45 C.F.R. 155.20.
   (4)(a) A QHP issuer shall make available, in a timely manner, information about the amount of enrollee cost-sharing under the
enrollee's plan or coverage relating to provision of a specific item or service by a participating provider upon the request of the enrollee.

(b) The information shall be made available to an enrollee through:
1. An Internet Web site; and
2. Other means if the enrollee does not have access to the Internet.

Section 6. Marketing and Benefit Design of QHPs. A QHP issuer and its officials, employees, agents, and representatives shall:
1. Comply with issuer marketing practices provided under KRS Chapter 304.17A and 806 KAR 12:010; and
2. Not employ marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with complex health care needs in QHPs.

Section 7. Network Adequacy Standards. (1) A QHP issuer shall ensure that the provider network of a QHP:
(a) Is available to all enrollees within the QHP service area;
(b) Includes essential community providers in the QHP provider network in accordance with 45 C.F.R. 156.235 and meets the network adequacy standards for essential community providers as established in Section 8 of this administrative regulation; and
(c) Maintains a network that is sufficient in number and types of providers, including providers that specialize in mental health and substance abuse services, to assure that all services will be provided in a timely manner; and
(d) Meets the reasonable network adequacy provisions of 45 C.F.R. 156.230 and KRS 304.17A-515.

(2) A QHP issuer shall make its provider directory for a QHP available:
(a) To the KHBE for online publication;
(b) To potential enrollees in hard copy upon request; and
(c) In accordance with KRS 304.17A-590.

(3) A QHP issuer shall identify in the QHP provider directory a provider that is not accepting new patients.

Section 8. Network Adequacy Standards for Essential Community Providers [for Coverage Year 2014]. A QHP issuer shall:
1. (a) Demonstrate a provider network, which includes at least twenty (20) percent of available essential community providers in the QHP service area participate in the issuers provider network; and
(b) Offer a contract to:
1. At least one (1) essential community provider in each essential community provider category in each county in the service area where an essential community provider in that category is available; and
2. Available Indian providers in the service area, using the Model Indian Addendum as developed by The Centers for Medicare and Medicaid Services and identified in [the "Supplementary Response: Inclusion of Essential Community Providers"] incorporated by reference in this administrative regulation; or
2. If unable to comply with the requirements in subsection (1) of this section:
(a) Demonstrate a provider network which includes at least ten (10) percent of available essential community providers in the QHP service area; and
(b) Submit a supplementary response as identified in ["Supplementary Response: Inclusion of Essential Community Providers"] as incorporated by reference in this administrative regulation.

Section 9. Health Plan Applications and Notices. A QHP issuer shall provide an application, including the streamlined application designated by the office, and notices to enrollees pursuant to standards described in 45 C.F.R. 155.230.

Section 10. Consistency of Premium Rates Inside and Outside the KHBE for the Same QHP. A QHP issuer shall charge the same premium rate without regard to whether the plan is offered:
1. (a) Through the KHBE;
(b) By an issuer outside the KHBE; or
(c) Through a participating agent.

Section 11. Enrollment Periods for Qualified Individuals. (1) A QHP issuer participating in the individual market shall:
(a) Enroll a qualified individual during the initial and annual open enrollment periods described in 45 C.F.R. 155.410(b) and (e) and comply with the effective dates of coverage established by the office [KHBE] in accordance with 45 C.F.R. 155.410(c)(1) and (f); and
(b) Make available, at a minimum, special enrollment periods described in 45 C.F.R. 155.420(d), for QHPs and comply with the effective dates of coverage established by the KHBE in accordance with 45 C.F.R. 155.420(b).
(c) A QHP issuer shall notify a qualified individual of the effective date of coverage.

(3) Notwithstanding the requirements of this section, coverage shall not be effective until premium payment is submitted by the individual.

Section 12. Enrollment Process for Qualified Individuals. (1) A QHP issuer shall process enrollment of an individual in accordance with this section.
(2) A QHP issuer participating in the individual market shall enroll a qualified individual if the KHBE:
(a) Notifies the QHP issuer that the individual is a qualified individual; and
(b) Transmits information to the QHP issuer in accordance with 45 C.F.R. 155.400(a).
(3) If an applicant initiates enrollment directly with the QHP issuer for enrollment in a plan offered through the KHBE, the QHP issuer shall either:
(a) Direct the individual to file an application with the KHBE in accordance with 45 C.F.R. 155.310; or
(b) Ensure the applicant received an eligibility determination for coverage through the KHBE through the KHBE Internet Web site.
(4) A QHP issuer shall accept enrollment information in accordance with the privacy and security requirements established by the office [KHBE] pursuant to 45 C.F.R. 155.260 and in an electronic format pursuant to 45 C.F.R. 155.270.
(5) A QHP issuer shall follow the premium payment process established by the KHBE in accordance with 45 C.F.R. 155.240.
(6) A QHP issuer shall provide new enrollees with an enrollment information package that complies with the accessibility and readability requirements established by 45 C.F.R. 155.230(b).
(7) A QHP issuer shall reconcile enrollment files with the KHBE no less than once a month in accordance with 45 C.F.R. 155.400(d).
(8) A QHP issuer shall acknowledge receipt of enrollment information transmitted from the KHBE in accordance with KHBE requirements established by 45 C.F.R. 155.400(b)(2).

Section 13. Termination of Coverage for Qualified Individuals. (1) A QHP issuer may terminate coverage of an enrollee in accordance with 45 C.F.R. 155.430(b)(2).
(2) If an enrollee’s coverage in a QHP is terminated for any reason, the QHP issuer shall:
(a) Provide the enrollee with a notice of termination of coverage that includes the reason for termination at least thirty (30) days prior to the final day of coverage, in accordance with the effective date established pursuant to 45 C.F.R. 155.430(d);
(b) Notify the KHBE of the termination effective date and reason for termination; and
(c) Comply with the requirements of KRS 304.17A-240 to 304.17A-245.
(3) Termination of coverage of enrollees due to non-payment of premium in accordance with 45 C.F.R. 155.430(b)(2)(i)(B) shall:
(a) Include the grace period for enrollees receiving advance payments of the premium tax credits as described in 45 C.F.R. 155.270(d); and
(b) Be applied uniformly to enrollees in similar circumstances.
(4) A QHP issuer shall provide a grace period of three (3) consecutive months if an enrollee receiving advance payments of the premium tax credit has previously paid at least one (1) full month’s premium during the benefit year. During the grace period, the QHP issuer:

(a) 1. Shall pay claims for services provided to the enrollee in the first month of the grace period; and
2. May suspend payment of claims for services provided to the enrollee in the second and third months of the grace period;
(b) Shall notify HHS of the non-payment of the premium due; and
(c) Shall notify providers of the possibility for denied claims for services provided to an enrollee in the second and third months of the grace period.

(5) For the three (3) months grace period described in subsection (4) of this section, a QHP issuer shall:
(a) Continue to collect advance payments of the premium tax credit on behalf of the enrollee from the U.S. Department of the Treasury; and
(b) Return advance payments of the premium tax credit paid on behalf of the enrollee for the second and third months of the grace period if the enrollee exhausts the grace period as described in subsection (7) of this section.

(6) If an enrollee is delinquent on premium payment, the QHP issuer shall provide the enrollee with a notice of the payment delinquency.

(7) If an enrollee receiving advance payments of the premium tax credit exhausts the three (3) months grace period in subsection (4) of this section without paying the outstanding premiums, the QHP issuer shall terminate the enrollee’s coverage on the effective date of termination described in 45 C.F.R. 155.430(d)(4) if the QHP issuer meets the notice requirement specified in subsection (2) of this section.

(8) A QHP issuer shall maintain records in accordance with KHBE requirements established pursuant to 45 C.F.R. 155.430(c).

(9) A QHP issuer shall comply with the termination of coverage effective dates as described in 45 C.F.R. 155.430(d).

Section 14. Accreditation of QHP Issuers. (1) A QHP issuer shall:

(a) Be accredited on the basis of local performance of a QHP by an accrediting entity recognized by HHS in categories identified by 45 C.F.R. 155.275(a)(1); and
(b) Pursuant to 45 C.F.R. 155.275(a)(2) authorize the accrediting entity that accredits the QHP issuer to release to the enrollee a copy of the most recent accreditation survey; and
(c) May suspend payment of claims for services provided to the enrollee in the second and third months of the grace period.

(b) A QHP issuer seeking certification of a QHP that has not received accreditation for the QHP shall submit evidence to support that the issuer has a plan for obtaining accreditation of the QHP within the timeline identified in paragraph (a) of this subsection.

The QHP issuer shall maintain accreditation so long as the QHP issuer offers QHPs.

Section 15. Recertification, Non-renewal, and Decertification of QHPs. (1) A QHP shall be recertified in accordance with the requirements of this administrative regulation every two (2) years no later than the fourth year of initial QHP certification and in every subsequent year of certification in accordance with requirements identified by 45 C.F.R. 155.1045.(f) and (g).

(b) A QHP issuer seeking certification of a QHP that has been decertified may request recertification of the QHP at least 120(ninety)(90) days prior to an expiration of the certification.

(3) If a QHP issuer elects not to seek recertification with the office[KHBE], the QHP issuer, at a minimum, shall:
(a) Notify the office[KHBE] of its decision prior to the beginning of the recertification process and follow the procedures adopted by the KHBE in accordance with 45 C.F.R. 155.1075; and
(b) Provide benefits for enrollees through the final day of the plan or benefit year.
(c) Submit reports as required by the office[KHBE] for the final plan or benefit year of the certification.
(d) Provide notices to enrollees in accordance with Section 13 of this administrative regulation.
(e) Terminate coverage of enrollees in the QHP in accordance with 45 C.F.R. 155.270, as applicable; and
(f) Comply with requirements of KRS 304.17A-240 and 304.17A-245, as applicable.

(4) If a QHP is decertified by the office[KHBE] pursuant to 45 C.F.R. 155.1080, the QHP issuer shall terminate coverage of enrollees only after:
(a) The KHBE has provided notification as required by 45 C.F.R. 155.1080(e);
(b) Enrollees have an opportunity to enroll in other coverage;
and
(c) The QHP issuer has complied with the requirements of KRS 304.17A-240 and 304.17A-245, as applicable.

Section 16. General Requirements for a Stand-alone Dental Plan. (1) In order for a dental insurer to participate in the KHBE beginning January 1, 2014 and offer a stand-alone dental plan, the dental insurer shall:
(a) Hold a certificate of authority to offer dental plans and be in good standing with the Kentucky Department of Insurance;
(b) Be authorized by the office to participate on the KHBE; and
(c) By April 1 of each year, submit Form KHBE-C1, Issuer Participation Intent Form, a nonbinding notice of intent to participate in the exchange during the next calendar year.
(d) Enter into a participation agreement with the office[KHBE];
(e)[(d)] Offer a pediatric dental plan certified by the office[KHBE] in accordance with this administrative regulation in the individual exchange or SHOP exchange that shall:
1. Comply with the requirements of KRS Chapter 304 Subtitle 1C;
2. Submit to DOI through the SERFF system:
   a. Form filings in compliance with KRS Chapter 304;
   b. Rate filings in compliance with KRS Chapter 304, as applicable; and
   c. Dental plan management data templates;
   d. Offer a stand-alone dental plan that shall:
   1. Be limited to a pediatric dental essential health benefit required by 42 U.S.C. 18022(b)(1)(J)(I) for individuals up to twenty-one (21) years of age;
   2. Pursuant to 45 C.F.R. 155.150, provide a grace period of three (3) months:
   a. A low level of coverage with an actuarial value of seventy (70) percent; and
   b. A high level of coverage with an actuarial value of eighty five (85) percent; and
   3. Have an annual limitation on cost-sharing at or below:
   a. $1,000 for a plan with one (1) child enrollee; or
   b. $2,000 for a plan with two (2) or more child enrollees; and
   (g)[(i)] Comply with the:  
   1. [Provider network adequacy requirements identified by KRS 304.17A-940 and maintain a network that is sufficient in number and types of dental providers to assure that all dental services will be accessible without unreasonable delay in accordance with 45 C.F.R. 155.230;]
   2. Requirements for stand-alone dental plans referenced in 45 C.F.R. 156 Subpart E; and
   3. Essential community provider requirement in 45 C.F.R. 156.235 and types of dental providers to assure that all dental services will be accessible without unreasonable delay in accordance with 45 C.F.R. 156.235 and
   (j) Make its provider directory for a QHP available:
   1. To the KHBE for online publication;
   2. To potential enrollees in hard copy upon request; and
   3. In accordance with KRS 304.17A-580.
(2) A dental insurer offering a stand-alone dental plan participating in the KHBE beginning January 1, 2014:
(a) May offer a stand-alone dental plan which includes coverage for individuals regardless of age which includes at a minimum a pediatric dental essential health benefit required by 42 U.S.C. 18022(b)(1)(D) coverage for individuals up to twenty-one (21) years of age; and
(b) If electing to offer the plan specified in paragraph (a) of this subsection, shall comply with the requirements of subsection (1) of this section.

Section 17. Essential health benefits for individuals up to twenty-one (21) years of age. The KHBE shall ensure that an individual up to age twenty-one (21) years of age eligible to enroll in a QHP shall obtain coverage for pediatric dental coverage.

Section 18. Enforcement. The DOI shall be responsible for enforcing the requirements of KRS Chapter 304 and any administrative regulations promulgated thereunder against any issuer.

Section 19. Issuer Appeals. (1) An issuer may appeal the office’s decision to:
(a) Deny certification of a QHP;
(b) Deny recertification of a QHP; or
(c) Decertify a QHP.
(2) An issuer appeal identified in subsection (1) of this section shall be made to the office in accordance with KRS Chapter 13B.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Chapter 7: Instructions for the Essential Community Providers Application Section", April 2013 version;
(b) "Form KHBE-C1, Issuer Participation Intent Form", revised October [August], 2013; and
(c) "Supplementary Response: Inclusion of Essential Community Providers", April 2013 version.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Health Benefit Exchange, 12 Mill Creek Park, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at www.healthbenefitexchange.ky.gov.

CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: August 14, 2013
FILED WITH LRC: August 14, 2013 at 1 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Kentucky Health Benefit Exchange
(As Amended at ARRS, October 8, 2013)


RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Parts 155, 156

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of the Kentucky Health Benefit Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to the operation of a Small Business Health Options Program in accordance with 42 U.S.C. 18031 and 45 C.F.R. parts 155 and 156.

Section 1. Definitions. (1) "Agent" is defined by KRS 304.9-020(1).
(2) "Annual open enrollment period" is defined by 45 C.F.R. 155.410(e) as the period each year during which a qualified employee may enroll or change coverage in a qualified health plan through an exchange.
(3) "Annual renewal date" means the date following twelve (12) months from the first day of the first coverage month and every twelve (12) months thereafter.
(4) "Children’s Health Insurance Program" or "CHIP" is defined by 42 C.F.R. 457.10.
(6) "Department of Health and Human Services" or "HHS" means the U.S. Department of Health and Human Services.
(7) "Employer identification number" means a unique numerical identifier which is used to identify a business, partnership, or other entity.
(8) "Full-time employee" is defined by 45 C.F.R. 155.20.
(9) "Full-time equivalent employee" means the number of employees determined by using the method set forth in section 4980h(c)(2) of the Internal Revenue Code, 26 U.S.C. 4980H(c)(2).
(10) "Group participation rate" means the number of eligible employees enrolled in a group health plan in relation to the number of employees eligible to enroll in the group health plan.
(11) "Health plan" is defined by 42 U.S.C. 18021(b)(1).
(12) "Indian" is defined by 25 U.S.C. 450b(d).
(13) "Initial open enrollment period" means the period beginning October 1, 2013 and extending through March 31, 2014, during which a qualified individual or qualified employee may enroll in health coverage through an exchange for the 2014 benefit year.
(14) "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-based exchange conditionally approved by HHS pursuant to [under standards set forth in] 45 C.F.R. 155.105 to offer a QHP beginning[qualified health plans on] January 1, 2014, that includes an:
(a) Individual exchange; and
(b) Small Business Health Options Program.
(15) "Kentucky Health Insurance Premium Payment Program" or "KHIPP" means a Kentucky Medicaid program that pays the costs of some or all of the[entire] employee portion of employer-sponsored health insurance premiums.
(16) "Medicaid" means coverage in accordance with Title XIX of the Social Security Act, 42 U.S.C. sections 1396 et seq, as amended.
(17) "Medicare advantage plan" means a Medicare program established under 42 U.S.C. 1395w-21[under Part C of title XVIII of the Social Security Act], which provides Medicare Part A and B benefits through a private insurer.
(18) "Metal level of coverage" means health care coverage provided within plus or minus two (2) percentage points of the full actuarial value as follows:
(a) Bronze level with an actuarial value of sixty (60) percent;
(b) Silver level with an actuarial value of seventy (70) percent;
(c) Gold level with an actuarial value of eighty (80) percent; and
(d) Platinum level with an actuarial value of ninety (90) percent.
(19) "Minimum essential coverage" is defined by 26 C.F.R. 1.5000A-2.
(20) ["Participation agreement" means an agreement between the office and a small employer participating in the KHBE Small Business Health Options Program.
(21) "Plan year" means a consecutive twelve (12) month period during which a health plan provides coverage for health benefits.

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Small Business Health Options (SHOP) Insurance Application for employers [an application] to participate in [KHBE] SHOP:
(a) Via the KHBE Web site at www.kynect.ky.gov;
(b) By telephone by contacting the KHBE customer service center;
(c) By mail; or
(d) In person.
(4) A qualified employer who ceases to be a small employer solely by reason of an increase in the number of employees shall be eligible to participate in the [KHBE] SHOP until the employer:
(a) Fails to otherwise meet the eligibility criteria of this section; or
(b) Chooses to no longer purchase health insurance coverage for qualified employees through the [KHBE] SHOP.
(5) As part of the verification of an application of the employer [application], a small employer shall submit:
(a) An employee census that includes the name, address, and social security number of all eligible employees;
(b) Proof of a federal employer identification number; and
(c) Copy of its most recent Employer's Quarterly Unemployment Wage and Tax Report, if applicable.
(6) A calculation of a group participation rate shall not include in the count of eligible employees an employee:
(a) Enrolled in:
1. A group health plan offered by a second employer;
2. A group health plan offered through the spouse of the employee;
3. An individual health plan;
4. Medicare, including a Medicare advantage plan;
5. [Medicaid or CHIP];
6. [TRICARE or other veteran’s health coverage];
7. [A parent's health plan);
8. [Coverage identified in 45 C.F.R. 156.602]; or
9. [Coverage recognized by HHS as meeting the requirement for minimum essential coverage under 45 C.F.R. 156.604];
(b) Issued a certificate of exemption from the shared responsibility payment by KHBE or HHS; or
(c) Not residing in the service area of at least one (1) QHP offered by the employer.
(7) If a small employer’s group participation rate falls below the requirement in subsection (1)(d) of this section during a plan year, the qualified small employer shall be eligible to participate in the [KHBE] SHOP through the remainder of the plan year.
(8) If the information submitted by a small employer is inconsistent with the eligibility standards in this section, the employer shall have thirty (30) days after a notification of the inconsistency to present documentation to support the employer’s application or resolve the inconsistency.
(9) A qualified small employer participating in the [KHBE] SHOP shall:
(a) Disseminate information to its qualified employees about the process to enroll in a QHP through the [KHBE] SHOP;
(b) Make a contribution toward the premium of any qualified employee in accordance with Section 4 of this administrative regulation;
(c) Remit to the KHBE, employer and employee contributions upon receipt of an invoice from the KHBE; and
(d) Qualified employers participating in the SHOP shall provide the KHBE with information about dependent or employees whose eligibility status for coverage purchased through the employer in the SHOP has changed; notify the KHBE of a change in eligibility status of an employee enrolled in a QHP within thirty (30) days of the event; and
(e) Enter into a participation agreement with the KHBE.
(10) A small employer may designate an agent to:
(a) Perform an employer function on behalf of the employer; or
(b) Assist an employer with enrollment and plan selection.
(11) A small employer participating in a SHOP may be eligible for small employer health insurance tax credits in accordance with 26 U.S.C. 45R.

Section 3. Employer Selection of Qualified Health Plans. (1) A small employer shall make available to a qualified employee:

(21) "Premium" is defined by KRS 304.14-030.
(22) "Qualified employer" means an [individual] employer that elects to make [offer], at a minimum, all full-time employees of [such] employer eligible for one (1) or more QHPs in the small group market in the small group market offered through the [SHOP].
(23) "Qualified employer" means an [individual] employer that elects to make [offer], at a minimum, all full-time employees of [such] employer eligible for one (1) or more QHPs in the small group market in the small group market offered through the [SHOP].
(24) "Qualified employer" means an [individual] employer that elects to make [offer], at a minimum, all full-time employees of [such] employer eligible for one (1) or more QHPs in the small group market in the small group market offered through the [SHOP].
(25) [KHBE] Shop means a Small Business Health Options Program operated by the [KHBE] [an exchange] through which a qualified employer can provide a qualified employer [employees, spouses,] and the employee's [spouses] dependsents with access to one (1) or more QHPs.
(26) "Small employer" means a small group market qualified employer can provide [a qualified employer [employees, spouses,] and the employee's [spouses] dependsents with access to one (1) or more QHPs.
(27) [KHBE] Shop means a Small Business Health Options Program operated by the [KHBE] [an exchange] through which a qualified employer can provide a qualified employer [employees, spouses,] and the employee's [spouses] dependsents with access to one (1) or more QHPs.
(28) "Qualified employer" means [an individual] employer that elects to make [offer], at a minimum, all full-time employees of [such] employer eligible for one (1) or more QHPs in the small group market in the small group market offered through the [SHOP].
(29) [KHBE] Shop means a Small Business Health Options Program operated by the [KHBE] [an exchange] through which a qualified employer can provide a qualified employer [employees, spouses,] and the employee's [spouses] dependsents with access to one (1) or more QHPs.
(30) [KHBE] Shop means a Small Business Health Options Program operated by the [KHBE] [an exchange] through which a qualified employer can provide a qualified employer [employees, spouses,] and the employee's [spouses] dependsents with access to one (1) or more QHPs.
(31) "Small employer" means an [individual] employer that elects to make [offer], at a minimum, all full-time employees of [such] employer eligible for one (1) or more QHPs in the small group market in the small group market offered through the [SHOP].
(32) [KHBE] Shop means a Small Business Health Options Program operated by the [KHBE] [an exchange] through which a qualified employer can provide a qualified employer [employees, spouses,] and the employee's [spouses] dependsents with access to one (1) or more QHPs.
(33) "Qualified employer" means an [individual] employer that elects to make [offer], at a minimum, all full-time employees of [such] employer eligible for one (1) or more QHPs in the small group market in the small group market offered through the [SHOP].
(34) [KHBE] Shop means a Small Business Health Options Program operated by the [KHBE] [an exchange] through which a qualified employer can provide a qualified employer [employees, spouses,] and the employee's [spouses] dependsents with access to one (1) or more QHPs.
(a) A single QHP;
(b) All available QHPs at a single metal level of coverage; or
(c) If metal levels are contiguous, one (1) or more QHPs at more than one (1) metal level of coverage.

(2) A qualified employer may apply for coverage through the SHOP for its qualified employees [small group] at any time in a year.

(3) The employer’s plan year shall consist of the twelve (12) [a] month period beginning with the qualified employer’s effective date of coverage.

Section 4. Minimum Contribution. (1) If a small employer selects one (1) QHP to offer to a qualified employee in accordance with Section 3 of this administrative regulation, the small employer shall:
(a) Define a percentage contribution of at least fifty (50) percent toward a premium for employee-only coverage under the QHP, except as provided for in 45 CFR 147.104(b)(1); and
(b) Apply the employer contribution determined in paragraph (a) of this subsection toward a QHP selected by the employee.

(2) If a small employer selects more than one (1) QHP to offer to a qualified employee in accordance with Section 3 of this administrative regulation, the small employer shall:
(a) Select a QHP to serve as a reference plan on which a contribution shall be based;
(b) Make a percentage contribution of at least fifty (50) percent toward a premium for employee-only coverage under the reference plan; and
(c) Apply the employer contribution determined in paragraph (b) of this subsection toward a QHP selected by the employee.

(3) If a small employer elects to provide dependent coverage, the small employer may make a contribution toward a premium for dependent coverage.

Section 5. Annual Employer Election Period. (1) On an annual basis, a small employer shall have a thirty (30) day period prior to the completion of the employer’s plan year and before the annual open enrollment period to change the employer’s participation in the SHOP [KHEB]

(b) The qualified employee gains a dependent through marriage, birth, adoption, or placement for adoption;
(3) The qualified employee or dependent of a qualified employee may change QHPs during a special enrollment period if:
(a) The qualified employee enrolls in another QHP; or
(b) Employer contribution towards the premium of a qualified employee made in accordance with Section 4 of this administrative regulation; and
(c) QHP or QHPs offered to qualified employees in accordance with Section 3 of this administrative regulation.

Section 6. Employee Eligibility. (1) An employee shall be eligible to enroll in a QHP through the [KHEB] SHOP if the employee receives an offer of coverage from a qualified employer.

(2) An employee shall submit Form KYBE-E11, Small Business Health Options (SHOP) Insurance Application for Employees, [an application] to enroll in a QHP:
(a) Via the internet at www.kynect.ky.gov;
(b) By telephone by calling the KHBE customer service center;
(c) By mail; or
(d) In person.
(3) If the information submitted by an employee is inconsistent with the eligibility standards in this section, the employee shall have thirty (30) days after a notification of the inconsistency to present documentation to support the employee’s application or resolve the inconsistency.

(4) A qualified employee may designate an individual or organization as an authorized representative.
(5) An eligible employee who does not want to enroll in a QHP offered by a qualified employer shall waive coverage.
(6) A small employer shall be notified if a qualified employee enrolled in a QHP terminates coverage in the QHP.

Section 7. Enrollment and Effective Dates of Coverage. (1) A qualified employee shall select a QHP or change a QHP offered by a qualified employer in accordance with Section 3 of this administrative regulation during:
(a) The initial open enrollment period;
(b) An annual open enrollment period as set forth in Section 8 of this administrative regulation;
(c) A special enrollment period set forth in Section 9 of this administrative regulation; or
(d) An enrollment period outside of the employer’s open enrollment period as set forth in Section 8(3) of this administrative regulation, only for a qualified employee who is newly eligible.

(2) The length of an initial open enrollment period and annual open enrollment period shall be:
(a) Thirty (30) days; and
(b) At the request of a small employer, extended up to a maximum of fifteen (15) additional days.

(3) Coverage in a QHP shall be effective:
(a) If plan selection is made prior to December 15, 2013, during the initial open enrollment period, January 1, 2014;
(b) If open enrollment ends between the first and 15th day of any month, the first day of the following month; or
(c) If plan enrollment ends between the 16th and the last day of any month, the first day of the second following month; and
(d) Upon receipt of the full first month’s premium from a small employer.

(4) For a renewal, the effective date of coverage shall be an employer’s annual renewal date.

(5) For a special enrollment period, the effective date of coverage shall be in accordance with Section 9(5) and (6) of this administrative regulation.

(6) Except for the death of an employee or dependent of an employee, the effective date for cancellation of coverage shall be the last day of the month during which an issuer terminates an employee’s or dependent of an employee’s coverage.
(b) The effective date for cancellation of the death of an employee or dependent of an employee shall be the date of death.
(7) Unless an employee changes coverage due to a qualifying event, a premium shall not change until the employer’s annual renewal date.

Section 8. Annual Open Enrollment Period. (1) A qualified employee shall select a QHP or change QHPs during an annual open enrollment period that shall be:
(a) No less than thirty (30) days; and
(b) Prior to the end of the employer’s plan year.

(2) If a qualified employee enrolled in a QHP remains eligible for coverage, the qualified employee shall remain enrolled in the QHP selected the previous year unless:
(a) The qualified employee enrolls in another QHP; or
(b) The QHP is no longer available to the qualified employee.

(3) A newly added employee who becomes eligible after the beginning of the plan year and prior to the annual enrollment period shall have thirty (30) days prior to the date the newly added employee becomes eligible for employer-sponsored coverage to enroll in a QHP.

(b) The effective date of coverage of a newly added employee shall be the first day of the month following the month the newly added employee becomes eligible for employer-sponsored coverage.

Section 9. Special Enrollment Period. (1) A qualified employee or dependent of a qualified employee may enroll in a QHP or a qualified employee may change QHPs during a special enrollment period if:
(a) The qualified employee or dependent of a qualified employee loses minimal essential coverage;
(b) The qualified employee gains a dependent through marriage, birth, adoption, or placement for adoption;
(c) The qualified employee or dependent of the qualified employee loses or fails to enroll in a QHP due to an error, misrepresentation, or inaction of an officer, employee, or agent of the KHBE or HHS;
(d) The qualified employee or dependent of the qualified employee loses minimal essential coverage;
employee demonstrates to the KHBE that the QHP in which the qualified employee or dependent of the qualified employee is enrolled substantiates violated a material provision of its contract in relation to the enrollee; 
(e) The qualified employee or dependent of the qualified employee gains access to new QHPs as a result of a permanent move; 
(f) The qualified employee or dependent of the qualified employee demonstrates that the qualified employee or dependent of an employee meets other exceptional circumstances; 
(g) The qualified employee is an Indian who may change from one (1) QHP to another QHP one (1) time per month; 
(h) The qualified employee or dependent of the qualified employee loses eligibility for coverage under Medicaid or CHIP; or 
i) The qualified employee or dependent of a qualified employee becomes eligible for premium assistance through KHP.
(2) A qualified employee or dependent of a qualified employee shall have[i] thirty (30) days from the date of a triggering event described in subsection (1)(a) through (g) of this section to select a QHP through the[KHBE] SHOP.
(3) A qualified employee or dependent of a qualified employee shall have[i] sixty (60) days from the date of a triggering event described in subsection (1)(h) [or and] (i) of this section to select a QHP through the[KHBE] SHOP.
(4) A dependent of a qualified employee shall not be eligible for a special enrollment period if a small employer does not offer coverage to a dependent.
(5) Except as provided in subsection (6) of this section, the effective date of coverage for an enrollment during a special enrollment period shall be, if a qualified employee selects a QHP[shall have]:
(a) Between the first and the fifteenth day of any month, the first day of the following month; or [and] 
(b) Between the sixteenth and the last day of any month, the first day of the second following month.
(6) Among birth, adoption, or placement for adoption, the effective date of coverage shall be the date of birth, adoption, or placement for adoption.
(b) For [in the case of] marriage, or [in the case where] a qualified employee loses minimum essential coverage as described in subsection (7) and (8) of this section, the effective date of the coverage shall be the first day of the following month.
(7) Loss of minimum essential coverage shall include[includes] those circumstances described in 26 C.F.R. 54.9801-6(a)(3)(i) through (iii).
(8) Loss of minimum essential coverage shall[does] not include termination or loss due to:
(a) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage; or 
(b) A situation allowing for a rescission as specified in 45 C.F.R. 147.128.
Section 10. Employer Voluntary and Involuntary Termination from[KHBE] SHOP. (1)(a) An employer may terminate its participation in[KHBE] SHOP at any time and for any reason by paying written notice to KHBE.
(b) The earliest effective date of termination shall be the last day of the calendar month following the calendar month in which notice is given.
(2) An employer may be terminated from participation in[KHBE] SHOP if the employer:
(a) Fails to meet the minimum contribution requirements established in pay a premium in accordance with Section 4 of this administrative regulation;
(b) Fails to meet the employer eligibility requirements established in Section 2 of this administrative regulation[or]
(c) Fails to pay the total premium due within the grace period described in KRS 304.17A-243; or 
(d) Commits fraud or misrepresentation.
(3) The effective date of employer termination from participation in the[KHBE] SHOP shall be:
(a) The date of notification of termination for failure to meet minimum contribution requirements under subsection (2)(a) of this section;[for non-payment of premiums, if the condition in subsection (2)(a) of this section is met.]
(b) The last day of the plan year, if the condition in subsection (2)(b) of this section is met[or]
(c) The date premium was due, if the condition in subsection (2)(c) of this section is met; or 
(d) The last day of the calendar month following the month in which an employer shall be notified of the termination by the KHBE, if the condition in subsection (2)(d) of this section is met.
(4) Coverage terminated under subsection (2)(c) of this section for nonpayment of premium shall be reinstated upon request of the employer one (1) time during a plan year if the employer:
(a) Requests reinstatement by the end of the month following the month of termination; and 
(b) Pays all premiums:
1. From the month of termination through the month reinstatement is requested; and 
2. For the month following the request for reinstatement[if] 
(5) If coverage is reinstated pursuant to subsection (4) of this section, there shall be no lapse in coverage.
Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Form KHBE-E10, Small Business Health Options Program (SHOP) Insurance Application for Employers", revised 8-30-13; and
(b) "Form KHBE-E11, Small Business Health Options Program (SHOP) Insurance Application for Employees", revised 8-30-13.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Health Benefit Exchange, 12 Mill Creek Park, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at wwww.healthbenefitexchange.ky.gov.
CARRIE BANAHAN, Executive Director 
AUDREY TAYSE HAYNES, Secretary 
APPROVED BY AGENCY: September 11, 2013 
FILED WITH LRC: September 12, 2013 at 2 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.
CABINET FOR HEALTH AND FAMILY SERVICES 
Office of the Kentucky Health Benefit Exchange 
(As Amended at ARRS, October 8, 2013)

900 KAR 10:050. Individual Agent or Business Entity Participation with the Kentucky Health Benefit Exchange.

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Part 155 
STATUTORY AUTHORITY: KRS 194A.050(1) 
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of the Kentucky Health Benefit Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures[of the Office of the Kentucky Health Benefit Exchange] relating to the registration of a business entity or individual agent in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.
Section 1. Definitions. (1) “Advanced payment of premium tax credits” or “APTC” means payment of the tax credits authorized by 26 U.S.C. 36B and its implementing regulations, which are provided on an advance basis to an eligible individual enrolled in a qualified health plan through an exchange in accordance with section 1412 of the Affordable Care Act, 42 U.S.C. 18082.

(2) “Agent,” is defined by [means an individual described in] KRS 304.9-020(1).

(3) “Business entity” is defined by KRS 304.9-020(5).

(4) “Certified application counselor” or “CAC” means an individual employed by, or a volunteer of, an entity designated by the office and the Department for Medicaid Services.

(5) “Cost-sharing reductions” or “CSR” means a reduction in the office and the Department for Medicaid Services.

(a) A state Medicaid program under title XIX of the

(b) Small Business Health Options Program

(c) “Insurance Affordability Program” means one (1) of the described in 45 C.F.R. 155.205 selected by the Office of KHBE.

(d) “Individual market” is defined by KRS 304.17A-005(26).

(e) “Department of Insurance” or “DOI” is defined by KRS 304.1-050(2).

(f) “Date of the notice” means the date on the notice plus five calendar days.

(g) “Department of Insurance” or “DOI” is defined by KRS 304.1-050(2).

(h) “Individual market” is defined by KRS 304.17A-005(26).

(i) “In-Person Assister” means an entity representing functions described in 45 C.F.R. 155.205 selected by the Office of KHBE.

(j) “Individual Affordability Program” means one (1) of the following:

(a) A state Medicaid program under title XIX of the Social Security Act, 42 U.S.C. 301 et seq.;

(b) A state children’s health insurance program (CHIP) under title XXI of the Social Security Act, 42 U.S.C. 301 et seq.;

(c) A program that makes coverage in a qualified health plan through the exchange with advance payments of the premium tax credit established under section 36B of the Internal Revenue Code, 26 U.S.C. 36B, available to qualified individuals; or

(d) A program that makes available coverage in a qualified health plan through the exchange with cost-sharing reductions established under section 1402 of the Affordable Care Act, 42 U.S.C. 18077.

(k) “Issuer” is defined by 45 C.F.R. 144.103.

(l) “Kentucky Health Benefit Exchange” or “KHBE” means the Kentucky state-based exchange conditionally approved by HHS pursuant to 45 C.F.R. 155.105 to offer a QHP beginning January 1, 2014, that includes an:

(a) Individual exchange; and

(b) Small Business Health Options Program.

(m) “Kentucky Insurance Code” means KRS Chapter 304 and associated administrative regulations.

(n) “Kentucky Online Gateway” means the system for authentication services for users requesting access to the KHBE portal.

(o) “Kynectors” means CACs, in-person assisters, or navigators.

(p) “Navigator” means CACs, in-person assisters, or navigators.

(q) “Office of the Kentucky Health Benefit Exchange” or “office” [or “OKHBE”] means the office created to administer the Kentucky Health Benefit Exchange.

(r) “Participating agent” means an agent[defined by KRS 304.9-020(4)] who has been certified by the office to participate on the KHBE.

(s) “Qualified employee” means an individual employed by a qualified employer who has been offered health insurance coverage by the qualified employer through the SHOP.

(t) “Qualified employer” means an employer that elects to make, at a minimum, all full-time employees of the employer eligible for one (1) or more QHPs in the small group market offered through the SHOP.

(4) “Qualified health plan” or “QHP” means a health plan that meets the standards described in 45 C.F.R. 156 Subpart C and that has in effect a certification issued by the office[OKHBE].

(5) “Qualified individual” means an individual who has been determined eligible to enroll through the KHBE in a QHP in the individual market.

(a) “Small group” is defined by KRS 304.17A-005(42).

(b) “Small group” is defined by KRS 304.17A-005(42).

(c) “Small Business” is defined by KRS 304.17A-005(42).

(d) “Small group” is defined by KRS 304.17A-005(42).

(e) “Small group” is defined by KRS 304.17A-005(42).

(f) “Small group” is defined by KRS 304.17A-005(42).

(g) “Small group” is defined by KRS 304.17A-005(42).

(h) “Small group” is defined by KRS 304.17A-005(42).

(i) “Small group” is defined by KRS 304.17A-005(42).

(j) “Small group” is defined by KRS 304.17A-005(42).

(k) “Small group” is defined by KRS 304.17A-005(42).

(l) “Small group” is defined by KRS 304.17A-005(42).

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(v) “Small group” is defined by KRS 304.17A-005(42).

(w) “Small group” is defined by KRS 304.17A-005(42).

(x) “Small group” is defined by KRS 304.17A-005(42).

(y) “Small group” is defined by KRS 304.17A-005(42).

(z) “Small group” is defined by KRS 304.17A-005(42).

(aa) “Small group” is defined by KRS 304.17A-005(42).

(bb) “Small group” is defined by KRS 304.17A-005(42).

(cc) “Small group” is defined by KRS 304.17A-005(42).

(dd) “Small group” is defined by KRS 304.17A-005(42).

(4) “Training” means the training established by the office for individual agents and kynectors.

Section 2. Requirements to be a Participating Individual Agent or Business Entity. (1) An individual agent seeking to be a participating agent shall:

(a) Be licensed by DOI with a health line of authority;

(b) Complete the office[OKHBE] approved agent training in accordance with 45 C.F.R. 155.220(d)(2);

(c) Sign an individual agent participation agreement;

(d) Comply with the privacy and security standards of 45 C.F.R. 155.260;

(e) 1. Maintain an appointment with at least two (2) QHP issuers participating on the KHBE; or

2. Maintain a designation with a business entity having an appointment with at least two (2) QHP issuers participating on the KHBE; and

(f) Register with the KHBE through the Kentucky Online Gateway.

(2) A business entity licensed as an agent with a health line of authority seeking to participate with the KHBE shall:

(a) Select an agent to serve as the participating business entity representative who shall:

1. Register with KHBE through the Kentucky Online Gateway as the individual authorized by the business entity;

2. Serve as a primary contact for the office;

3. Ensure that the business entity signs a participation agreement with the office; and

4. Be responsible for ensuring that only an active Kentucky licensed agent designated with the business entity is provided access to the KHBE through the Kentucky Online Gateway;

(b) Designate the individual agents or business entity who shall participate on the KHBE through the participating business entity and who shall:

1. Complete the [OKHBE] agent training provided by the office or an approved party;

2. Sign an agent participation agreement;

3. Comply with the privacy and security standards of 45 C.F.R. 155.260; and

4. Register with the KHBE through the Kentucky Online Gateway; and

(c) Maintain an appointment with at least two (2) QHP issuers participating on the KHBE.

Section 3. Permitted Activities of a Participating Individual Agent or Business Entity. (1) Upon completion of the registration requirements as set forth in Section 2 of this administrative regulation, a participating individual agent or business entity may:

(a) Enroll a qualified individual in any QHP offered through the KHBE in the individual market;

(b) Assist qualified employers in selecting a QHP and enroll qualified employers in a QHP offered through the KHBE in the small group market; [and]

(c) Assist an individual in applying for advance payments of the premium tax credit and cost-sharing reductions.

(2) A qualified individual may be enrolled in a QHP through the KHBE by a participating individual agent or business entity if the participating individual agent or business entity ensures the applicant’s completion of an application as described in 42 C.F.R. 155.405.

(3) A participating individual agent or business entity shall:

(a) Disclose to potential applicants any relationships the individual agent or business entity has with QHP issuers, insurance affordability programs, or other potential conflicts of interest identified by the office[OKHBE]; and

(b) Not:

1. Impose any charge or fee on an applicant for assistance in completing an application or enrolling in a QHP;

2. Provide compensation or a referral fee to a kynector; and

3. Enter into an exclusive referral agreement with a kynector.

(4) If the office finds noncompliance with the terms and conditions of the individual agent participation agreement, business entity participation agreement, or an administrative regulation of the office, the office shall withdraw an agent’s or business entity’s
registration and participation with the KHBE after:
(a) Giving notice to the participating individual agent or participating business entity and
(b) An opportunity to respond in accordance with Section 5 of this administrative regulation.

Section 4. Renewal of Participation and Registration with the office[OKHBE]. To maintain registration with the office, a participating individual agent or participating business entity shall:
(1) Comply with annual training prescribed by the office;
(2) Sign an agent or business entity participation agreement; and
(3) Maintain licensure, appointments, and designations as identified in Section 2 of this administrative regulation.

Section 5. Withdrawal of Registration and Appeals. (1) (a) Except as provided in subsection (2) of this section, if the office finds noncompliance with the terms and conditions of an individual agent participation agreement, a business entity participation agreement, or an administrative regulation of the office, the office shall:
1. Provide the participating individual agent or the participating business entity with notice that the applicable registration shall be withdrawn as of the date of notice;
2. Allow the participating individual agent or participating business entity an opportunity to submit evidence of compliance or additional information within ten (10) business days;
3. Review any information submitted by the participating individual agent or participating business entity; and
4. Based on a review of the information provided, issue a decision to uphold the withdrawal[withdraw] or reinstate the applicable registration of a participating individual agent or participating business entity.
(b) A participating individual agent or participating business entity shall have the right to appeal a decision to withdraw registration in accordance with paragraph (a) of this subsection through the office.
(2)(a) If the health line of authority or licensure of an agent or business entity is suspended, revoked, or has expired, the [OKHBE] registration of the agent or business entity shall be withdrawn by the office[OKHBE] based on DOI's administrative action.
(b) Any appeal or request of an action by DOI pursuant to paragraph (a) of this subsection shall be made to DOI in accordance with the Kentucky Insurance Code.
(3) After one (1) year following a decision to withdraw the registration of a participating individual agent or participating business entity, the individual agent or business entity may reapply in accordance with Section 2 of this administrative regulation.

WILLIAM J. NOLD
For CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: July 3, 2013
FILED WITH LRC: July 10, 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
(As Amended at ARRS, October 8, 2013)

906 KAR 1:190. Kentucky Applicant Registry and Employment Screening Program.

RELATES TO: 42 U.S.C. 1320a-71
STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 1320a-71

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. 42 U.S.C. 1320a-71 directs the secretary of the United States Department of Health and Human Services to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. On May 20, 2011, the Commonwealth of Kentucky was the twelfth state to receive a National Background Check Program (NBCP) grant awarded by the Centers for Medicare and Medicaid Services under 42 U.S.C. 1320a-71. On the date this amended after comments administrative regulation was filed with the Legislative Research Commission, twenty-four[twenty-three—(23)] states and territories had received an NBCP grant. The Cabinet for Health and Family Services, Office of Inspector General is charged with responsibility to oversee and coordinate Kentucky's fingerprint-supported NBCP grant initiative, called the KARES "Kentucky Applicant Registry and Employment Screening" Program. This administrative regulation establishes procedures for the implementation of KARES as a voluntary program. The Cabinet for Health and Family Services encourages long-term care facilities and providers to participate in KARES as the grant program provides employers with an enhanced pre-employment screening mechanism intended to help protect elderly and vulnerable adults from potential abuse, neglect, and exploitation. The conditions set forth in this administrative regulation for voluntary KARES program participants are in addition to the name-based, state only background check requirements of KRS 216.533, 216.712(2), 216.787, and 216.789.

Section 1. Definitions. (1) "Applicant" means an individual who applies for employment with an employer identified in subsection (6) of this section.
(2) "Cabinet" means the Cabinet for Health and Family Services.
(3) "Criminal background check" means a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police and the Federal Bureau of Investigation.
(4) "Disqualifying offense" means:
(a) A conviction of, or a plea of guilty, an Alford plea, or a plea of nolo contendere to:
1. A misdemeanor offense related to abuse, neglect, or exploitation of an adult as defined by KRS 209.020(4) or child, or a sexual offense;
2. A criminal offense against a victim who is a minor, as defined in KRS 17.500;
3. A felony offense involving a child victim;
4. A felony offense under:
   a. KRS Chapter 209;
   b. KRS Chapter 218A;
   c. KRS 507.020;
   d. KRS 507.030;
   e. KRS 507.040;
   f. KRS Chapter 508;
   g. KRS Chapter 509;
   h. KRS Chapter 510;
   i. KRS Chapter 511;
   j. KRS Chapter 513;
   k. KRS 514.030;
   l. KRS Chapter 515;
   m. KRS 529.100;
   n. KRS 529.110;
   o. KRS Chapter 530; and
   p. KRS Chapter 531.
5. An offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph; or
6. (Any crime described in 42 U.S.C. 1320a-7;
(b) A substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 U.S.C. 1395i-3
or 1996;
(c) Registration as a sex offender under federal law or under the law of any state; or
(d) Being listed on a registry as defined in subsection (9) of this section.
(5) "Employee" means an individual who:
(a) Is hired directly or through contract by an employer defined in subsection (6) of this section, and has duties that involve or may involve one-on-one contact with a patient, resident, or client; or
(b) Is a volunteer who has duties that are equivalent to the duties of an employee providing direct services and the duties involve, or may involve, one-on-one contact with a patient, resident, or client; and
(c) Has access to the personal belongings or funds of a patient, resident, or client; or
(d) Providing or procuring temporary employment in or with a long-term care facility or provider;
(e) Has one (1) or more employers as listed in this subsection with staff whose duties are equivalent to duties performed by an employee pursuant to subsection (5) of this section; or
(f) Any staff person who has access to the personal belongings or funds of a patient, resident, or client of the employer; and
(g) Any volunteer who has duties that are equivalent to the duties of an employee providing direct services and those duties involve or may involve one-on-one contact with a patient, resident, or client of an employer without line-of-sight supervision by facility or provider staff;
(6) "Employer" means:
(a) A long-term care facility as defined in KRS 216.510;
(b) A nursing pool as defined in subsection (9) of this section providing staff to a long-term care facility or provider;
(c) An adult day health care program as defined in KRS 216B.0441;
(d) An assisted living community as defined in KRS 194A.700;
(e) A home health agency as defined in KRS 216.935; of this section;
(f) A provider of hospice care as defined in 42 U.S.C. 1395xx(d)(1)(H);
(g) A personal care services agency as defined in KRS 216.710; and
(h) A long-term care hospital as defined in 42 U.S.C. 1395ww(d)(1)(B)(iv):
(i) A provider[Providers] of home and community-based services authorized under KRS Chapter 205;
(ii) A staffing agency with a contracted relationship to provide one (1) or more employees as listed in this subsection with staff whose duties are equivalent to duties performed by an employee pursuant to subsection (5) of this section; or
(k) Any other health facility or service licensed pursuant to KRS Chapter 216B that applies to participate voluntarily in the KARES program.
(7) "Inspector general" means the Office of Inspector General of the Cabinet for Health and Family Services.
(8) "Nursing pool" means a [any] person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in or with a long-term care facility or provider for medical personnel, including [but not limited to] nurses, nursing assistants, nursing aides, and orderlies.
(9)[(9)] "Registry" means the:
(a) Nurse aide abuse registry maintained pursuant to 906 KAR 1:100 and 42 C.F.R. part 56;
(b) Child abuse and neglect registry maintained pursuant to 922 KAR 1:470 and required by 42 U.S.C. 671(a)(20);[and]
(c) List of Excluded Individuals and Entities maintained by the United States Department of Health and Human Services, Office of Inspector General pursuant to 42 U.S.C. 1320a-7; and
(d) Any available abuse registry, including the abuse and neglect registries of another state if an applicant resided in that state.
(9)[(10)] "State" is defined by KRS 446.010(40).
(10)[(11)] "Violent crime" means a conviction of, or a plea of guilty, an Alford plea, or a plea of no contest to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, [or] rape in the first degree or sodomy in the first degree of the victim, sexual abuse in the first degree, or serious physical injury to a victim.

Section 2. Applicability and Exceptions. (1) This administrative regulation shall apply to:
(a) Prospective cabinet staff hired on or after[upon] the effective date of this administrative regulation whose duties include conducting inspections of:
(i) Health facilities and services licensed pursuant to KRS Chapter 216B; or
(ii) Services regulated pursuant to KRS 194A.700 through 194A.729, or KRS 216.710 through 216.714;
(b) Prospective employees hired on or after[upon] the effective date of this administrative regulation of state-owned or operated health facilities licensed pursuant to KRS Chapter 216B;
(c) Prospective cabinet staff hired on or after[upon] the effective date of this administrative regulation who have or may have one-on-one contact with a patient or resident of an employer defined by Section 1(6) of this administrative regulation; and
(d) Prospective employees seeking employment with a private employer that participates voluntarily in the KARES Program hired on or after[upon] the effective date of this administrative regulation.
(2) This administrative regulation shall not apply to current cabinet staff or current employees of any employer that participates voluntarily in the KARES program that are[. As used in this subsection, current means] employed[on or] before the effective date of this administrative regulation.
(3) A prospective employee shall not include:
(a) Any[the] individual who independently contracts with a KARES-participating[ ]employer to provide utility, construction, communications, or other services if the contracted services are not directly related to the provision of services to a resident, patient, or client of the employer; or
(b) A board certified physician, surgeon, or dentist under contract with a KARES-participating employer.
Section 3. Agreement to Participate. An employer that elects to participate in KARES voluntarily shall complete and submit an Agreement to Participate in the KARES Program.

Section 4. Registry and Criminal Background Checks: Procedures and Payment.
(1) To initiate the process for obtaining a background check on a prospective employee, the employer shall:
(a) Request that the applicant provide a copy of his or her driver's license or government-issued photo identification and verify that the photograph clearly matches the applicant;
(b) Request that the applicant complete a:
1. Disclosure Form; and
2. Consent and Release Form; and
(c) Log on to the KARES portal, which shall be a secure web-based system maintained by the cabinet, and enter the applicant's demographic information for a check of:
1. Each registry as defined by Section 1(8)[(9)] of this administrative regulation; and
2. Databases maintained separately by the Kentucky Board of Medical Licensure, Kentucky Board of Nursing, and Kentucky Board of Physical Therapy to validate the applicant's professional licensure status, if applicable.
(2) An applicant who is found on the child abuse and neglect central registry maintained pursuant to 922 KAR 1:470 may request a rehabilitation review pursuant to Section 9 of this administrative regulation.
(3) If an applicant is cleared for hire after a check of the
registries and databases identified in subsection (1)(c) of this section, the employer shall submit payment via credit or debit card for the criminal background check.

(b)1. Effective until May 19, 2014, or until NBCP grant funds are depleted, whichever date is later, employers shall pay the twenty (20) dollar fee charged by the Justice and Public Safety Cabinet pursuant to paragraph (d)1. of this subsection.

2. Effective until May 19, 2014, or until NBCP grant funds are depleted, whichever date is later, employers shall pay the sixty-three (63) dollar fee charged by the cabinet to cover the cost of facilitating the criminal background check.

1. Have thirty (30) calendar days from the date of payment pursuant to subsection (3) of this section to submit his or her fingerprints at an authorized collection site; and

2. Present the Live Scan Fingerprinting Form and driver’s license or government-issued photo identification to the designated agent at the authorized collection site prior to fingerprint submission.

5. Upon completion of a criminal background check, the cabinet shall:

(a) Provide notice to the employer that the applicant is clear to hire, or not clear to hire if the applicant is found by the cabinet to have a disqualifying offense; and

(b) Not disclose the applicant’s criminal history to the employer.

Section 5. Provisional Employment. (1) If an applicant is not found on a registry and the individual’s license has been validated, if applicable, an employer may hire the applicant for a period of provisional employment pending completion of the criminal background check.

2. The period of provisional employment shall:

(a) Not commence prior to the date the applicant submitted his or her fingerprints; and

(b) Not exceed sixty (60) days from the date of fingerprint collection.

3. During the period of provisional employment, the individual shall not have supervisory or disciplinary power or routine contact with patients, residents, or clients without supervision on-site and immediately available to the individual.

Section 6. Individuals Ineligible to be Hired. An employer participating in the KARES program, an agency within the cabinet responsible for conducting inspections of any employer, or a state-owned or and operated health facility shall not employ, contract with, or permit to work as an employee any applicant that submits to a background check if one (1) or more of the following are met:

1. The applicant refuses to provide photo identification or complete the Disclosure Form or Consent and Release Form required by Section 4(1)(a) and (b) of this administrative regulation;

2. The applicant is found on a registry as defined by Section 1(8)(a)(y) of this administrative regulation;

3. The applicant’s professional license is not in good standing, if applicable;

4. The applicant fails to submit his or her fingerprints at an authorized collection site within thirty (30) calendar days of payment submitted pursuant to Section 4(3) of this administrative regulation;

5. Upon completion of the criminal background check, the employer, cabinet agency, or state-owned or operated health facility receives notice that the applicant is not clear for hire based on a cabinet determination that the individual has been found to have a disqualifying offense; or

6. Final disposition of a criminal charge related to a disqualifying offense is not provided to the cabinet within sixty (60) days of fingerprint submission.

Section 7. Notice of a Disqualifying Offense and Appeals. (1) The cabinet shall notify each applicant determined to have a disqualifying offense:

2. In addition to the cabinet’s notification required by subsection (1) of this section, an employer that receives notice from the cabinet that an individual has been determined to have a disqualifying offense shall notify the individual of the cabinet’s determination within three (3) business days of receipt of the notice.

3. An applicant who receives notice of a disqualifying offense may:

(a) Request a rehabilitation review pursuant to Section 9 of this administrative regulation; or

(b) Challenge the accuracy of the cabinet’s determination regarding a disqualifying offense by submitting a written request to the cabinet for appeal under KRS Chapter 13B within five (5) days of receipt of the notice.

4. If an applicant wishes to obtain information concerning the disqualifying offense or challenge the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

5. If an applicant challenges the finding that he or she is the true subject of the results from a registry check, the cabinet shall refer the individual to the agency responsible for maintaining the registry.

Section 8. Termination of a Provisional Employee Upon Receipt of Notice of a Disqualifying Offense. (1) If a provisional employee has not requested an informal review or an appeal pursuant to Section 7(3)(b) of this administrative regulation, the employer shall:

(a) Terminate the employee no later than six (6) business days after receipt of notice of the disqualifying offense; and

(b) Submit a written attestation statement to the cabinet affirming the employee’s dismissal within three (3) business days of termination.

2. If a provisional employee requests an informal review or an appeal pursuant to Section 7(3)(b) of this administrative regulation, the employer may retain the employee pending resolution of the employee’s informal review or appeal under the following conditions:

(a) The employee shall be subject to direct, on-site supervision, or reassigned to duties that do not involve one-on-one contact with a resident, patient, or client of the employer;

(b) The employer shall inform the employee that termination shall be immediate if the informal review upholds the cabinet’s determination regarding a disqualifying offense, or the employee does not prevail in an appeal requested pursuant to Section 7(3)(b).
of this administrative regulation:

1. The employer shall immediately terminate an employee if the informal review upholds the accuracy of the cabinet’s determination regarding a disqualifying offense or the employee does not prevail in an appeal requested pursuant to Section 7(3)(b) of this administrative regulation upon completion of the appeal; and

(d) The employer shall submit a written attestation statement to the cabinet affirming the individual’s dismissal within three (3) business days of termination.

Section 9. Rehabilitation Review. (1)(a) An applicant found on the child abuse and neglect central registry maintained pursuant to 922 KAR 1:470, or found to have a disqualifying offense upon completion of the criminal background check shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying offense under the rehabilitation review process described in this section shall not apply to:

1. A disqualifying offense that occurred less than seven (7) years prior to the date of the criminal background check;

2. A criminal conviction related to abuse, neglect, or exploitation of an adult or child;

3. Registration as a sex offender under federal law or under the law of any state; or

4. A conviction for a violent crime.

(2) An applicant may submit a written request for a rehabilitation review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet’s determination pursuant to Section 7(1) of this administrative regulation regarding a finding on the child abuse and neglect central registry or determination of a disqualifying offense.

(3) The request for a rehabilitation review shall include the following information:

(a) A written explanation of each finding on the child abuse and neglect central registry or each disqualifying offense, including:

1. A description of the events related to the registry finding or disqualifying offense;

2. The number of years since the occurrence of the registry finding or disqualifying offense;

3. The identification of any other individuals involved in the offense;

4. The age of the offender at the time of the registry finding or disqualifying offense; and

5. Any other circumstances surrounding the registry finding or offense;

(b) Official documentation showing that all fines, including court-imposed fines or restitution, have been paid or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.

(4) A rehabilitation review shall be conducted by a committee of three (3) employees of the cabinet, each of whom was not responsible for determining the finding or disqualifying offense; and

(a) The finding of child abuse or neglect that placed the individual on the central registry; or

(b) That the individual has a disqualifying offense.

(5) The committee shall consider the information required under subsection (3) of this section, and shall also consider mitigating circumstances including:[that may include but are not limited to]:

(a) The amount of time that has elapsed since the child abuse and neglect central registry finding or disqualifying offense, which shall not be less than seven (7) years in the case of a disqualifying offense;

(b) The lack of a relationship between the registry finding or disqualifying offense and the position for which the individual has applied; and

(c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the registry finding or disqualifying offense. The committee shall make a recommendation to the secretary or designee, who shall be responsible for making the final decision.

(6) The secretary or designee may grant a waiver from the prohibition against employment of an applicant with a child abuse and neglect finding or a disqualifying offense upon consideration of the information required under subsection (3) of this section and the committee’s recommendation of subsection (5) of this section.

(7) No later than thirty (30) calendar days from receipt of the written request for the rehabilitation review, the secretary or designee shall send a written determination on the rehabilitation waiver to the applicant.

(8) The decision of the secretary or designee pursuant to subsection (7) of this section shall be subject to appeal under KRS Chapter 13B.

(9) An individual with a finding on the child abuse and neglect central registry or a disqualifying offense shall not be employed by an employer until the employer receives notification from the cabinet that the individual has been granted a waiver.

(10) An employer is not obligated to employ or offer employment to an individual who is granted a waiver pursuant to this section.

Section 10. Pardons and Expungement. An applicant who has received a pardon for a disqualifying offense or has had the record expunged may be employed.

Section 11. Status of Employment. An employer participating in KARES shall maintain the employment status of each employee who has submitted to a fingerprint-supported criminal background check by reporting the status using the KARES web-based system.

Section 12. Immunity from Civil Liability. [An][the] person, including the cabinet, the Justice and Public Safety Cabinet, an employer, or an individual acting on behalf of any of these entities shall not be liable for civil damage or be subject to any claim, demand, cause of action, or proceeding of any nature as a result of actions taken in good faith to comply with this administrative regulation, including the disqualification of an applicant or provisional employee from employment on the basis of a disqualifying offense.

Section 13. Kentucky Applicant Registry and Employment Screening Fund. (1)(a) The Cabinet shall establish a trust and agency fund called the Kentucky Applicant Registry and Employment Screening Fund to[shall be] be administered by the Finance and Administration Cabinet.

(b) The fund shall be funded with moneys collected under Section 4(3) of this administrative regulation.

(2) Moneys in the fund shall be used solely to operate the KARES program.

(3) Moneys remaining in the fund at the close of the fiscal year shall not lapse and shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in subsection (2) of this section.

(4) Interest earned on moneys in the account shall accrue to the account.

Section 13(14). Incorporation by Reference. (1) The following material is incorporated by reference:

(a) OIG 1:190-A, “Agreement to Participate in the KARES Program”, May 2013[edition];

(b) OIG 1:190-B, “Deserializer Form”, May 2013[edition];

(c) OIG 1:190-C, “Consent and Release Form”, May 2013[edition]; and

(d) OIG 1:190-D, “Live Scan Fingerprinting Form”, May 2013[edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector
FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amended After Comments)

105 KAR 1:140. Employer’s administrative duties.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(18), 61.565, 61.645(9)(g), 61.675, 78.545(33), 78.625

FINANCE AND ADMINISTRATION CABINET REQUIREMENT SUBJECT TO LAW: KRS 61.645(9) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. Necessary or proper in order to carry out the provisions of KRS 61.645(9)(g) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 61.565, 61.580, 61.597, 61.598, 61.637(17), 61.640, 61.655, 61.665, 61.675, 78.545(33), 78.625, 26 U.S.C. 401(a)(17), (31), 403(b), 408(a), (b), 414(g)(6), 457(b), 3121(b)(10), Pub. L. 104-191, Pub. L. 111-5, Div. A, Title XIII, Div. B, Title IV

STATUTORY AUTHORITY: KRS 16.583, 61.560, 61.645(9)(g), 61.675, 78.545(33), 78.625

FINANCE AND ADMINISTRATION CABINET ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

Section 1. (1) Each employer shall submit the reports required under KRS 61.675 and KRS 78.625 electronically using the secure Kentucky Retirement Systems’ Employer Self Service Web site by:

(a) The Enter Report Details Module; or

(b) Uploading an electronic file that meets the requirements of the Employer Contribution Record Layout. The employer shall submit a test file to the retirement systems, which shall be reviewed for compliance with the requirements of the Employer Contribution Record Layout. If the test file is in compliance with the requirements of the Employer Contribution Record Layout, the retirement systems shall certify the electronic file and inform the employer of the month when the employer may begin using the electronic file for submitting reports. If the test file is not in compliance with the requirements of the Employer Contribution Record Layout, the retirement systems shall inform the employer of the needed corrections to the test file. The employer shall not submit a report by electronic file pursuant to this subsection until the test file is certified by the retirement systems.

(2) The retirement systems shall notify each employer of the Web address of the secure Kentucky Retirement Systems’ Employer Self Service Web site and shall notify each employer if the Web address of the secure Kentucky Retirement Systems’ Employer Self Service Web site changes.

(3) Each employer shall submit the contributions required by KRS 61.675 and KRS 78.625:

(a) Electronically using the secure Kentucky Retirement Systems’ Employer Self Service Web site;

(b) By mailing or hand delivering a check;

(c) By the eMARS system maintained by the Finance and Administration Cabinet; or

(d) By wire transfer.

(4) The employer shall report all creditable compensation paid during a month by the tenth day of the following month.

(a) The employer shall designate the month to which the creditable compensation should be applied if it is not the month for which the employer is reporting and if the month the creditable compensation was earned is the month in which the employer:

1. Became employed;

2. Became eligible to participate in one of the systems administered by Kentucky Retirement Systems;

3. Was transferred to hazardous coverage from nonhazardous participation;

4. Was transferred from hazardous coverage to nonhazardous participation;

5. Terminated from employment; or

6. Became ineligible to participate in one (1) of the systems administered by Kentucky Retirement Systems.

(b) If the employee is paid creditable compensation in a lump sum or nonrecurring payment, the employer shall designate the reason for the lump sum or nonrecurring payment.

1. If the lump sum or nonrecurring payment was earned during a specific time period, the employer shall designate the time period during which the lump sum or nonrecurring payment was earned.

2. If the employer fails to designate a specific time period during which the lump sum or nonrecurring payment was earned, the payment shall be considered a lump sum bonus pursuant to KRS 16.505(8), 61.510(13), or 78.510(13).

(c) The provisions of subsection (1) of this section shall not apply to the Kentucky Personnel Cabinet or agencies that are reported by the Kentucky Personnel Cabinet.

(5) Each employer shall report employees who are regular full-time employees as defined by KRS 61.510(21) and 78.510(21) and shall remit employer and employee contributions for those employees.

(6) If an employer fails to withhold from an employee’s creditable compensation the full amount of contributions due from the employee in accordance with KRS 16.583, 61.560, 61.597, or 61.702:

(a) The retirement systems shall notify the employer of the additional amount of employee contributions due from the employee;

(b) The employer shall withhold the additional contributions due from the employee in accordance with KRS 16.583, 61.560, 61.675, or 61.702 from the employee’s creditable compensation and remit the additional contributions to the retirement systems;

(c) If the employer is no longer employed by the employer, the employer shall notify the retirement systems and the retirement systems shall refund the contributions submitted by the employer on behalf of the employee to the employer, which shall withhold the applicable taxes from the contributions and remit the remaining money to the employee; and

(d) If the contributions are refunded in accordance with paragraph (c) of this subsection, then that service credit shall be applied to the Kentucky Personnel Cabinet or agencies that are reported by the Kentucky Personnel Cabinet.

(7) Each employer shall report employees who are not regular full-time employees as defined by KRS 61.510(21) and 78.510(21), but shall not remit employer or employee contributions for those employees unless required to do so pursuant to KRS 61.680(6), except:

(a) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and who are exempt from FICA withholding pursuant to 26 U.S.C. 3121(b)(10) and 26 C.F.R. 31.3121(b)(10)-2, 31.3121(b)(4)-2; and

(b) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and are classified as full-time students throughout the fiscal year pursuant to 29 C.F.R. 519.2(a).

(8) An employer participating in Kentucky Employees Retirement System or County Employees Retirement System shall not classify an employee in more than one (1) non-participating position status during the fiscal year, except an employer
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Section 2. (1) Each employer shall submit electronic mail to the retirement systems by logging on to the Kentucky Retirement Systems’ secure electronic mail server.

(2)(a) If an employer submits personal information about its employees to the retirement systems in an unsecured electronic format or submits personal information regarding its employees intended to be submitted to the retirement systems to another person or entity by hand delivery, mail, fax, or in an electronic format; the employer shall notify affected employees in writing of the disclosure of personal information and provide information regarding obtaining credit reports.

(b) Personal information includes the member’s first name or first initial and last name in combination with the member’s:
1. Social Security number;
2. Driver’s license number;
3. Personal Identification Number permitting access to the member’s account; or
4. Medical Information.

(c) The retirement systems shall notify the employer of a disclosure upon discovery.

(d) The employer shall notify the retirement systems of a disclosure upon discovery.

(e) The employer shall submit a draft of the written notification to be made to affected employees to the retirement systems for approval or denial.

(f) The employer shall submit copies of the written notifications made to affected employees to the retirement systems after the notifications have been made.

(g) If the retirement systems is required by federal or state law to provide notification to affected members about the employer’s disclosure of personal information or if the retirement systems determines that it should provide the notification to its affected members because of the nature or magnitude of the employer’s disclosure, the employer shall reimburse the retirement systems for its costs in notifying members affected by the employer’s disclosure.

On transmitting any medical related personal information, the employer shall comply with all statutes and regulations comprising the Health Insurance Portability and Accountability Act of 1996 “HIPAA”, Pub.L. 104-191 and the Health Information Technology for Economic and Clinical Health Act “HITECH”, Pub.L. 111-5.

(i) Each employer shall execute a data use agreement with retirement systems.

Section 3. (1)(a) The retirement systems shall submit an invoice to employers for any payments owed to the retirement systems, which were not paid through the normal monthly reports.

(b) The employer shall remit payment to the retirement systems by the due date provided on the invoice.

(2) The retirement systems may offset funds owed by the employer to the retirement systems with funds owed to the employer by the retirement systems.

Section 4. (1) An employer shall pay interest at the rate adopted by the board for any creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission or for any creditable compensation paid in anticipation or settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes.

(2) The interest shall be assessed from the time period for which the creditable compensation has been reinstated.

Section 5. If an employer refuses to provide the retirement systems access to records or information requested in accordance with KRS 61.685 or does not respond to a request for information or records by the retirement systems, the retirement systems may, if appropriate, hold all payments of:

(1) Any funds due to the employer; or

(2) Refunds or initial retirement allowances to any employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the retirement system.

Section 6. (1) Effective July 1, 1996, and before July 1, 2002, the creditable compensation on which contributions are reported shall not exceed the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17), $150,000, as adjusted for cost-of-living increases under 26 U.S.C. 401(a)(17)(B). The retirement system shall notify employers of the maximum annual compensation limit. Each employer shall report contributions on all creditable compensation up to the maximum annual limit. Once an employee’s creditable compensation has reached the maximum annual limit, the employer shall continue to report the employee’s creditable compensation but shall not report any further employer or employee contributions on the employee’s creditable compensation. If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.

(2) Effective only for the 1996 plan year, in determining the compensation of an employer eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these rules, the term “family” shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.

(3) Effective with respect to plan years beginning on and after July 1, 2002, a plan member’s annual compensation that exceeds $200,000 (as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B)) shall not be taken into account in determining benefits or contributions due for any plan year. Annual compensation shall include compensation during the plan year or any[such] other consecutive twelve (12) month period over which compensation is otherwise determined under the plan (the...
determination period). The cost-of-living adjustment in effect for a calendar year shall apply to annual compensation for the determination period that begins with or within the calendar year. If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

(4) A participating member may pay contributions for the creditable compensation over the maximum annual compensation limit for the years used to determine the member's final compensation for purposes of retirement if:

(a) The member's creditable compensation has exceeded the maximum annual compensation limit contained in 26[25] U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002;
(b) The member has filed a notification of retirement; and
(c) The excess creditable compensation is within the maximum annual compensation limit applicable in 2002-2003. Upon receipt of employee contributions, the retirement systems shall bill the employer for the employer contributions on the excess creditable compensation, and the employer shall remit the employer contributions to the retirement systems. The excess shall only be included in retirement calculations if both the employee and employer have paid their respective contributions.

Section 7. (1) An employer may request that the retirement systems make a determination if a change in position or hiring of an employee is a bona fide promotion or career advancement prior to the employee's change of position or hiring as provided in KRS 61.598.

(2) An employer may submit a Form 6480, Employer Request for Pre-Determination of Bona Fide Promotion or Career Advancement, describing the proposed change in position or hiring of an employee or potential employee including:

(a) The employee's or potential employee's full name;
(b) The employee's or potential employee's Kentucky Retirement Systems Member Identification Number or Social Security Number;
(c) The potential employee's current employer;
(d) The employee's current job description;
(e) The job description for the employee's proposed job;
(f) Documentation of additional training, skills, education, or expertise gained by the employee or potential employee;
(g) Employer's organizational chart; and
(h) Any additional information the employer wants to be considered by the retirement systems.

(3) The employer shall provide any additional information requested by the retirement systems.

(4) The retirement systems may require the employer to make certifications regarding the information and documentation submitted.

(5) In determining if a change in position or hiring would be a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a)(1) among others:

(a) If the employee's or potential employee's proposed job duties represent a significant increase in responsibility from the employee's previous job duties;
(b) If the employee or potential employee has gained training, skills, education, or expertise to justify a change in position; and
(c) If the employee's proposed job represents a promotion within the employee's organization from the employee's previous job.

(6) Increases or proposed increases in an employee's creditable compensation caused by overtime, compensatory time other than lump-sum payment made at the time of termination, or bonuses shall not be a bona fide promotion or career advancement.

(2) The retirement systems shall issue a final administrative decision in writing informing the employer whether the employee's or potential employee's change in position or potential employee's hiring is a bona fide promotion or career advancement. The retirement systems' determination shall be specific to the employee or potential employee and shall be based on the information and documentation provided by the employer. If the information or documentation provided by the employer is not accurate, the final administrative decision of the retirement systems shall not be binding on the retirement systems pursuant to KRS 61.685.

(3) An employer who disagrees with the retirement systems' final administrative decision may request an administrative hearing in accordance with KRS Chapter 138. The request for administrative hearing shall be made within thirty (30) days of the date of the final administrative decision of the retirement systems.

Section 8. (1) After the member retires, the retirement systems shall determine if annual increases in the member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment. If the member's creditable compensation for any fiscal year is greater than the member's creditable compensation for the previous fiscal year by ten (10) percent, the member's creditable compensation for that fiscal year shall be annualized by dividing the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation for any fiscal year is greater than the member's creditable compensation for the previous fiscal year by ten (10) percent, the retirement systems shall determine if annual increases in the member's creditable compensation greater than ten (10) percent has occurred.

(b) For purposes of performing the calculations in paragraph (a) of this subsection, the member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year by the number of months in service credit, and multiplying by twelve (12).

(2) If the retirement systems determine that the member received annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, the retirement systems shall send written notice to the member's last participating employer of the retirement systems' determination that the member has experienced annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, and the amount of the additional actuarial cost to the retirement systems attributable to the increases.

(3) If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona fide promotion or career advancement, the employer shall file a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, for a determination that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement. The Form 6481 shall be filed within sixty (60) days of the date of the notice. If the retirement systems had previously provided a determination that a change in position or hiring of the member would be a bona fide promotion or career advancement, the employer shall submit the determination and provide documentation that the increase in creditable compensation for that fiscal year was due to the employer implementing the proposed change in position or hiring.

(4) The employer shall provide any additional information requested by the retirement systems.

(5) The retirement systems may require the employer to make certifications regarding the information and documentation submitted.

(6) In determining if a change in position or hiring was a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS...
61.590(1)(a) [follows factors]:
(a) If the employee’s or potential employee’s proposed job duties represent a significant increase in responsibility from the employee’s previous job duties;
(b) If the employee or potential employee has gained training, skills, education, or expertise to justify a change in position; and
(c) If the employee’s proposed job represents a promotion within the employee’s organization from the employee’s previous job.

(7) The retirement systems shall issue a final administrative decision in writing informing advising the employer whether the annual increases in creditable compensation greater than ten (10) percent over the member’s last five (5) fiscal years of employment were due to a bona fide promotion or career advancement.

(8) If the employer disagrees with the final administrative decision by the retirement systems, the employer shall file a written request for an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date of the final administrative decision. The hearing shall be limited to the issue of whether the retirement systems correctly determined that the annual increases in the member’s creditable compensation greater than ten (10) percent over the member’s last five (5) fiscal years of employment were due to a bona fide promotion or career advancement.

(10) If the employer fails to file a written request for administrative hearing within thirty (30) days of the date of the final administrative decision, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member’s last five (5) fiscal years of employment.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form 6480, “Employer Request for Pre-Determination of Bona Fide Promotion or Career Advancement”, July 2013; and
(b) Form 6481, “Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement”, September 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

WILLIAM A. THIELEN, Executive Director
RANDY OVERSTREET, CHAIR
APPROVED BY AGENCY: October 15, 2013
FILED WITH LRC: October 15, 2013 at 9 a.m.
CONTACT PERSON: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jennifer A. Jones

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for employers to provide reports and contributions to Kentucky Retirement Systems.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and requirements for employers to provide reports and contributions to Kentucky Retirement Systems.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provide that employers must file contributions and reports at the retirement systems. This administrative regulation provides the procedures and requirements for employers to file reports and contributions at the retirement systems.

(2) 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 providing the procedures and requirements for employers to file reports and contributions with the retirement systems.

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

(a) How the amendment will change this existing administrative regulation: The amendment provides the procedures and necessary documentation an employer will have to provide to make a determination if a proposed change of position or hiring is a bona fide promotion or career advancement both before and after a member’s retirement. It also establishes the procedures for processing of incomplete contributions where an employer failed to withhold the entire amount of contributions due from the employee’s salary and cannot correct the error. It also establishes the parameters for employers who classify people under the exceptions to regular full time position found in KRS 61.510(21) and 78.510(21).

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide the procedure and necessary documentation an employer will have to provide to make a determination if a proposed change of position or hiring is a bona fide promotion or career advancement both before and after a member’s retirement. It also necessary to establish the procedure for processing of incomplete contributions where an employer failed to withhold the entire amount of contributions due from the employee’s salary and cannot correct the error and to establish the parameters for employers who classify people under the exceptions to regular full time position found in KRS 61.510(21) and 78.510(21).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by providing the procedure and necessary documentation an employer will have to provide to make a determination if a proposed change of position or hiring is a bona fide promotion or career advancement both before and after a member’s retirement. It also establishes the procedures for processing of incomplete contributions where an employer failed to withhold the entire amount of contributions due from the employee’s salary and cannot correct the error, and establishing the parameters for employers who classify people under the exceptions to regular full time position found in KRS 61.510(21) and 78.510(21).

(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 providing the procedure and necessary documentation an employer will have to provide to make a determination if a proposed change of position or hiring is a bona fide promotion or career advancement both before and after a member’s retirement, by establishing the procedures for processing of incomplete contributions where an employer failed to
withhold the entire amount of contributions due from the employee’s salary and cannot correct the error, and establishing the parameters for employers who classify people under the exceptions to regular full time position found in KRS 61.510(21) and 78.510(21).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1800 participating employers of Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employers may request a determination regarding whether or not a proposed change in position or hiring will be a bona fide promotion or career advancement and will know the procedures for refund of incomplete contributions and classification of employees under KRS 61.510(21) and 78.510(21).
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The additional cost to employers should be minimal because they already report electronically. It is within the employer’s discretion to request a determination or administrative appeal of a determination of bona fide promotion or career advancement. Kentucky Retirement Systems will have a cost of staff time and resources to make the determination of bona fide promotion or career advancement if an employer makes a request for determination.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employer’s will know how to request determination or administrative appeal of a determination of bona fide promotion or career advancement and will know how to correctly report non-participating positions and process refunded employee contributions.
(d) How much will it cost to administer this program for the first year? None.
(e) 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.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: zero dollars
(b) On a continuing basis: zero dollars
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Procedures are the same for all participating employers; therefore, tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state and local government employers participating in Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.645(18), 61.565, 61.645(9)(g), 61.675, 78.545(33), and 78.625.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
(c) How much will it cost to administer this program for the first year? The additional cost to employers should be minimal because they already report electronically. It is within the employer’s discretion to request a determination or administrative appeal of a determination of bona fide promotion or career advancement. Kentucky Retirement Systems will have a cost of staff time and resources to make the determination of bona fide promotion or career advancement if an employer makes a request for determination.
(d) How much will it cost to administer this program for subsequent years? There is no additional cost as employers have always been required by statute to report.

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

(4) TIERING: Is tiering applied? Procedures are the same for all participating employers; therefore, tiering was not applied.

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

Amended After Comments

301 KAR 1:130. Live bait for personal use.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 105.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area to regulate creel and possession limits of fish, including the size or types of devices used for places fish and other aquatic organisms, where the taking of fish is permitted. This administrative regulation establishes the procedures for the taking of live bait for personal use.

Section 1. Definitions. (1) “Different body of water” means a body of water that is separate and not contiguous to another body of water, including a man-made reservoir that is separated from a downstream river by a dam, but does not include a river, stream, or creek that is separated by a low-level dam.

(2) “Live bait” means live bait fishes(minnows, shad, herring, crayfish, salamanders, frogs except bullfrogs, tadpoles, native lampreys, Asiatic clams (Genus Corbicula), and other aquatic invertebrate organisms except mussels.

(3) “Live bait fishes” means:
(a) Rough fishes except blackside dace, palezone shiner, relict darter, Cumberland darter, and tuxedo darter;
(b) Redear sunfish less than six (6) inches in length (Minnows) means fishes under six (6) inches in length, except blackside dace, palezone shiner, relict darter, dasyatid darter, largemouth bass, smallmouth bass, Kentucky bass, redear sunfish, rock bass, trout, crappie, walleye, sauger, pikes, white bass, yellow bass, striped bass, and muskellunge, or any hybrid of the above.

“Sport fisherman” means a person holding a valid resident or nonresident fishing license and includes a person who is license exempt pursuant to KRS 150.170(j) as defined in 301 KAR 1:410(6).

Section 2. Equipment. (1) Any other organisms not defined as
live bait pursuant to Section 1 of this administrative regulation shall be returned immediately to the water.

(2) Live bait for personal use shall only be taken with the following gear:
(a) The maximum size seine for:
1. Take in the Ohio and Mississippi Rivers and Barkley and Kentucky Lakes shall be:
   a. Thirty (30) feet long;
   b. Six (6) feet deep; and
   c. With bar mesh no larger than one-fourth (1/4) of an inch;
2. All other waters of the Commonwealth shall be:
   a. Ten (10) feet long;
   b. Four (4) feet deep; and
   c. With bar mesh no larger than one-fourth (1/4) of an inch.
(b) The maximum size for a minnow trap shall be:
1. Three (3) feet long;
2. Eighteen (18) inches in diameter; and
3. With openings no larger than one (1) inch.
(c) The maximum size for a dip net shall be three (3) feet in diameter, and shall only be allowed in the following waters:
   1. Ohio River;
   2. Tennessee River;
   3. Mississippi River;
   4. Cumberland River below Barkley Dam;
   5. Kentucky River below Lock Number Fourteen (14); and
   6. All lakes over 1,000 acres.
(d) The maximum size for a sport cast net on a statewide basis shall be twenty (20) feet in diameter with one (1) inch bar mesh, except take is prohibited in the following bodies of water:
   1. Lakes with a surface area of less than 500 acres; and
   2. Hatchery Creek in Russell County, a tributary to the Cumberland River located below Wolf Creek Dam.
Live bait shall be taken with the following gear for personal use. Other species except live bait taken with this gear shall be returned immediately to the water.
(1) Seine:
(a) Maximum size shall be ten (10) feet long, four (4) feet deep, one-fourth (1/4) inch bar mesh, with taking permitted statewide, and
(b) Maximum size shall be thirty (30) feet long, six (6) feet deep, one-fourth (1/4) inch bar mesh, with taking permitted in Ohio and Mississippi Rivers and Kentucky and Barkley lakes.
(2) Minnow trap: Maximum size shall be three (3) feet long, eighteen (18) inches in diameter, one (1) inch openings for catching, with taking permitted statewide.
(3) Dip net: Maximum size shall be three (3) feet in diameter, with taking permitted in Ohio, Tennessee, and Mississippi Rivers; Cumberland River below Barkley Dam; Kentucky River below Lock #14; and all lakes over 1,000 acres.
(4) Sport cast net: The maximum size shall be twenty (20) feet in diameter, one (1) inch bar mesh, with taking permitted statewide except for:
(a) Streams stocked with trout, which include statewide streams, national forest streams, seasonal catch and release streams, and the Fort Campbell and Fort Knox military reservations that are cited in the List of Streams Stocked with Trout, 2008;
(b) Lakes with a surface area of less than 500 acres; and
(c) Crocus and Marrowbone Creeks, Cumberland County.
1. Crocus Creek shall be closed to cast nets for an area extending from the mouth of the stream to fifty (50) yards upstream.
2. All other tributaries of the Cumberland River below Wolf Creek Dam to the Tennessee state line shall be closed to cast nets.

Section 3. Bait. (1) A mussel, except for an Asiatic clam, shall not be taken or used as bait[Mussels shall not be taken for use as bait except Asiatic clam].
(2) A fisherman shall not possess bait in an amount greater than the following:
fishermen shall fisherman shall not possess bait in amounts greater than those listed in each category below:
(a) 500 live bait fishes[minnows];
(b) 500 crayfish;
lakes less than 500 acres and in Hatchery Creek which is located below Wolf Creek Dam. This amendment will also prohibit a person from moving live wild-caught shad and herring from the water body in which they were collected, even if a person is moving them on a Kentucky highway to be used on the same body of water. The amendment allows a person to possess or transport live shad or herring if the person legally purchases the fish from a licensed bait dealer, if the person possesses a valid receipt of the purchase that includes the species of fish purchased, the quantity of shad and/or herring, the amount of the transaction, and the date of purchase.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow sport fishermen to collect live bait for personal use in all tributaries of the Cumberland River located below Wolf Creek Dam and trout streams with the exception of Hatchery Creek. It is also needed to prevent the accidental introduction of young Asian carp into new water bodies as young Asian carp are difficult to separate from native shad and herring.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, and state or local governments affected by this administrative regulation: All individuals who collect live bait for personal use will be affected by this amendment. At present, there is no estimate of the number of people who collect live bait for personal use in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers will need to comply with the changes identified in (2)(a).

(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 who collect live bait for personal use to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals will now be able to collect live bait for personal use from more water bodies, but shall only use live wild-caught shad and herring in the water body from which they were collected. A person may also legally possess and transport live shad or herring, provided the fish were purchased from a licensed bait dealer if they possess a valid receipt of the purchase that includes the species of fish purchased, the quantity of fish, the amount of the transaction, and the date of the purchase.

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

(a) Initially: This administrative regulation change will result in no initial change in cost to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals who collect live bait for personal use are being treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The 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) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will 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? There will be no additional costs 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
(Amended After Comments)

301 KAR 3:022. License, tag, and permit fees.

RELATES TO: KRS 150.025, [150.175, 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603 [150.620], 150.660, 150.720

STATUTORY AUTHORITY: KRS 150.175, 150.195(4)(f), 150.225, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 authorizes the types of licenses, permits and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation establishes fees and terms for licenses, permits, and tags.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year. (1) Sport fishing licenses:

(a) Statewide annual fishing license (resident): twenty (20) dollars;

(b) Statewide annual fishing license (nonresident): fifty (50) dollars;

(c) Joint statewide fishing license (resident): thirty-six (36) dollars; and

(d) Statewide three (3) year fishing license (resident): fifty-five
(55) dollars;
(a) Trout permit (resident or nonresident): ten (10) dollars.
(2) Commercial fishing licenses:
(a) Commercial fishing license (resident) plus ten (10) resident
commercial gear tags: $150; and
(b) Commercial fishing license (nonresident) plus ten (10)
nonresident commercial gear tags: $600.
(3) Commercial fishing gear tags (not to be sold singly):
(a) Commercial fishing gear tags (resident) block of ten (10)
tags: fifteen (15) dollars; and
(b) Commercial fishing gear tags (nonresident) block of ten (10)
tags: $100.
(4) Hunting licenses:
(a) Statewide hunting license (resident): twenty (20) dollars;
(b) Statewide hunting license (nonresident): $140[$130];
(c) statewide junior hunting license (resident): six (6) or
nonresident: five (5) dollars;
(d) Statewide junior hunting license (nonresident): ten (10)
dollars;
(e) Shooting preserve hunting license (resident or nonresident):
five (5) dollars; and
(f) Magratory game bird and waterfowl permit (resident or nonresident):
fifteen (15) dollars.
(5) Combination hunting and fishing license (resident): thirty
(30) dollars.
(6) Senior sportsman's license (resident): eleven
(11) Senior/disabled combination hunting and fishing license
(resident): five (5) dollars.
(7) Disabled sportsman's license (resident): eleven (11) dollars.
(8) Trapping licenses:
(a) Trapping license (resident): twenty (20) dollars;
(b) Trapping license (resident landowner/tenant): ten (10)
dollars;
(c) Trapping license (nonresident): $130; and
(d) Junior trapping license (resident): five (5) dollars.
(9) [8] Game permits:
(a) Resident bear: thirty (30) dollars;
(b) Resident bear chase: thirty (30) dollars.
(c) Resident senior bear chase: ten (10) dollars;
(d) Resident quota cow elk permit: sixty (60) elk hunt permit:
thirty (30) dollars;
(e) Nonresident quota cow elk permit: $400 elk hunt permit:
$365;
(f) Resident quota bull elk permit: $100;
(g) Nonresident quota bull elk permit: $550;
(h) Resident out-of-zone elk [hunt] permit: thirty (30) dollars;
(i) Nonresident out-of-zone elk [hunt] permit: $400 [555];
(j) Game permit: Resident deer permit: thirty-five (35) dollars;
(k) Game permit: Nonresident deer permit: $160 [60] dollars;
(l) Game permit: Nonresident deer permit: resident deer (resident or
nonresident): ten (10) dollars.
(m) Junior game permit, resident deer (resident or
nonresident): fifteen (15) dollars.
(n) Bonus antlerless deer permit (two (2) tags per
(resident or nonresident): fifteen (15) dollars;
(o) Bonus quota hunt deer permit (resident or nonresident):
thirty (30) dollars;
(p) Game permit, resident spring turkey: thirty (30) dollars;
(q) Game permit, nonresident spring turkey: seventy-five
(75) dollars;
(r) Game permit, resident fall turkey: thirty (30) dollars;
(s) Game permit, nonresident fall turkey: seventy-five
(75) dollars;
(t) Junior game permit, [r] nonresident turkey: ten (10) dollars;
(u) Junior game permit, nonresident turkey: fifteen (15) dollars;
(v) Junior game permit, resident elk: thirty (30) dollars; and
(w) Junior game permit, resident elk: forty (40) dollars.
(10) Peabody individual permit: fifteen (15) dollars.
(11) Commercial mussel licenses:
(a) Musseling license (resident): $400;
(b) Mussel license (nonresident): $1,600;
(c) Mussel buyer's license (resident): $600; and
(d) Mussel buyer's license (nonresident): $1,600.
(12) [11] Sportsman's license [licenses] (resident), which[1] includes a resident hunting and fishing license [combination], spring
turkey, fall turkey, permit, trout permit, state migratory game
bird and waterfowl permit, and deer permit [game permit for deer]:
ninety-five (95) dollars.
(13) [12] Junior sportsman's license (resident or nonresident), which either includes a junior hunting license, two (2)
resident junior deer permit [permits], and two (2) junior turkey
deer permit [permits], and waterfowl permit: thirty
(30) dollars.
(14) [13] Land Between the Lakes hunting permit: twenty (20)
dollars.
(15) Conservation permit: five (5) dollars.

Section 2. Licenses, tags and permits, listed in this section shall be valid for the calendar year in which they are issued. (1) Live fish and bait dealer's licenses:
(a) Live fish and bait dealer's license (resident): fifty (50)
dollars; and
(b) Live fish and bait dealer's license (nonresident): $150.
(2) Commercial taxidermist license: $150.
(3) Commercial guide licenses:
(a) Commercial guide license (resident): $150; and
(b) Commercial guide license (nonresident): $400.
(4) Shooting area permit: $150.
(5) Dog training area permit: fifty (50) dollars.
(6) Collecting permits:
(a) Educational wildlife collecting permit: twenty-five (25)
dollars; and
(b) Scientific wildlife collecting permit: $100.
(7) Nuisance wildlife control operators [TAD/CO] permit: $100;
(8) Pay lake license:
(a) First two (2) acres or less: $150; and
(b) Per additional acre or part of acre: twenty (20) dollars.
(9) Commercial captive wildlife permit: $150.
(10) Commercial fish propagation permit: fifty (50) dollars.
(12) Annual wildlife transportation permit: $250; and
(13) Peabody Wildlife Management Area annual event permit:
$250; and
(14) Fish transportation permit: twenty-five (25) dollars.

Section 3. Licenses, tags and permits listed in this section shall be valid for three (3) years from the date of issue. (1) Falconry
permit: seventy-five (75) dollars.
(2) Noncommercial captive wildlife permit: seventy-five (75) dollars.

Section 4. Licenses, tags and permits listed in this section shall be valid for the date or dates specified on each. (1) Short-term licenses:
(a) One (1) day resident fishing license: seven (7) dollars;
(b) One (1) day nonresident fishing license: ten (10) dollars;
(c) Seven (7) day nonresident fishing license: thirty (30) dollars;
(d) Fifteen (15) day nonresident fishing license: forty (40) dollars.
(e) One (1) day resident hunting license (not valid for deer, elk, or turkey hunting): seven (7) dollars.
(f) One (1) day nonresident hunting license (not valid for deer, elk, or turkey hunting): fifteen (15) [ten (10)] dollars.
(g) Seven (7) [five (5)] day nonresident hunting license (not valid for deer, elk, or turkey hunting): fifty (50) or forty (40) dollars.
(h) Three (3) day fur bearer's license: fifty (50) dollars; and
(2) Individual wildlife transportation permit: twenty-five (25) dollars.
(3) Special resident commercial fishing license: $600.
(4) Special nonresident commercial fishing license: $900.
(5) Commercial waterfowl shooting area permit: $150.
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the fees, terms, and expiration dates for licenses, tags, and permits sold by the Department of Fish and Wildlife Resources.
(b) The necessity of this administrative regulation: This administrative regulation is necessary for the Department of Fish and Wildlife Resources to establish reasonable license, tag, and permit fees, permit terms, and the expiration dates of licenses and permits.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.175 authorizes the types of licenses, permits, and fees. KRS 150.195(4)(f) requires the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the requirements and purposes of the statutes identified in (1)(c) by establishing reasonable fees and terms for licenses, permits, and tags issued by the Department.

(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 increases the fee for thirteen different categories of licenses or permits.

Section 5. Licenses, tags, and permits listed in this section shall be valid on a per unit basis as specified. (1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.
(2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.
(3) Horse stall rental (per space, per day): two (2) dollars.
(4) Dog kennel rental (per dog, per day): fifty (50) cents.
(5) Pond stocking fee (per stocking): $150, except for additional surface area of water over 3.0 acres prorated on a 0.25 acre basis.
(6) Commercial captive cervid permit (per facility, per year): $150.
(7) Noncommercial captive cervid permit (per facility; per three years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section shall be valid from April 1 through March 31 of the following year:
(1) Fur processor's license (resident): $150.
(2) Fur buyer's license (resident): fifty (50) dollars.
(3) Fur buyer's license (nonresident): $300.

Section 7. The following Otter Creek Outdoor Recreation Act permits shall be valid from July 1 through June 30 of the following year:
(1) Annual Entry Permit: thirty (30) dollars, with children under twelve (12) free; and
(2) Annual Special Activities Permit: seventy (70) dollars.

Benjy Kinman, Deputy Commissioner
Robert H. Stewart, Secretary

Approved by Agency: October 8, 2013
Filed with LRC: October 15, 2013 at 9 a.m.
Contact Person: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under the proposed amendment, for the license year beginning on March 1, 2014, nonresident hunters will be required to pay increased fees in order to hunt in Kentucky. Residents who are not license exempt wishing to hunt deer and elk will be required pay an increased fee. Senior or disabled resident hunters and anglers will be required to pay an increased fee to fish or hunt. The youth hunting license and youth sportsman’s license fee will also increase. Those people who hunt migratory birds, but not waterfowl, will be required to pay an increased fee. Anglers will have the option to purchase a multi-year license at a reduced cost.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will depend on the activity to be pursued and whether the hunter or angler qualifies as a senior or disabled participant.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Resident anglers will have a new multi-year license purchase option at a reduced cost. The department will also be able to provide for hunters, anglers, and wildlife recreation enthusiasts the same level of fish and wildlife management attention, the same level of customer service, and be able to provide the same high quality or enhanced quality of fish and wildlife populations and their habitats for the next five (5) to seven (7) years in the face of rising operational costs.
   (d) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
      (a) Initially: There will be some additional administrative costs to the department to implement this administrative regulation for the initial year.
      (b) On a continuing basis: There will be no additional cost to the department in subsequent years.
      (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: Yes. Per the above explanations some fees will be increased, particularly for nonresidents, senior/disabled hunters and anglers, resident deer and elk hunters, and youth hunters, while one new multi-year license option is proposed.
   (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes. Please see above.
   (9) TIERING: Is tiering applied? Yes. Nonresident hunters and anglers must pay a higher fee for permits and licenses than residents. Resident senior and disabled hunters and youths pay a reduced fee compared to other resident hunters and anglers.

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 the administrative regulation? The Department’s Divisions of Administrative Services and Law Enforcement will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.175 authorizes the types of licenses, permits and tags. KRS 150.195(4)(l) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation.

(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 department estimates that the proposed license and permit fee increase will generate approximately an additional $2.5 million 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? The department estimates that the increase will generate approximately $2.5 million in subsequent years, though this figure is dependent on the future pattern of license sales.
   (c) How much will it cost to administer this program for the first year? There will be some minimal administrative costs to the department to implement this administrative regulation for the initial year.
   (d) How much will it cost to administer this program for subsequent years? Administrative costs in subsequent years should remain similar.

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

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amended After Comments)

702 KAR 1:115. Annual in-service training of district board members.

RELATES TO: KRS [156.031, 160.180
STATUTORY AUTHORITY: KRS 156.070, 160.180
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.031 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1999; and KRS 160.180(5) provides that all local school board members shall complete an established number of hours of in-service training annually, based on the number of years of experience, and that the Kentucky Board of Education [State Board for Elementary and Secondary Education] shall identify the criteria for fulfilling such requirements. This administrative regulation establishes standards for the annual in-service training of district board members.

Section 1. Content of Training. (1) The [annual] in-service requirements for all district school board members set forth in KRS 160.180(5) shall include as follows:
   (a) Three [(1-2)] Twelve [(4-12)] hours of school finance training annually; one (1) hour of ethics training annually, and one (1) hour of superintendent evaluation training annually for school board members with zero to three (3) years of experience. School board members with zero to three (3) years of experience may [shall] acquire the remainder of their hours in these topics or topics listed in Section 2(1)(b) of this administrative regulation;
   (b) Two [(2)] Eight [(8)] hours of school finance training annually; one (1) hour of ethics training annually, and one (1) hour of superintendent evaluation training annually for school board members with four (4) to seven (7) years of experience; or;
   (c) One (1) hour of school finance [(2)] Four [(4)] hours training annually, one (1) hour of ethics training annually, and one (1) hour of superintendent evaluation training biennially for school board members with eight (8) or more years of experience. [41(4) Newly
appointed or elected school board members who take office after June 30th of a particular year shall be entitled, upon appropriate request, to an extension of time under Section 5 of this administrative regulation within which to acquire a maximum number of unacquired hours equal to the difference between the required number of hours and one (1) hour per month for each full month actually served during the year, and such extensions shall extend no longer than through the remainder of the term being served or the next two (2) calendar years, whichever is longer.

(b) Newly appointed or elected members who take office prior to July 1, but on or after March 1, of a particular year may be granted an extension of time under Section 5 of this administrative regulation, in appropriate cases and for an appropriate period of time not to exceed two (2) calendar years, within which to obtain the balance of any required, but unacquired in-service hours for the initial year of new service. Any such extension to acquire hours shall not exceed the difference between the required number of hours and one (1) hour per month for each full month actually served during the year.

(2) For board members with four (4) or more years of experience, the remaining hours of required training[Section 2. The topics relating to the responsibilities of board members] may include but not be limited to the following subjects:

(a) (1) The basic role and responsibility of the district board and its members;
(b) Curriculum and instruction[Instructional programs];
(c) District finance;
(d) Relations with superintendent and staff;
(e) School law; and
(f) Community relations.

(3) To qualify toward meeting the in-service board member training requirements of KRS 160.180(5) and this administrative regulation, the required training activity shall not be:

(a) The regular work of the board, such as the attendance of meetings or the conduct of hearings;
(b) Irrelevant to the pertinent knowledge and skills of board membership; or
(c) A public relations or social activity, such as graduation or other student events.

Section 2. Providers of Training. (1) (a) The Kentucky School Boards Association (KSBA) shall be recognized as the provider of eight (8) hours of district board member in-service training for board members who are required to obtain twelve (12) hours annually. Board members with zero to three (3) years of experience may acquire the remaining four (4) hours of their training from either the KSBA or the providers described in subsection (2) of this section. Board members with more than four (4) years of experience may acquire their hours from the KSBA or the providers described in subsection (2) of this section.

(2) Of this subsection annually. No topic shall be made available less frequently than once in every twenty-four (24) month period.

(c) Each provider of training shall offer training in at least seven (7) of the ten (10) topics listed in paragraph (a) of this subsection annually. No topic shall be made available less frequently than once in every twenty-four (24) month period.

(c) The KSBA shall coordinate with the chief state school officer annually to develop an in-service training plan for approval by the Kentucky Board of Education on or before November 1 of each year for use in the following calendar year. In-service training for district board members shall be provided at a minimum of five (5) geographic locations, on a variety of dates. KSBA shall offer training in at least seven (7) of the ten (10) topics listed in paragraph (a) of this subsection annually. No topic shall be made available less frequently than once in every twenty-four (24) month period.
names of all district school board members who fail to complete the required hours of in-service training set forth in KRS 160.180(5) and this administrative regulation shall be transmitted by the department of Education to the Attorney General.

Section 4. Extension of Time. (1) The Kentucky Board of Education may grant newly appointed or elected school board members who take office prior to July 1, but on or after March 1, of a particular year an extension of time of service, for an appropriate period of time not to exceed two (2) calendar years, within which to obtain the balance of any required, but unacquired in-service training hours for the initial year of service. Any such extension to acquire hours shall not exceed the difference between the required number of hours and one (1) hour per month for each full month actually served during the year.

(2) The Kentucky Board of Education may grant newly appointed or elected members who take office prior to July 1, but on or after March 1, of a particular year an extension of time of service, for an appropriate period of time not to exceed two (2) calendar years, within which to obtain the balance of any required, but unacquired in-service training hours for the initial year of service. Any such extension to acquire hours shall not exceed the difference between the required number of hours and one (1) hour per month for each full month actually served during the year.

(3) The Kentucky Board of Education, in cases of emergency, may grant an extension of time within which a local board member shall complete the required hours of in-service training. Such extensions may include true emergencies for board members serving less than a full year, based upon reasons other than merely less than a full year's service.

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(5).

TERRY HOLLIDAY, Ph.D., Commissioner
ROGER MARCUM, Chairperson
APPROVED BY AGENCY: October 15, 2013
FILED WITH LRC: October 15, 2013 at 11 a.m.
CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601; phone 502-564-4474, fax 502-564-3921.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the criteria for fulfilling the training requirements of KRS 160.180(5) for district board members.
(b) The necessity of this administrative regulation: KRS 160.180(5) requires district board members to fulfill its requirements for the number of hours of annual in-service training and directs the agency to provide criteria for that training. This administrative regulation details the criteria for training content, course standards, the consequence for meeting the training requirements, and the avenue for extension of time to meet the training requirements.
(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 160.180(5) establishes the number of hours of in-service district board member training required annually and directs the agency to provide the criteria for that training in an administrative regulation. This administrative regulation conforms to the content of the authorizing statute by providing the criteria for that training.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation outlines the criteria for the training required of district board members and the reporting mechanism for ensuring district board members meet the training requirement of KRS 160.180(5).
(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 in-service training criteria to include required topics and course standards for the training of all district board members.
(b) The necessity of the amendment to this administrative regulation: The overall purpose of this amendment to the administrative regulation is to help all district board members engage in positive growth and become better informed about certain critical areas, specifically ethics, finance, and superintendent evaluation. This amendment adds mandatory requirements for training in these topics and sets course standards to ensure the alignment of the training course to the roles and needs of district board members. This amendment also provides an avenue for district board members to evaluate and provide feedback on the training they have received.
(c) How the amendment conforms to the content of the authorizing statute: KRS 160.180(5) establishes the number of hours of in-service district board member training required annually and directs the agency to provide the criteria for that training in an administrative regulation. This administrative regulation conforms to the content of the authorizing statute by updating the criteria for that training in light of current district board members' needs.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will increase the district boards' efficacy in the areas of ethics, school finance, and superintendent evaluation, which should result in better management of school districts.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 school districts and their governing boards.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required by school districts to comply.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment will increase the district boards' efficacy in the areas of ethics, school finance, and superintendent evaluation, which should result in better management of school districts.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional cost
(b) On a continuing basis: No additional cost
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General school district funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this change.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There will be no increase in fees with this administrative regulation.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.180(5).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The intent is to update the criteria for district board member training to effect an increase the district boards’ efficacy in the areas of ethics, school finance, and superintendent evaluation, which should result in better management of school districts.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated by this change.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated by this change.

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

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

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

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Education
(As Amended After Comments)

704 KAR 3:035. Annual professional development plan.

RELATES TO: KRS 156.095, 158.070
STATUTORY AUTHORITY: KRS 156.070, 156.095, 158.070(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.095 requires the Kentucky Board of Education to establish, direct, and maintain a statewide program of professional development [training] with the purpose of the program being the improvement of instruction in the public schools. KRS 158.070(5) requires the state board to promulgate administrative regulations establishing guidelines and procedures to be followed for the approval of the professional development activities four (4) days of the minimum school term which are mandated to be four (4) days of the minimum school term which are mandated to be utilized by each local school district for professional development activities for the professional staff[teachers][the professional staff]. This administrative regulation establishes the requirements for the annual professional development plan.

Section 1. Definitions.

(1) “Comprehensive School Improvement Plan” is defined in 703 KAR 5:225, Section 1. “High-quality professional development” means those experiences that systematically, over a sustained period of time, enable educators to facilitate the learning of students by acquiring and applying knowledge, understanding, skills, and abilities that address the instructional improvement goals of the school district, the individual school, or the individual professional growth needs of the educator.

(2) “Improvement plan” means a product that clearly identifies how assessment, planning, implementation, and evaluation are to be accomplished in the school or district relative to established standards, goals, or objectives for improvement.

(3) “Needs assessment” means the gathering, sorting, and analysis of student, educator, and system data that lead to conclusions regarding the need for content and learning designs for professional development in identified areas related to educator performance and student achievement.

(4) “Professional development” means professional learning that is an individual and collective responsibility, that fosters shared accountability among the entire education workforce for student achievement, and:

(a) Aligns with Kentucky’s Core Academic Standards in 704 KAR 3:035, educator effectiveness standards, individual professional growth goals, and school, district, and state goals for student achievement;

(b) Focuses on content and pedagogy, as specified in certification requirements, and other related job-specific performance standards and expectations;

(c) Occurs among educators who share responsibility [accountability] for student growth;

(d) Is facilitated by school and district leaders, including curriculum specialists, principals, instructional coaches, competent and qualified third-party facilitators, mentors, teachers or teacher leaders;

(e) Focuses on individual improvement, school improvement, and program implementation; and

(f) Be on-going[Occurs several times per week].

(5)

Professional development program: means a sustained[and] coherent, relevant, and useful professional learning process[of professional development] that is measurable by indicators and includes professional learning and ongoing support to transfer that learning to practice[may be composed of several initiatives].

Section 2. Each local school and district shall develop a process to plan[for the development of] a professional development plan[program] that meets[. This process shall lead to a program of high quality professional development experiences that the school and district will provide for its instructional and administrative staff within the goals[as] established in KRS 158.6451 and in the local needs assessment. A school professional development plan[program] shall be incorporated into the school improvement plan and made public prior to the implementation of the[school] program. The local district professional development plan[program] shall be incorporated into the district improvement plan and posted to the local district Web site prior to the implementation of the plan[program].

Section 3. Each school and local district professional development plan[program][improvement plan] shall contain[meet] the following six (6) elements[standards related to the professional development program]:

(1) [There is a] Clear statement of the school or district mission;

(2) [There is] Evidence of representation of all persons affected by the professional development program;

(3) Application of Needs assessment analysis[evident];

(4) Professional development objectives that are focused on the school or district mission and derived from needs assessment, and specify changes in educator practice needed to improve student achievement; and

(5) The professional development program and implementation strategies are designed to support school or district goals and objectives; and

(6) A process for evaluating[professional development experiences for their] impact on student learning and using evaluation results to improve[improving] professional learning[development initiatives is incorporated in the plan].

Section 4. (1) The school or district improvement plan shall, in compliance with KRS 158.6451, address professional learning required to improve instruction[for any instructional improvement or training needs that are in accordance with the goals as established in KRS 158.6451].

(2) High-quality Professional development[experiences] shall:

(a) Be related to the teachers’ instructional assignments and
the administrators' professional responsibilities]...Experiences shall support the local school's instructional improvement goals; and
(b) Be aligned with the school or district improvement plan or the individual professional growth plans of teachers;
(c) Occur within learning communities committed to continuous improvement, collective responsibility, and goal alignment;
(d) Be facilitated by skillful leaders who develop capacity and advocate and create support systems for professional learning;
(e) Be prioritized and monitored by the district;
(f) Use a variety of sources and types of student, educator, and system data to plan, assess, and evaluate professional learning;
(g) Integrate theories, research, and models of human learning to achieve its intended outcomes;
(h) Apply current research on systems change and sustain support for implementation of professional learning for long-term instructional improvement as evidenced by student growth;
(i) Align its outcomes with educator performance and student curriculum standards; and
(j) Focus resources on areas of identified need.
(3)[Experiences for] Professional development[credit of classroom teachers] shall not supplant any of the six (6) hour instructional day.
(4) A district may report flexible professional development[experiences] on unpaid[,] noncontact[days] for which [these experiences that provide remuneration beyond travel, food, lodging or tuition.]
This shall require a district calendar change and the change shall be reported to the Department of Education.
(5) Professional development[experiences] that relates[relate] to an individual professional growth plan may be used to satisfy the requirements for certification or renewal options as established by the Kentucky Education Professional Standards Board in Title 16 KAR.
(6)(a) Professional development grant dollars may reimburse college or graduate course tuition expended[be used for college or graduate course tuition reimbursement] for a teacher to deepen content knowledge and content-specific pedagogy in[specific academic subject content areas in] math, science, English/language arts, social studies, arts and humanities, and practical living and career studies, for which the teacher is assigned to teach in those areas.
(b) The use of professional development funds for tuition reimbursement[this purpose] shall be specified in the district improvement plan approved by the school board or the school plan approved by the school council as to funds under its control.
(c) Particular content areas and grade levels, which qualify for reimbursement, may be specified based upon information about the level of academic preparation of the teacher employed, local student performance data, and student learning needs[ instructional need].
(7) Professional development credit shall not be awarded for those experiences that provide remuneration beyond travel, food, lodging or tuition.
(8) A school district implementing a flexible professional development schedule shall award professional development credit for any experience that addresses the goals of the school or district improvement plan or the individual professional growth plans of teachers.
(9) Parent-teacher conferencing skill development shall be permissible as a professional development experience.

Section 5. The Qualifications and Duties of the District Professional Development Coordinator. (1) Qualifications for the position of district professional development coordinator shall include:
(a) A staff member meeting the certification requirement for a professional development coordinator as established by the Education Professional Standards Board in 16 KAR 4-010;
(b) A demonstrated ability to work with schools to design, implement, and evaluate professional development that aligns with the requirements of this administrative regulation[Experience in professional development planning]; and
(c) A demonstrated ability to work with schools to connect professional development with effective instructional practices and student achievement data.
(2) Duties of the district professional development coordinator shall include:
(a) Facilitating analysis of student, educator, and system data to conduct[ Collecting] the district professional development needs assessment;
(b) Coordinating the intradistrict alignment of professional learning to achieve identified goals[,] and objectives[,] and experiences[ for professional development];
(c) Building capacity of school leaders, school council members, and other school and district leaders to plan, access resources, implement, and evaluate professional learning[Providing technical assistance to school councils, staff and professional development committees in the alignment of professional development experiences with school goals as identified through the local school improvement planning process];
(d) Disseminating professional development information to school councils, staff members, and professional development committees;
(e) Providing technical assistance to school councils on scheduling to allow for job-embedded professional learning opportunities[during the school day];
(f) Coordinating the planning, implementation, and evaluation of the district professional development plan[program] that is aligned, supportive of, and developed in conjunction with[local school improvement plans][Upon request by a school council or school staff, providing technical assistance on the evaluation and coordination of school-based professional development experiences];
(g) Coordinating the establishment of local policies, procedures, timetables,[preparation of] necessary forms and letters, assignment of workshop sites and all other practical elements of professional development[training], including fiscal management;
(h) Maintaining, verifying, and, if appropriate, submitting district and school professional development records, documentation, and other pertinent information to the Department of Education;
(i) Explaining the district's professional development plan[programs] objectives, results, and needs to school professionals, district staff, [the] board members, civic and parent groups, teacher training institutions and others as requested[and]
(j) Maintaining[ a professional] contact with the Department of Education and other agencies involved in providing professional development; and
(k) Identifying, selecting, coordinating and evaluating the services of third-party professional development providers[experiences];

Section 6. A maximum of fifteen (15) percent of the district's professional development grant may be used for administrative purposes.

Section 7. When implementing professional development plans[programs] under KRS 158.070, a local school or district shall adhere to its school or district improvement plan.

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(5).

TERRY HOLLIDAY, Ph.D., Commissioner
ROGER MARCUM, Chairperson
APPROVED BY LRC: October 15, 2013
FILED WITH LRC: October 15, 2013 at 11 a.m.
CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Kevin C. Brown
(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 156.095 requires the Kentucky Board of Education to establish, direct, and maintain a statewide program of professional development with the purpose of the program being the improvement of instruction in the
In complying with this administrative regulation or conforms to the new professional development standards, providers and consumers will ensure that all professional learning practice. The expectation is that professional learning education posted online, for access by each entity, to provide information new professional development standards. Free modules are between the former professional development standards and the regulation or amendment: Each entity will discover the difference.

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 definition of professional development has been replaced with the definition recommended by the Professional Learning Task Force. Kentucky’s current professional development standards are replaced with new research-based standards. Terminology was updated to bolster consistency.

(b) The necessity of the amendment to this administrative regulation: A comprehensive, sustained, and intensive approach to professional learning is necessary to support the state’s College and Career Readiness agenda for students, teachers, and leaders.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 156.095 requires the Kentucky Board of Education to establish, direct, and maintain a statewide program of professional development with the purpose of the program being the improvement of instruction in the public schools. The amendment clarifies the kinds of experiences that should be provided in a professional development plan in order to increase student achievement.

(d) How the amendment will assist in the effective administration of the statutes: Districts will be provided with the most up-to-date and research-based standards to ensure that professional learning is leading to instructional change and, in turn, to increased student performance.

(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 definition of professional development has been replaced with the definition recommended by the Professional Learning Task Force. Kentucky’s current professional development standards are replaced with new research-based standards. Terminology was updated to bolster consistency.

(b) The necessity of this administrative regulation: This administrative regulation establishes the requirements for the district annual professional development plan. The professional development outlined in the district plan along with what teachers receive related to their individual growth plan is crucial in improving student performance.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 156.095 requires the Kentucky Board of Education to establish, direct, and maintain a statewide program of professional development with the purpose of the program being the improvement of instruction in the public schools. This regulation amends that statewide program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: In order to enable the Kentucky Board of Education to properly review and approve the activities districts are providing for teachers, an annual professional development plan, from school districts, is necessary.

(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 definition of professional development has been replaced with the definition recommended by the Professional Learning Task Force. Kentucky’s current professional development standards are replaced with new research-based standards. Terminology was updated to bolster consistency.

(b) The necessity of the amendment to this administrative regulation: A comprehensive, sustained, and intensive approach to professional learning is necessary to support the state’s College and Career Readiness agenda for students, teachers, and leaders.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 156.095 requires the Kentucky Board of Education to establish, direct, and maintain a statewide program of professional development with the purpose of the program being the improvement of instruction in the public schools. The amendment clarifies the kinds of experiences that should be provided in a professional development plan in order to increase student achievement.

(d) How the amendment will assist in the effective administration of the statutes: Districts will be provided with the most up-to-date and research-based standards to ensure that professional learning is leading to instructional change and, in turn, to increased student performance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 school districts.

(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 (2) will have to take to comply with this administrative regulation or amendment: Each entity will discover the difference between the former professional development standards and the new professional development standards. Free modules are posted online, for access by each entity, to provide information about the standards and instruct how they may be translated into practice. The expectation is that professional learning education providers and consumers will ensure that all professional learning conforms to the new professional development standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There will be no cost to districts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A comprehensive, sustained, and intensive approach to professional learning will be guided by the new standards. This is necessary to support the state’s College and Career Readiness agenda for students, teachers, and leaders.

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

(a) Initially: what are the costs? The work to develop tools and guidance to support for implementation of the new professional development standards is supported by private foundations through work with Learning Forward. Therefore, no additional cost will be incurred, beyond the appropriation for professional development. Resources will be provided through the Continuous Improvement Technology System.

(b) On a continuing basis: No additional cost will be incurred, beyond the appropriation for professional development. Resources will be provided through the Continuous Improvement Technology System.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: To support district access to high quality professional development resources, Title II and Race to the Top 3 monies will be used. Private foundation monies are being used to development guidance and tools for districts to support the implementation of the new professional learning standards.

(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: KDE will include, in its budget request, a call for more money to implement this regulation for the purpose of providing high quality professional development resources.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes no fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate because the administrative regulation applies equally to all schools and districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 173 school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.095 requires the Kentucky Board of Education to establish, direct, and maintain a statewide program of professional development with the purpose of the program being the improvement of instruction in the public schools. KRS 158.070(5) requires the Kentucky Board of Education to promulgate administrative regulations to establish guidelines and procedures to be followed for the approval of the professional development activities utilized by each local school district.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 school districts for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated as a result of this administrative regulation.

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

(d) How much will it cost to administer this program for subsequent years? No additional cost will be incurred, beyond the appropriation for professional development. Resources will be provided through the Continuous Improvement Technology System.

4. Other Explanation: 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 1. Establishment of general city quotas. (1) Except as provided in subsection (2) of this section and Section 4 of this administrative regulation, the number of quota retail package licenses issued by the department in any city of the Commonwealth which becomes wet separately by virtue of a KRS 242.125 local option election held after January 1, 2013, shall not exceed a number equal to one (1) for every 2,300 persons resident in the city.

(2) The minimum number of quota retail package licenses issued by the department in any city shall be two (2) such licenses.

(3) The estimates of population for Kentucky cities prepared by the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, shall be used, if available, in every year except a census year to determine the number of licenses prescribed by this administrative regulation. The United States Government census figures of population shall be used in a census year.

Section 2. Requests for Specific City Quota. (1) Three (3) years after the certification of a wet election pursuant to KRS 242.125 by a city, the city may file a request to the board seeking a specific city quota to increase the number of quota retail package licenses for the city from that established in Section 1 of this administrative regulation.

(2) Before seeking this request, the city shall publish a notice in the newspaper used by the city for legal notices advising the general public of the city’s intent to request additional city quota licenses from the board. A city may petition the board for a specific quota increasing the number of quota retail package licenses only once every three (3) years from the date of the denial or establishment of a specific city quota.

(3) A city’s request to the board for a specific increased quota shall include:
   (a) A certified copy of a city’s governing body’s request; and
   (b) An explanation why the city meets the criteria for a quota increase set forth in Section 3 of this administrative regulation.

(4) Upon receiving a city request satisfying subsection (3) of this section, the board may promulgate, in conformity with KRS Chapter 13A, an amendment to Section 4 of this administrative regulation which sets a higher specific quota for the city.

(5) If the board rejects a request made under this section, the board shall notify the city of its decision by registered mail at the address given in the request. Within thirty (30) days after the date of the mailing of the notice, the city may, within ten days after receipt of the administrative decision, request a hearing before an administrative hearing officer established under KRS 13B.504 and 13B.505. The hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.

(6) In conformity with Section 4 of this administrative regulation, the department may publish notice of quota vacancies and issue quota retail package licenses for the general quota number established by Section 1 of this administrative regulation. A licensee that holds a quota retail package license assumes the business risk that the number of quota licenses might be increased.

(7) Any specific city quota for quota retail package licenses set by the board in subsection (4) of this section shall not exceed a ratio of one (1) for every 1,500 persons resident in the city.

(8) This Section does not guarantee that a city will receive the requested specific city quota even if the board promulgates an initial amendment pursuant to subsection (4) of this section. The city shall bear the burden of showing such an increase is necessary due to a change in circumstances from the previous request and that current needs are not being met by the current license holder.

Section 3. Criteria for Consideration. The board may consider the following information in its determination of a city’s request for an increased quota made under Section 2(3) of this administrative regulation:

(1) Population served by the city;
(2) Total retail sales of the city for the most recent past fiscal year;
(3) Retail sales per capita for the most recent past fiscal year;
(4) Total alcohol sales in the city for the most recent fiscal year;
(5) Tourist destinations in the area; and
(6) Other economic and commercial data offered to show the city’s capacity to support additional licenses.

Section 4. Establishment of Specific City Quotas. (1) Pikeville, which repealed prohibition on April 12, 1983, shall have a quota of thirteen (13) quota retail package licenses.

(2) Madisonville, which repealed prohibition on March 10, 1992, shall have a quota of seven (7) quota retail package licenses.

(3) Central City, which repealed prohibition on July 10, 2002, shall have a quota of four (4) quota retail package licenses.

(4) Dawson Springs, which repealed prohibition on February 5, 2008, shall have a quota of two (2) quota retail package licenses.

(5) Lancaster, which repealed prohibition on August 19, 2008, shall have a quota of three (3) quota retail package licenses.

(6) Paintsville, which repealed prohibition on June 9, 2009, shall have a quota of three (3) quota retail package licenses.

(7) Danville, which repealed prohibition on March 2, 2010, shall have a quota of six (6) quota retail package licenses.

(8) Earlington, which repealed prohibition on March 29, 2011, shall have a quota of two (2) quota retail package licenses.

(9) Manchester, which repealed prohibition on June 21, 2011, shall have a quota of two (2) quota retail package licenses.

(10) Elizabethtown, which repealed prohibition on October 4, 2011, shall have a quota of twelve (12) quota retail package licenses.

(11) Radcliff, which repealed prohibition on October 4, 2011, shall have a quota of nine (9) quota retail package licenses.

(12) Vine Grove, which repealed prohibition on October 4, 2011, shall have a quota of two (2) quota retail package licenses.

(13) Guthrie, which repealed prohibition on October 4, 2011, shall have a quota of two (2) quota retail package licenses.

(14) Junction City, which repealed prohibition on October 4, 2011, shall have a quota of two (2) quota retail package licenses.

(15) Corbin, which repealed prohibition on February 14, 2012, shall have a quota of three (3) quota retail package licenses.

(16) Somerset, which repealed prohibition on June 26, 2012, shall have a quota of five (5) quota retail package licenses.

(17) Whitesburg, which repealed prohibition on June 26, 2012, shall have a quota of two (2) quota retail package licenses.
(18) Murray, which repealed prohibition on July 17, 2012, shall have a quota of seven (7) quota retail package licenses.
(19) Franklin, which repealed prohibition on August 17, 2012 shall have a quota of three (3) quota retail package licenses.
(20) LaGrange, which repealed prohibition on July 24, 2012, shall have a quota of three (3) quota retail package licenses.
(21) Georgetown, which repealed prohibition on July 31, 2012, shall have a quota of twelve (12) quota retail package licenses.
(22) Princeton, which repealed prohibition on August 7, 2012, shall have a quota of two (2) quota retail package licenses.

Section 5. Quota Vacancies. (1) On or before January 1 of each year, the Department of Alcoholic Beverage Control shall request from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, population estimates as of that date for wet cities located in dry counties.
(2) When a quota retail package license vacancy is created or it occurs for any reason, the Department of Alcoholic Beverage Control shall within sixty (60) days arrange for the newspaper used for legal notices to advertise the vacancy and provide information about applying for it.
(3) The Department of Alcoholic Beverage Control shall accept applications for quota retail package license vacancy not later than thirty (30) days following the date on which the public notice required by subsection (2) of this section is published.

Section 6. Quota Reductions. (1) This administrative regulation shall not prohibit renewal or approved transfer of an existing quota retail package license issued in a wet city situated in a dry county.
(2) The number of existing quota retail package licenses in excess of the quota established by this administrative regulation shall be reduced as they expire or are surrendered or revoked.

Section 7. No Separate City Quota in Wet County. If a dry county in which a wet city is located becomes wet, the quota established for that entire county by 804 KAR 9:010 shall supersede and replace any separate city quota under this administrative regulation.

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, Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: October 14, 2013
FILED WITH LRC: October 14, 2013 at noon
CONTACT PERSON: Trey Hienerman, Special Assistant, 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 Person: Trey Hienerman
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes automatic quotas for cities that vote to go wet at a ratio of 1:2,300 people. The amendment also creates a mechanism for cities to petition the board to increase their quota. The amendment to this administrative regulation also 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. The amendment to this administrative regulation establishes the method for filling quota vacancies and reducing quotas. Finally, the amendment clarifies that no city quota can exist in a wet county.
(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. This regulation is necessary to establish quotas for wet cities located within dry counties.
(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.
(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 the existing administrative regulation: This administrative regulation establishes automatic quotas for cities that vote to go wet at a ratio of 1:2,300 people. The amendment also creates a mechanism for cities to petition the board to increase their quota. The amendment to this administrative regulation also 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. The amendment to this administrative regulation establishes the method for filling quota vacancies and reducing quotas. Finally, the amendment clarifies that no city quota can exist in a wet county.
(b) The necessity of the amendment to 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. This amendment is necessary to establish quotas for wet cities located within dry counties.
(c) How the amendment 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.
(d) How the amendment 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.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment to the administrative regulation will affect the Kentucky Department of Alcoholic Beverage Control ("Department") by providing a limited number of retail liquor package licenses that may be issued to newly wet cities. It will affect the cities of Paintsville, Danville, Earlington, Manchester,
Elizabethtown, Radcliff, Vine Grove, Guthrie, Junction City, Corbin, Somerset, Whitesburg, Murray, Franklin, LaGrange, Georgetown, and Princeton. The city of Grandview will be affected by this regulation, as they are the only city to repeal prohibition since January 1, 2013. Current quota retail package license holders in the aforementioned cities may be affected if the cities petition for additional licenses and the board approves the petition.

4. Provide an analysis of how 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: 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. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The cities identified in question (3) will have little to no cost. The cost impact on the licensees mentioned in question (3) is indeterminable, since the board must decide whether to increase the city’s quota.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The cities in question (3) will have a set of higher retail package licenses, with the potential to increase their number of licenses. The licensees mentioned in question (3) will receive no additional benefits.

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

(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.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What unit, part, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation. 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 these respective cities. Residents who vote to repeal prohibition after January 1, 2013 will be affected by this regulation.

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

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). This amendment should generate revenue for the state and the cities regulated by this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts)?

(b) The cities of Paintsville, under KRS 243.070(7)(d), the state would receive $1,500.00 annually ($500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,500.00 annually ($500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Paintsville could receive up to $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Manchester could receive $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Danville could receive up to $3,600.00 annually ($600.00 per license) if six (6) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $3,600.00 annually ($600.00 per license) if six (6) quota retail package licenses were issued in the city of Danville. Under KRS 243.070(1)(e)(4), the city of Earlington could receive up to $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Earlington could receive up to $8,400.00 annually ($700.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $8,400.00 annually ($700.00 per license) if twelve (12) quota retail package licenses were issued in Elizabethtown. Under KRS 243.070(1)(e)(4), the city of Paintsville could receive up to $8,400.00 annually ($700.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $8,400.00 annually ($700.00 per license) if twelve (12) quota retail package licenses were issued in Elizabethtown. Under KRS 243.070(1)(e)(4), the city of Earlington could receive up to $1,200.00 annually ($600.00 per license) if nine (9) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,200.00 annually ($600.00 per license) if nine (9) quota retail 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) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $6,300.00 annually ($700.00 per license) if nine (9) quota retail package licenses were issued. 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 twelve (12) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,400.00 annually ($700.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Paintsville could receive up to $8,400.00 annually ($700.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $8,400.00 annually ($700.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Junction City could receive up to $1,200.00 annually ($600.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,200.00 annually ($600.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Franklin could receive up to $1,000.00 annually ($500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,000.00 annually ($500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Murray could receive up to $2,100.00 annually ($600.00 per license) if six (6) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $2,100.00 annually ($600.00 per license) if six (6) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Somerset could receive up to $3,000.00 annually ($600.00 per license) if five (5) quota retail package licenses were issued. Under KRS 243.030(7)(c), the state would receive $3,000.00 annually ($600.00 per license) if five (5) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Somerset could receive up to $3,000.00 annually ($600.00 per license) if five (5) quota retail package licenses were issued. Under KRS 243.030(7)(c), the state would receive $3,000.00 annually ($600.00 per license) if five (5) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Murray could receive up to $4,200.00 annually ($600.00 per license) if seven (7) quota retail package licenses were issued. Under KRS 243.030(7)(c), the state would receive $4,200.00 annually ($600.00 per license) if seven (7) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Murray could receive up to $1,500.00 annually ($500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,500.00 annually ($500.00 per license) if three (3) quota retail package licenses were issued.
quota retail package licenses were issued in the city of Franklin. Under KRS 243.070(1)(e)(4), the city of LaGrange could receive up to $1,500.00 annually ($500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,500.00 annually ($500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Elizabethtown could receive up to $8,400.00 annually ($700.00 per license) if nine (9) quota retail package licenses were issued. Under KRS 243.030(7)(b), the city would receive $8,400.00 annually ($700.00 per license) if nine (9) quota retail 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) quota retail package licenses were issued. Under KRS 243.030(7)(b), the city would receive $6,300.00 annually ($700.00 per license) if nine (9) quota retail package licenses were issued. 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 two (2) quota retail package licenses were issued. Under KRS 243.030(7)(b), the state would receive $1,400.00 annually ($700.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(b), the state would receive $1,400.00 annually ($700.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Guthrie could receive up to $1,400.00 annually ($700.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(b), the city would receive $1,400.00 annually ($700.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Junction City could receive up to $1,200.00 annually ($600.00 per license) if two (2) quota retail package licenses were issued.

Under KRS 243.030(7)(c), the state would receive $1,200.00 annually ($600.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,500.00 annually ($500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.030(7)(d), the city of Corbin could receive up to $1,500.00 annually ($500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.030(7)(d), the city of Elizabethtown could receive up to $1,500.00 annually ($500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.030(7)(c), the city would receive $3,000.00 annually ($600.00 per license) if five (5) quota retail package licenses were issued. Under KRS 243.030(7)(b), the state would receive $3,000.00 annually ($600.00 per license) if five (5) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $3,000.00 annually ($600.00 per license) if five (5) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $3,000.00 annually ($600.00 per license) if five (5) quota retail package licenses were issued.

Under KRS 243.030(7)(d), the state would receive $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued.

(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? Under KRS 243.030(7)(b), the state would receive $1,200.00 annually ($600.00 per license) if two (2) quota retail package licenses were issued to the city of Paintsville. Under KRS 243.070(1)(e)(4), the city of Princeton could receive up to $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the city would receive $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued to the city of Junction City. Under KRS 243.070(1)(e)(4), the city of Paintsville could receive up to $6,000.00 annually ($500.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.030(7)(d), the city of Dawson Springs could receive up to $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the city of Elizabethtown could receive up to $1,000.00 annually ($500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,200.00 annually ($600.00 per license) if six (6) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Elizabethtown could receive up to $6,000.00 annually ($600.00 per license) if six (6) quota retail package licenses were issued. Under KRS 243.030(7)(c), the city of Elizabethtown could receive up to $6,000.00 annually ($600.00 per license) if six (6) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Elizabethtown could receive up to $6,000.00 annually ($600.00 per license) if six (6) quota retail package licenses were issued.

Under KRS 243.030(7)(d), the state would receive $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $1,000.00 annually ($500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the city of Elizabethtown could receive up to $6,000.00 annually ($500.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.030(7)(d), the city would receive $3,600.00 annually ($600.00 per license) if six (6) quota retail package licenses were issued. Under KRS 243.030(7)(d), the city of Elizabethtown could receive up to $6,000.00 annually ($500.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $3,600.00 annually ($600.00 per license) if six (6) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Elizabethtown could receive up to $6,000.00 annually ($500.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Elizabethtown could receive up to $6,000.00 annually ($500.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.030(7)(d), the city of Elizabethtown could receive up to $6,000.00 annually ($500.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $3,600.00 annually ($600.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Elizabethtown could receive up to $6,000.00 annually ($500.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive $3,600.00 annually ($600.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.070(1)(e)(4), the city of Elizabethtown could receive up to $6,000.00 annually ($500.00 per license) if twelve (12) quota retail package licenses were issued.

(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be minimal, if any.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be minimal, if any.

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.
Section 1. Definitions. (1) "Affiliate" means an entity:  
(a) That is wholly owned by a utility;  
(b) In which a utility has a controlling interest;  
(c) That wholly owns a utility;  
(d) That has a controlling interest in a utility; or  
(e) That is under common control with the utility.  
(2) "Case" means a matter coming formally before the commission.  
(3) "Commission" is defined by KRS 278.010(15).  
(4) "Controlling interest in" and "under common control with" mean a utility or other entity if the utility or entity:  
(a) Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of another entity; and  
(b) Exercises that power:  
1. Through one (1) or more intermediary companies, or alone;  
2. In conjunction with, or pursuant to an agreement;  
3. Through ownership of ten (10) percent or more of the voting securities;  
4. Through common directors, officers, stockholders, voting or holding trusts, associated companies;  
5. By contract; or  
6. Through direct or indirect means.  
(5) "Electronic mail" means an electronic message that is sent to an electronic mail address and transmitted between two (2) or more [telecommunication][telecommunications] devices, computers, or electronic devices capable of receiving electronic messages.  
(6) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered, and consists of a user name or mailbox and a reference to an Internet domain.  
(7) "Electronic signature" is defined by KRS 369.102(8).  
(8) "Executive director" means the person appointed to the position established in KRS 278.100 or a person that he or she has designated to perform a duty or duties assigned to that position.  
(9) [48] "Paper" means, regardless of the medium on which it is recorded, an application, petition, or other initiating document, motion, complaint, answer, response, reply, notice, request for information, or other document that this administrative regulation or the commission directs or permits a party to file in a case.  
(10)[49] "Party" means a person who:  
(a) Initiates action through the filing of a formal complaint, application, or petition;  
(b) Files a tariff or tariff sheet with the commission pursuant to KRS 278.180 and 807 KAR 5:011 that the commission has suspended and established a case to investigate or review;  
(c) Is named as a defendant in a formal complaint filed pursuant to Section 20[149] of this administrative regulation;  
(d) Is granted leave to intervene pursuant to Section 4[111] of this administrative regulation; or  
(e) Is joined[as a party] to a commission proceeding.  
(11)[40] "Person" is defined by KRS 278.010(2).  
(12)[411] "Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).  
(13)[42] "Signature" means [any] manual, facsimile, conform ed, or electronic signature[an original signature or an electronic signature as defined by KRS 369.102(8)].  
(14) "Tariff" means the schedules of a utility’s rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.  
(15)[113] "Utility" is defined by KRS 278.010(3).  
(16) "Water district" means a special district formed pursuant to KRS 65.610 and [KRS]Chapter 74.  
(17) "Web site" means an identifiable site on the internet, including social media, which is accessible to the public.

Section 2. Hearings. The commission shall provide notice of hearing in a case by order except if a hearing is not concluded on the designated day and the presiding officer verbally announces the date for continuation of the hearing. A verbal announcement made by the presiding officer shall be deemed proper notice of the continued hearing.

Section 3. Duties of Executive Director[to Furnish Information]. (1) Upon request, the executive director shall:  
(a) Advise as to the form of a paper[petition, complaint, answer, application, or other document] desired to be filed;  
(b) Provide general information regarding the commission’s procedures and practices;  
(c) Make available from the commission’s files, upon request, a document or record pertinent to a matter before the commission unless KRS 61.878 expressly exempts the document or record from inspection or release.  
(2) The executive director shall reject for filing a document that on its face does not comply with 807 KAR Chapter 5.

Section 4. General Matters Pertaining to All Cases[Formal Proceedings]. (1) Address of the commission. All communications shall be addressed to: Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602[40601].  
(2) Case numbers and styles. Each case shall receive a number and a style descriptive of the subject matter. The number and style shall be placed on each subsequent paper[document] filed in the case.  
(3) Signing of papers.  
(a) A paper shall be signed by the submitting party or attorney and shall include the name, address, telephone number, facsimile number, and electronic mail address, if any, of the attorney of record or submitting party.  
(b) A paper shall be verified or under oath if required by statute, administrative regulation, or order of the commission.  
(4) A person shall not file a paper on behalf of another person, or otherwise represent another person, unless the person is an attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2). An attorney who is not licensed to practice law in Kentucky shall present evidence of his or her compliance with SCR 3.030(2) if appearing before the commission.  
(5) Amendments. Upon motion of a party and for good cause shown, the commission shall allow a complaint, application, answer, or other paper to be amended or corrected or an omission supplied. Unless the commission orders otherwise, the amendment shall not relate back to the date of the original paper.  
(6) Witnesses and subpoenas.  
(a) Upon the written request of a party to a proceeding or commission staff, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.  
(b) Subpoenas for the production of books, accounts, documents, or records (unless directed to issue by the commission on its own authority) may be issued by the commission or a commission officer, upon written request, stating as nearly as possible the books, accounts, documents, or records desired to be produced.  
(c) A party shall submit a completed subpoena form with its written request as necessary.  
(d) Every subpoena shall be served, in the manner prescribed by subsection (8) of this section, on each party and [any] person...
whose information is being requested.

(e) Copies of all documents received in response to a subpoena shall be filed with the commission and furnished to all other parties to the case, except on motion and for good cause shown. Any other tangible evidence received in response to the subpoena shall be made available for inspection by the commission and all other parties to the action.

(7) Computation of time.

(a) In computing a period of time prescribed or allowed by order of the commission or by KRS Chapter 74 or 278, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

(b) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed, in which event the period shall run until the end of the next day that is not a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed.

(8) Service.

(a) Unless the commission orders service upon a party and the party[s] attorney[otherwise], service shall be made upon the party’s attorney if the party is represented by an attorney.

(b) Service upon an attorney or upon a party shall be made by:

1. Delivering a copy to the attorney or party at the last known address; or
2. Mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address; or
3. Sending a copy by electronic means to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic means shall comply with Section 8(4) of this administrative regulation.

(c) Service shall be complete upon mailing or electronic transmission. If a serving party learns that the mailing or electronic transmission did not reach the person to be served, the serving party shall take reasonable steps to immediately re-serve the party to be served, unless service is refused, in which case the serving party shall not be required to take additional action.

(9) Filing.

(a) Unless electronic filing procedures established in Section 8 of this administrative regulation are used, a paper[document] shall not be deemed filed with the commission until it is physically received by the executive director at the commission’s offices during the commission’s official business hours and the paper meets all applicable requirements of KRS Chapter 278 and KAR Title 807.

(b) The executive director shall endorse upon each paper or document accepted for filing the date of its filing. The endorsement shall constitute the filing of the paper or document.

(10) Privacy protection for filings.

(a) If a party files a paper[document] containing an individual’s Social Security number, taxpayer identification number, birth date, or a financial account number, the party shall redact the document so the following information cannot be read:

1. The digits of the Social Security number or taxpayer identification number;
2. The month and day of an individual’s birth; and
3. The digits of the financial account number.

(b) To redact the paper[document], the filing party shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read.

(c) The executive director shall not be required to review papers[documents] for compliance with this section. The responsibility to redact a document shall rest with the party that files the document.

(11) Intervention and parties.

(a) [In a formal proceeding:] A person who wishes to become a party to a case[proceeding] before the commission may, by timely motion, request[that] leave to intervene[be granted]. The motion shall include the movant’s name and address and shall state his or her interest in the case[proceeding] and how intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(b) The commission may grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she[person] has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(c) Unless electronic filing procedures established in Section 8 of this administrative regulation are used in the case, a party shall serve a person granted leave to intervene with all papers[documents] that the party submits in the case after the order granting intervention, but is not required to provide any papers[documents] submitted prior to the issuance of that order unless the commission otherwise orders.

(d) Unless the commission finds good cause to order otherwise, a person granted leave to intervene in a case shall, as a condition of his or her intervention, be subject to the procedural schedule in existence in that case when the order granting the person’s intervention is issued.

(e) A person who the commission has not granted leave to intervene in a case may file written comments regarding the subject matter of the case. These comments shall be filed in the case record. A person filing written comments shall not be deemed a party to the proceeding and need not be named as a party to an appeal.

(12) Requests for information.

(a) If permitted by administrative regulation or by order of the commission, a party may, in accordance with this section request information from another party to the case. The requesting party shall serve its request upon the party from which it seeks the requested information and shall also file its request with the commission.

(b) Commission staff, through the commission’s executive director, may request information from any party to a case on the commission’s behalf.

(c) Unless otherwise established in administrative regulation, the commission shall establish by order in a case the time for parties to issue and to respond to requests for information.

(d) Responses to requests for information.

1. Responses to requests for information shall be appropriately bound, tabbed, and indexed.

2. Each response shall:
   a. Include the name of the witness responsible for responding to the questions related to the information provided; and
   b. Be answered under oath or, for representatives of a public or private corporation, a partnership, an association, or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the person that the response is true and accurate to the best of that person’s knowledge, information, and belief formed after a reasonable inquiry.

3. If the requested information has previously been provided in the case, a responding party may, in lieu of providing the requested information, provide a reference to the specific location of the requested information in the case record.

4. A responding party shall make timely amendment to its prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is subsequently incorrect in any material respect.

5. If a party served with a request for information fails or refuses to furnish all or part of the requested information, the party[document] shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

6. The responding party shall file with the commission the party[s]'[its] response to a request for information and shall serve it upon all parties to a case.

(e) A party shall compel compliance with the party[s]'[its] request for information by motion to the commission, which shall include:

1. A description of the information requested;
2. The reasons why it is relevant to the issues in the case; and
3. The efforts taken to resolve any disagreement over the
   production of the requested information.
(13) Each report, specification, drawing, and plan that a
professional engineer or professional land surveyor prepared
and that is filed with the commission shall contain the seal or stamp
and signature of that professional engineer or land surveyor in
accordance with KRS 322.340.
(14) Consolidation of cases.
(a) The commission may order two (2) or more proceedings
involving a similar question of law or fact to be consolidated where
rights of the parties or the public interest will not be prejudiced.
(b) Upon designing the consolidation of cases, the
commission shall specify into which case the other case shall be
consolidated.
(c) All papers received after the order of consolidation has
been issued shall be filed in the record of the designated case.
(d) Papers filed prior to the order of consolidation shall remain
in their respective case files.

Section 5. Motion Practice. (1) All requests for relief that are
not required to be made in an application, petition, or written
request shall be by motion. A motion shall state precisely the relief
requested.
(2) Unless the commission orders otherwise, a party to a case
shall file a response to a motion no later than seven (7) days from
the date of filing of a motion.
(3) Unless the commission orders otherwise, a party shall file a
reply no later than five (5) days of the filing of the most recent
response to the party's motion. The reply shall be confined to
points raised in the responses to which they are addressed, and
shall not reiterate an argument already presented.

Section 6. Proof [Certificate] of Service. (1) Except as provided
in Section 8 of this administrative regulation, all papers filed in a
case shall contain proof of the date and manner of service of the
papers on all parties.
(1) Proof shall be made by certificate of the other party's attorney
by affidavit of the person who served the papers, or by a
comparable [any] proof [satisfactory to the commission].
(3) The certificate or affidavit shall identify by name the person
served and the date and method of service.
(4) Proof of electronic service shall state the electronic
notification address of the person served [All documents served
pursuant to R 307.36 KAS 2015 shall have a consent of service
certification. Proof of service shall state the date and method of
service and shall be signed by a person who can verify service].

Section 7. Filing Procedures. (1) Unless the commission orders
otherwise or the electronic filing procedures established in Section
8 of this administrative regulation are used, if a paper [document in
paper medium] is filed with the commission, an original unbound
and ten (10) additional copies in paper medium shall also be filed.
(2) Each paper [All documents] filed with the commission shall
conform to the requirements established in this subsection.
(a) Form. Each filing shall be printed or typewritten, double spaced,
and on one (1) side of the page only.
(b) Size. Each filing shall be on eight and one-half (8 1/2)
 inches by eleven (11) inches paper.
(c) Point. Each filing shall be in type no smaller than twelve (12)
 point, except footnotes, which may be in type no smaller than ten
(10) point.
(d) Binding. A side bound or top bound filing shall also include an identical unbound copy.
(3) Except as provided for in Section 8 of this administrative
regulation, a filing made with the commission outside its business
hours shall be considered as filed on the commission's next business
day.
(4) A paper [document] submitted by facsimile transmission
shall not be accepted.

Section 8. Electronic Filing Procedures. (1) Upon an applicant's
timely election of the use of electronic filing procedures or upon
order of the commission in a case that the commission has initiated
on its own motion, the procedures established in this section shall
be used in lieu of other filing procedures established in this
administrative regulation.
(2) At least seven (7) days prior to the submission of its
application, an applicant shall:
(a) File with the commission written notice of its election to use
electronic filing procedures using the Notice of Election of Use of
Electronic Filing Procedures form; and
(b) If it does not have an account for electronic filing with the
commission, register for an account at http://psc.ky.gov/Account/Register.
(3) All papers [documents, and exhibits] shall be filed with the
commission by uploading an electronic version [of the document]
using the commission's E-Filing System at http://psc.ky.gov. In
addition, the filing party shall file one (1) copy in paper
medium [original] with the commission as required by subsection
(12)(a) of this section.
(4) Audio or video files.
1. A file containing audio material shall be submitted in MP3
format.
2. A file containing video material shall be submitted in MPEG-4
format.
(b) Except as established in paragraph (a) of this subsection,
each file in an electronic submission shall be:
1. In portable document format;
2. Search-capable;
3. Optimized for viewing over the Internet;
4. Bookmarked to distinguish sections of the paper, except that
documents filed in response to requests for information need not
be individually bookmarked; and
5. If a scanned material [document], scanned at a resolution
of no less than 300 dots per inch.
(5) Each electronic submission shall include an introductory
file in portable document format that is named "Read1st" and that
contains:
1. A general description of the filing;
2. A list of all material to be filed in paper or physical medium
but not included in the electronic submission [filing]; and
3. A statement that the materials in the electronic submission
are a true representation of the materials in paper
medium [attesting that the electronically filed documents are a true
representation of the original documents].
(b) The "Read1st" file and any other material [document] that
normally contains a signature shall contain a signature in the
electronically submitted document.
(c) The electronic version of the cover letter accompanying the
paper medium filing may be substituted for a general
description.
(d) If the electronic submission does not include all
documents contained in the paper medium version, the absence of
these documents shall be noted in the "Read1st" document.
(6) An electronic transmission of an uploading session shall not
exceed twenty (20) files or 100 megabytes.
(b) An individual file shall not exceed thirty (30) [fifty (50)]
megabytes.
(c) If a filing party's submission exceeds the limitations
established in paragraph (a) or (b) of this subsection, the filer shall
make electronic submission in two (2) or more
consecutive [electronic transmission of] uploading sessions.
(7) If filing a paper [document] with the commission, the filing
party shall certify that:
(a) The electronic version of the paper [filing] is a true and
accurate copy of each paper [document] filed in paper medium;
(b) The electronic version of the paper [filing] has been
submitted [transmitted] to the commission; and
(c) A copy of the paper [filing] in paper medium has been mailed
to all parties that the commission has excused from electronic filing
procedures [participant at conferences by electronic means].
(8) A copy of the paper [filing] in paper medium has been mailed
to all parties that the commission has excused from electronic filing
procedures [participant at conferences by electronic means].
(b) Upon a party’s [site] receipt of this notification, each party shall be solely responsible for accessing the commission’s Web site at http://psc.ky.gov to view or download the submission. In the party’s receipt of this message, it shall be the receiving party’s responsibility to access the commission’s electronic file depository at http://psc.ky.gov and view or download the submission.

(9) Unless a party objects to the use of electronic filing procedures in the party’s [site] motion for intervention, it shall be deemed granted leave to intervene. A party granted leave states its objection to the use of electronic filing procedures in a motion for intervention, a party granted leave to intervene shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order of the commission granting the party’s intervention a written statement that:

1. The party waives any right to service of commission orders by United States mail; and
2. The party, or the party’s authorized agent, possesses the facilities to receive electronic transmissions.

(10) In cases in which [judicial] the commission has ordered the use of electronic filing procedures on its own motion, unless a party files with the commission an objection to the use of electronic filing procedures within seven (7) days of issuance of the order directing the use of electronic filing procedures, the party shall [unless a party to a case states an objection to the use of electronic filing procedures within seven (7) days of issuance of an order in which the commission orders the use of electronic filing procedures on its own motion, that party shall]:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all documents on that party and by that party, and by all other parties, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order directing the use of electronic filing procedures a written statement that:

1. The party waives any right to service of commission orders by United States mail; and
2. The party, or the party’s authorized agent, possesses the facilities to receive electronic transmissions.

(11) If a party objects to the use of electronic filing procedures and good cause exists to excuse the party [that party] from the use of electronic filing procedures, service of papers on and by the party and by all other parties shall be made in accordance with Section 4(8) of this administrative regulation. By a stipulation in writing filed with the commission:

(a) A paper [document] shall be considered timely filed with the commission if:

1. It has been successfully transmitted in electronic medium to the commission within the time allowed for filing and meets all other requirements established in this administrative regulation and any [an] order of the commission; and
2. The paper [original document], in paper medium, is filed at the commission’s offices no later than the second business day following the successful electronic transmission [filing].

(b) Each paper shall attach to the top of the paper medium submission a copy in paper medium of the electronic notification [email message] from the commission confirming [transmission and receipt of its electronic submission.]

(13) Except as expressly provided in this section, a party may object to the use of electronic filing procedures with the procedures established in this section shall not be required to comply with Section 4(8) of this administrative regulation.

Section 9. Hearings and Rehearings. (1) Unless a hearing is not required by statute, is waived by the parties in the case, or is found by the commission to be unnecessary for protection of substantial rights or not in the public interest, the commission shall conduct a hearing [required by statute, waived by the parties in the case, or if the commission finds that a hearing is not necessary in the public interest or for the protection of substantial rights, the commission shall grant a hearing in the following classes of cases]:

(a) [If an order to satisfy or answer a complaint has been made and the person complained of has not satisfied the complaint to the commission’s satisfaction of the commission; or]

(b) A request for hearing has been made if an application has been made in a formal proceeding.

(2) Publication of notice.

(a) Upon the filing of an application, the commission may order an applicant to give notice on all [other] persons who may be affected by serving [service of] a copy of the application upon those persons or by publishing notice of the filing [publication]. The applicant shall bear the expense of providing the notice. If the notice is provided [given] by publication, the commission may designate the contents of the notice [and] the number of times and the time period in which the notice shall be published [length of time] and the newspaper in which the notice shall be published [appear] [Proof of the publication shall be filed at or before the hearing.]

(b)1. The commission may order an applicant to give notice to the public of any hearing on the applicant’s application and shall order an applicant for a general adjustment of rates or reduction or discontinuance of service to give notice of any hearing on its application.

2. If notice of a hearing pursuant to KRS 424.300 is published by the applicant in a newspaper, it shall be published at least one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing in a newspaper of general circulation in the areas that will be affected.

3. Notice by mail shall be mailed not less than fourteen (14) days nor more than twenty-one (21) days prior to the hearing.

4. Notice of hearing shall state the purpose, time, place, and date of hearing.

5. [one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing giving the purpose, time, place, and date of hearing.] The applicant shall bear the expense of providing the notice.

6. Proof of publication shall be filed at or before the hearing.

(3) Investigation on commission’s own motion. The commission may, on its own motion, conduct investigations and order hearings into any act or thing done or omitted to be done by a utility, which the commission believes is in violation of an order of the commission or KRS Chapters 74 or Chapter 278 or 807 KAR Chapter 5. The commission may also, through its own experts or employees, or otherwise, obtain evidence the commission finds necessary or desirable in a formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. The commission, on its own motion, through its executive director or upon a motion of a party, may convene a conference in a case for the purpose of considering the possibility of settlement, the simplification or clarification of issues, or any other matter that may aid in the handling and disposition of the case. Unless the commission directs otherwise or the parties otherwise agree, participation in conferences with commission staff shall be limited to parties of the subject proceeding and their representatives.

(5) Conduct of hearings. Hearings shall be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing filed with the commission, the parties to a case [proceeding or investigation by the commission] may agree among themselves or with commission staff upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission shall be given under oath or affirmation.

(8) Objections and exceptions. A party objecting to the admission or exclusion of evidence before the commission shall state the grounds for objection. Formal exceptions shall not be necessary to be made, but shall be taken to rulings on objection.

(9) Record of evidence.

(a) The commission shall cause to be made a record of all hearings. Unless the commission orders otherwise, this record shall be a digital video recording.

1. A party to a case may, by motion made prior to the hearing, request that a stenographic transcript be made by a
Section 11. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed, may accept certified, or otherwise authenticated, copies of the documents or portions of the same as may be relevant, or may require evidence to be entered as a part of the record.

(2) If relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party shall plainly designate the matter so offered. If immaterial matter unnecessarily encumbers the record, the book, paper, or document shall not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of the matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine the book, paper, or document, and to offer evidence in like manner other portions thereof found to be material and relevant.

(3) The sheets of each exhibit shall be numbered. If practical, the lines of each sheet shall also be numbered. If the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Rate comparisons and other evidence shall be condensed into tables.

(4) Except as expressly permitted in particular instances, the commission shall not receive in evidence or consider as a part of the record a book, paper, or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of a party to a proceeding, the record of a case in the commission's files or any document on file with the commission may be made a part of the record by reference only. The case or document made a part of the record by reference only shall not be physically incorporated into the record.

(a) [By reference only.] The case or document made a part of the record by reference only shall not be physically incorporated into the record.

(b) [Commissioner shall cause to be made a written exhibit list, a written hearing log, and a written log listing the date and time of where each witness' testimony begins and ends on the digital video recording.]

(c) [A brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee or trustee, amount of indebtedness authorized to be secured, and the amount of indebtedness actually secured, together with signing fund provisions, if applicable;]

(d) [A motion to redact material submitted in a case.]

Section 12. Financial Exhibit. (1) If a party introduces an exhibit that is neither a document nor a photograph, the commission may direct a photograph of the exhibit be substituted for the exhibit.

Section 10. Briefs. Each brief shall be filed within the time fixed. A request for extension of time to file a brief shall be made to the commission by written motion.

Section 11. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed, may accept certified, or otherwise authenticated, copies of the documents or portions of the same as may be relevant, or may require evidence to be entered as a part of the record.

(2) If relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party shall plainly designate the matter so offered. If immaterial matter unnecessarily encumbers the record, the book, paper, or document shall not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of the matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine the book, paper, or document, and to offer evidence in like manner other portions thereof found to be material and relevant.

(3) The sheets of each exhibit shall be numbered. If practical, the lines of each sheet shall also be numbered. If the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Rate comparisons and other evidence shall be condensed into tables.

(4) Except as expressly permitted in particular instances, the commission shall not receive in evidence or consider as a part of the record a book, paper, or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of a party to a proceeding, the record of a case in the commission's files or any document on file with the commission may be made a part of the record by reference only. The case or document made a part of the record by reference only shall not be physically incorporated into the record.

(a) The executive director of the commission shall cause to be made a written exhibit list, a written hearing log, and a written log listing the date and time of where each witness' testimony begins and ends on the digital video recording.

(b) The executive director of the commission shall cause to be made a written exhibit list, a written hearing log, and a written log listing the date and time of where each witness' testimony begins and ends on the digital video recording.

(c) If a party introduces an exhibit that is neither a document nor a photograph, the commission may direct a photograph of the exhibit be substituted for the exhibit.

Section 11. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed, may accept certified, or otherwise authenticated, copies of the documents or portions of the same as may be relevant, or may require evidence to be entered as a part of the record.

(2) If relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party shall plainly designate the matter so offered. If immaterial matter unnecessarily encumbers the record, the book, paper, or document shall not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of the matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine the book, paper, or document, and to offer evidence in like manner other portions thereof found to be material and relevant.

(3) The sheets of each exhibit shall be numbered. If practical, the lines of each sheet shall also be numbered. If the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Rate comparisons and other evidence shall be condensed into tables.

(4) Except as expressly permitted in particular instances, the commission shall not receive in evidence or consider as a part of the record a book, paper, or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of a party to a proceeding, the record of a case in the commission's files or any document on file with the commission may be made a part of the record by reference only. The case or document made a part of the record by reference only shall not be physically incorporated into the record.

(a) The case or document made a part of the record by reference only shall not be physically incorporated into the record.

(b) Upon action in the Franklin Circuit Court, excerpts from the record of a case or part of a document may be made a part of the record before the court, at the request of a party.

Section 12. Financial Exhibit. (1) If this administrative regulation requires that a financial exhibit be annexed to the application, the exhibit shall:

(a) [Commissioner shall cause to be made a written exhibit list, a written hearing log, and a written log listing the date and time of where each witness' testimony begins and ends on the digital video recording.]

(b) The motion and one (1) copy of the material in paper medium, with only those portions for which confidentiality is sought redacted, shall be served on all parties[. The motion shall contain a certificate of service on all parties.]

(c) The motion and one (1) copy of the material in paper medium, with only those portions for which confidentiality is sought redacted, shall be served on all parties[. The motion shall contain a certificate of service on all parties.]

(d) The burden of proof to show that the material falls within the exclusions from disclosure requirements enumerated in KRS 61.878 and to demonstrate the time period for which the material should be considered as confidential shall be upon the moving party[requesting confidential treatment].

(e) Unless the commission orders otherwise[. a party may may
respond to a motion for confidential treatment within seven (7) days after it is filed with the commission.

(4) If the case is being conducted using electronic filing procedures established in Section 8 of this administrative regulation, the parties shall comply with those procedures except that an unobscured copy of the material for which confidentiality is sought shall not be transmitted electronically.

(3) Procedure for determining confidentiality of material submitted outside of a case.

(a) A person who requests confidential treatment of material filed with the commission outside of a case shall submit a written request to the executive director that:

1. Establishes specific grounds upon which the material should be classified as confidential;
2. States the time period in which the material should be treated as confidential and the reasons for this time period; and
3. Includes one (1) copy of the material in paper medium with those portions redacted for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) The written request, one (1) copy of the material in paper medium which is identified by underscoring or highlighting, and one (1) copy of the material in paper medium with those portions redacted for which confidentiality is sought, shall be filed with the commission. If confidential treatment is sought for an entire document, the filer may file a sheetro note that the entire document is confidential in lieu of redacting the document.

(c) The burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878 and the time period for which the material should be considered as confidential shall be upon the person requesting confidential treatment.

(d) A person whose request for confidential treatment is denied, in whole or in part, by the executive director may make application within twenty (20) days of the executive director’s decision to petition the commission for confidential treatment of the material in accordance with the procedures established in subsection (2) of this section. The commission shall establish a case and shall review the application without regard to the executive director’s determination and in the same manner as it would review a motion for confidential treatment made pursuant to subsection (2) of this section. The application shall comply with the requirements of subsection (2)(a) of this section.

(e) If the executive director denies a request for confidential treatment, the material for which confidential treatment was sought shall be placed in the public record for twenty (20) days following his or her decision to allow the requesting party to petition the commission.

(f) Pending action by the commission on a motion for confidential treatment or by its executive director on a request for confidential treatment, the material specifically identified shall be accorded confidential treatment.

(g) If the petition for confidential treatment of material is denied, the material shall not be placed in the public record for the period permitted pursuant to KRS 278.410 to bring an action for review.

(h) Procedure for a party to request access to confidential material filed in a case pending.

(a) A party to a case before the commission shall not fail to respond to a request for information by the commission staff or another party on grounds of confidentiality if the commission shall not fail to respond to discovery by the commission or its staff or another party to the proceeding on grounds of confidentiality.

1. A party seeking confidential treatment for its response to information requests shall follow the procedures for requesting confidentiality established in this administrative regulation. If a party responding to discovery requests seeks to have a portion or all of the responsive held confidential by the commission, the party shall follow the procedures for petitioning for confidentiality established in this administrative regulation.

2. A party’s response to discovery requests for information shall be served upon all parties, with only those portions for which confidential treatment is sought redacted.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then a party may, by motion, request access to the material on the grounds that it is essential to the party’s meaningful participation in the proceeding.

1. The motion shall include a description of efforts to enter into a protective agreement and unwillingness, if applicable, to enter into a protective agreement and unwillingness, if applicable.

2. A party may respond to the motion within seven (7) days after it is filed with the commission.

3. The commission shall determine if the movant is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

4. Requests for access to records pursuant to KRS 61.870 to 61.884. A time period prescribed in subsection (10)(a) of this section shall not limit the right of a person to request access to commission records pursuant to KRS 61.870 to 61.884. Upon a request filed pursuant to KRS 61.870 to 61.884, the commission shall respond in accordance with the procedure established in KRS 61.880.

5. Procedure for request for access to confidential material. A person denied access to records requested pursuant to KRS 61.870 to 61.884 or to material deemed confidential by the commission in accordance with the procedures established in this section, may obtain this information only pursuant to KRS 61.870 to 61.884 and other applicable law.

6. Use of confidential material during formal proceedings.

(a) A person who files any paper that contains material that has previously been deemed confidential or for which a request or motion for confidential treatment is pending shall submit one (1) copy of the paper with the adjudged or alleged confidential material underscored or highlighted, and ten (10) copies of the paper with those portions redacted; and a party that files material that contains or reveals material that has previously been deemed confidential shall submit with the filed material:

1. If the confidential status of the material has been determined previously, a written notice identifying the person who filed the original submitted the material, the date on which a determination on the materials confidentiality was made and, if applicable, the case number in which the determination was made; or
2. A written notice identifying the person who made the request and the date on which the request was submitted.

The commission shall not limit the right of a person to request access to commission records pursuant to KRS 61.870 to 61.884. A time period prescribed in subsection (10)(a) of this section shall not limit the right of a person to request access to commission records pursuant to KRS 61.870 to 61.884.

A party that files material that contains or reveals material that has previously been deemed confidential shall submit with the filed material:

1. A request for confidential treatment of the material is pending, a written notice identifying the person who made the request and the date on which the request was submitted.

2. If a request for confidential treatment of the material is pending, a written notice identifying the person who made the request and the date on which the request was submitted.

Material deemed confidential by the commission may be designated and relied upon during a formal hearing by the procedure established in this paragraph.

1. The party seeking to address the confidential material shall advise the commission prior to the use of the material.

2. A person other than commission employees not a party to a protective agreement related to the confidential material shall be present in the hearing room during testimony.
Section 14. Applications. (1) Each application shall state:

(a) The facts relied upon to show that the proposed construction or extension, if any, shall be annexed to the application, or a written statement attesting that its articles of incorporation and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

(b) If the applicant is a limited liability company, a certified copy of its articles of organization and all amendments, if any, shall be annexed to the application, or a written statement attesting that its articles of organization and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

Section 15. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3).

(a) Upon application to the commission by the utility for a certificate of convenience and necessity authorizing the applicant to bid on a franchise, license, or permit offered by a governmental agency, the applicant shall submit with its application:

1. The information required pursuant to Section 14 of this administrative regulation.
2. The name of the governmental agency offering the franchise;
3. The type of franchise offered; and
4. A statement showing the need and demand for service.

(b) If any applicant is successful in acquiring the franchise, license, or permit, the applicant shall file a copy with the commission using the commission's electronic filing system.

(2) New construction or extension. Upon application by the utility, person, firm, or corporation for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property, or facility, the applicant, in addition to complying with Section 14 of this administrative regulation, shall submit with its application:

(a) The facts relied upon to show that the proposed construction or extension is or will be required by public convenience or necessity;

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed construction or extension, if not previously filed with the commission;

(c) A full description of the proposed location, route, or routes of the proposed construction or extension, including a description of the manner in which same will be constructed, and the names of all public utilities, corporations, or persons with whom the proposed construction or extension is likely to compete;

(d) One (1) copy in portable document format on electronic storage medium and two (2) copies in paper medium of:
1. Maps to suitable scale showing the location or route of the proposed construction or extension, as well as the location to scale of like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of the other facilities; and
2. Plans and specifications and drawings of the proposed plant, equipment, and facilities;

(e) The manner in which the applicant proposes to finance the proposed construction or extension; and

(f) An estimated annual cost of operation after the proposed facilities are placed into service; and

(g) All other information the commission shall require to authorize the commission to complete a certificate of public convenience and necessity.
and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal applications. [As procedure is concerned.] An application for a renewal of a certificate of convenience and necessity shall be treated as an original application.

Section 16. Applications for General Adjustments of Existing Rates. (1) Each application requesting a general adjustment of existing rates shall:

(a) Be supported by:
1. A twelve (12) month historical test period that may include adjustments for known and measurable changes; or
2. A fully forecasted test period; and
(b) Include:
1. A statement of the reason the adjustment is required;
2. [If the utility is incorporated or is a limited partnership, a certificate of good standing or certificate of authorization dated within sixty (60) days of the date the application is filed;]
3. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that a certificate is not necessary.
4. New or revised tariff sheets, if applicable, in a format that complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed; and
5. New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:
   a. [Providing] The present and proposed tariffs in comparative
   b. [Providing] A copy of the present tariff indicating proposed
   c. A statement that existing tariffs exist and are
   d. A statement that the rates contained in this notice are
   e. A statement that a corporation, association, or person may
      file a rate application at least thirty (30) days, but not more than
   f. A statement that the rates contained in this notice are
      for the purposes of
   g. A statement that a corporation, association, or person may
      file a rate application at least thirty (30) days, but not more than
   h. A statement that a corporation, association, or person may
      file a rate application at least thirty (30) days, but not more than

(3) Notice of intent. A utility with gross annual revenues greater than $5,000,000 shall notify the commission in writing of its desire to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application.

(a) The notice of intent shall state if the rate application will be supported by a historical test period or a fully forecasted test period.

(b) Upon filing the notice of intent, an application may be made to the commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon that may be used to obtain a copy from the applicant of the full schedule of increases or rate changes.

(c) [Upon filing] filing the notice of intent with the commission, the applicant shall mail to the Attorney General’s Office of Rate Intervention a copy of the notice of intent or send by electronic mail in a portable document format, to rateintervention@ag.ky.gov. The

(4) Manner of notification.

(a) If the utility has twenty (20) or fewer customers or is a sewage utility, it shall:
1. Mail notice to each customer no later than the date on which the application is filed with the commission. The notice shall meet the requirements established in subsection (4) of this section;
2. Post at its place of business no later than the file date of the application a sheet containing the information required by subsection (4) of this section and shall:
   1. Include notice with customer bills mailed by the date the application is filed;
   2. Publish notice in a trade publication or newsletter going to all customers by the date the application is filed; or
   3. Publish notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility’s service area, the first publication to be made by the date the application is filed.
(b) Utilities providing service in multiple counties may use a combination of the notice methods listed in paragraph (b) of this subsection.

(c) Notice upon petition to this administrative regulation shall satisfy the requirements of 807 KAR 5:051. Section 2.

(5) Notice Requirements. Each notice shall contain the following information:

(a) The present rates and proposed rates for each customer class to which the proposed rates will apply;
(b) The amount of the change requested in both dollar amounts and percentage change for customer classification to which the proposed rate change will apply;
(c) The amount of the average usage and the effect upon the average bill for each customer class to which the proposed rate change will apply, except for local exchange companies, which shall include the effect upon the average bill for each customer class for the proposed rate change in basic local service;
(d) A statement that the rates contained in this notice are
(e) A statement that a corporation, association, or person may
(f) A statement that

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application is filed and shall not remove the notification until issuance of a final order from the commission establishing the utility's approved rates; and

(b) A utility that maintains a public web site shall, within seven (7) days of filing an application, post a copy of the public notice as well as a hyperlink to its filed application on the commission’s Web site and shall not remove the notification until issuance of a final order from the commission establishing the utility’s approved rates.

(2) Abbreviated form of notice. Upon written request, the commission may grant a utility permission to use an abbreviated form of published notice of the proposed rates, provided the notice includes a coupon that may be used to obtain all of the required information.

(3) Notice of hearing scheduled by the commission upon application by a utility for a general adjustment in rates shall be advertised by the utility by newspaper publication in the areas that will be affected in compliance with KRS 424.200.

(4) Each application supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility’s application:

(a) A complete description and quantified explanation for all proposed adjustments with proper support for proposed changes in price, activity levels, if applicable, and other factors that may affect the adjustment;

(b) If the utility has gross annual revenues greater than $5,000,000, the written testimony of each witness the utility proposes to use to support its application;

(c) If the utility has gross annual revenues less than $5,000,000 the written testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit written testimony;

(d) A statement estimating the effect that each new rate will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease;

(e) If the utility provides electric, gas, water, or sewer service, the effect upon the average bill for each customer classification to which the proposed rate change will apply;

(f) If the utility is an incumbent local exchange company, the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(g) A detailed analysis of customers’ bills whereby revenues from the present and proposed rates can be readily determined for each customer class;

(h) A summary of the utility’s determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules;

(i) A reconciliation of the rate base and capital used to determine its revenue requirements;

(j) A current chart of accounts if more detailed than the Uniform System of Accounts prescribed by the commission;

(k) The independent auditor’s annual opinion report, with written communication from the independent auditor to the utility, if applicable, which indicates the existence of a material weakness in the utility’s internal controls;

(l) The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;

(m) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Public Service Commission Form T (telephone);

(n) A summary of the utility’s latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission’s average depreciation rates shall provide a schedule that identifies the current and test period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case’s number shall be sufficient;

(o) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility’s application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; and the specifications for the computer hardware and the operating system required to run the program;

(p) Prospectuses of the most recent stock or bond offerings;

(q) Annual report to shareholders, or members, and statistical supplements covering the two (2) most recent years from the utility’s application filing date;

(r) The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;

(s) A copy of the utility’s annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters updated as current information becomes available;

(t) If the utility had amounts charged or allocated to it by an affiliate or general or home office or paid monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;

2. An explanation of how the allocator for the test period was determined; and

3. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the test period was reasonable;

(u) If the utility provides gas, electric, water, or sewage service and has annual gross revenues greater than $5,000,000 a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(v) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000 except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(5) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just, and reasonable rates based on the historical test period. The following information shall be filed with each application requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility’s application:

(a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;

(b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;

(c) For each proposed pro forma adjustment reflecting plant additions, provide the following information:

1. The starting date of the construction of each major component of plant;

2. The proposed in-service date;

3. The total estimated cost of construction at completion;

4. The amount contained in construction work in progress at the end of the test period;

5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;

6. The original cost and the cost of removal and salvage for each component of plant to be retired during the period of the
proposed pro forma adjustment for plant additions;

7. An explanation of differences, if applicable, in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and

8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;

(d) The operating budget for each month of the period encompassing the pro forma adjustments; and

(e) The number of customers to be added to the test period end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.

(f) The utility shall provide a reconciliation of the rate base and the variables, assumptions, and other factors used as the basis for alternative forecast based on a reasonable number of changes in activity levels shall be quantified, explained, and supported.

(g) The number of customers to be added to the test period shall be limited to the twelve (12) months immediately following the suspension period.

(h) The utility's most recent capital construction budget containing at a minimum a three (3) year forecast of construction expenditures;

(i) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.

(j) Forecasts of the financial data for the forecasted period shall be limited to the twelve (12) months immediately following the suspension period.

(k) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecast period.

(l) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast, except for the correction of mathematical errors, unless the revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application.

(m) The number of customers to be added to the test period shall be limited to the twelve (12) months immediately following the suspension period.

(n) Operations and maintenance expenses shall be quantified, explained, and supported;

(o) The utility's forecast period. All econometric models, variables, assumptions, and capital assumptions used in the forecast have been identified and justified;

(p) That the forecast contains the same assumptions and methodologies used in the forecast prepared for use by management, or an identification and explanation for differences that exist, if applicable; and

(q) That productivity and efficiency gains are included in the forecast;

(r) For each major construction project that constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast, the following information shall be filed:

1. The date the project was started or estimated starting date;

2. The estimated completion date;

3. The total estimated cost of construction by year exclusive of AFUDC or interest during construction credit; and

4. The most recent available total costs incurred exclusive and inclusive of AFUDC or interest during construction credit;

5. For all construction projects that constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;

6. A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:

   1. Operating income statement (exclusive of dividends per share or earnings per share);

   2. Balance sheet;

   3. Statement of cash flows;

   4. Revenue requirements necessary to support the forecasted rate of return;

   5. Load forecast including energy and demand (electric);

   6. Access line forecast (telephone);

   7. Mix of generation (electric);

   8. Mix of gas supply (gas);

   9. Employee level;

   10. Labor cost changes;

   11. Capital structure requirements;

   12. Rate base;

   13. Gallons of water projected to be sold (water);

   14. Customer forecast (gas, water);

   15. Sales volume forecasts – cubic feet (gas);

   16. Toll and access forecast of number of calls and number of minutes (telephone); and

   17. A detailed explanation of other information provided, if applicable;

   (i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;

   (j) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Public Service Commission Form T (telephone);

   (k) The annual report to shareholders or members and the statistical supplements covering the most recent two (2) years from the application filing date;

   (l) The current chart of accounts if more detailed than the Uniform System of Accounts chart prescribed by the commission;

   (m) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;

   (n) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available;

   (p) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, and any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters;

   (q) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility that indicates the existence of a material weakness in the utility's internal controls;

   (r) The quarterly reports to the stockholders for the most recent five (5) quarters;

   (s) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunication utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number shall be sufficient;

   (t) A list of all commercially available or in-house developed computer software, programs, and models used in the

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development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;

(u) If the utility had amounts charged or allocated to it by an affiliate or a general or home office or paid monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:
1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;
2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;
3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and
4. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the base period is reasonable;
(v) If the utility provides gas, electric, sewage[utility], or water utilities service and has annual gross revenues greater than $5,000,000, in the division for which a rate adjustment is sought, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and
(w) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:
1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and
2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000 except local exchange access:
   a. Based on current and reliable data from a single time period; and
   b. Using generally recognized fully allocated, embedded, or incremental cost principles.
(8)[42] Each application seeking a general adjustment in rates supported by a forecasted test period shall include[the following data]:
(a) A jurisdictional financial summary for both the base period and the forecasted period that details how the utility derived the amounts charged, allocated, or paid during the base period or during the previous three (3) calendar years, the base period, and the forecasted period;
(b) A jurisdictional separations study consistent with 47 C.F.R. Part 36; and
(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.
(d) A utility shall post at its place of business a copy of the public notice; and
2. A hyperlink to the location on the commission's Web site where the case documents are available.
(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.
(2) Customer Notice.
(a) If other information that the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;
(b) If the information that is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information that it maintains; and
(c) The expense to the utility in providing the information that is the subject of the waiver request.

Section 17. Notice of General Rate Adjustment. When filing an application for a general rate adjustment, a utility shall provide notice as established in this section[follows]:
(1) Public postings.
(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.
(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web site:
   1. A copy of the public notice; and
   2. A hyperlink to the location on the commission’s Web site where the case documents are available.
(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.
(2) Customer Notice.
(a) If a utility has twenty (20) or fewer customers or is a sewage utility, the utility[shall] mail a written notice to each customer no later than the date on which the application is submitted to the commission.
(b) If a utility has more than twenty (20) customers and is not a sewage utility, it shall provide notice by:
   1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;
   2. Mailing a written notice to each customer no later than the date the application is submitted to the commission;
   3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility’s service area, the first publication to be made no later than the date the application is submitted to the commission; or
4. Publishing notice in a trade publication or newsletter delivered to all customers no later than forty-five (45) days from the date the application was initially submitted to the commission:
   (c) A utility that provides service in more than one (1) county and is not a sewage utility may use a combination of the notice methods listed in paragraph (b) of this subsection.

3. Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the application was initially submitted to the commission:
   (a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the dates of the mailing;
   (b) If notice is published in a newspaper of general circulation in the utility’s service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice’s publication; or
   (c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

4. Notice Content. Each notice issued in accordance with this section shall contain:
   (a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;
   (b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;
   (c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;
   (d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply, except for local exchange companies, which shall include the effect upon the average bill for each customer classification for the proposed rate change in local service;
   (e) A statement that a person may examine this application [and any related documents] at the offices of (utility name) located at (utility address);
   (f) A statement that a person may examine this application [and any related documents] at the commission’s offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission’s Web site [http://psc.ky.gov/publicnotice/index.html] to File a Public Notice;
   (g) A statement that comments regarding the application may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;
   (h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;
   (i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and
   (j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of initial publication or mailing of the notice, the commission may take final action on the application.

5. Abbreviated form of notice. Upon written request, the commission may grant a utility permission to use an abbreviated form of published notice of the proposed rates, provided the notice includes a coupon that may be used to obtain all of the required information.

Section 18. Application for Authority to Issue Securities, Notes, Bonds, Stocks, or Other Evidences of Indebtedness. (1) An application for authority to issue[application by the utility for an order authorizing the issuance of] securities, notes, bonds, stocks, or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof[. pursuant to the provisions of KRS 278.300], the application, in addition to complying with the provisions of Section 14 of this administrative regulation, shall contain:
   (a) The information required by Section 14 of this administrative regulation:
   (b) A general description of the applicant’s property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant. If it is impossible to state the original cost, the facts creating the impossibility shall be stated;
   (c) The amount and kinds of stock, if any, which the applicant[utility] desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds, or other evidences of indebtedness, if any, which the applicant[utility] desires to issue, with terms, rate of interest, and if and how to be secured;
   (d) The use to be made of the proceeds of the issue of securities, notes, bonds, stocks, or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement of service, the maintenance of service, and the discharge or refunding of obligations;
   (e) The property in detail that is to be acquired, constructed, improved, or extended with its cost, a detailed description of the contemplated construction, completion, extension, or improvement of facilities established in a manner whereby an estimate of the cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. If a contract has been made for the acquisition of property, or for construction, completion, extension, or improvement of facilities, or for the disposition of the securities, notes, bonds, stocks, or other evidence of indebtedness that it proposes to issue or the proceeds thereof and if a contract has been made, copies thereof shall be annexed to the application[petition];
   (f) If it is proposed to discharge or refund obligations, a statement of the nature and description of the obligations including their par value, the amount for which they were actually sold, the associated expenses, and the application of the proceeds from the sales. If notes are to be refunded, the application[petition] shall show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended; and
   (g) If the applicant is a water district, a copy of the applicant’s[utility’s] written notification to the state local debt officer regarding the proposed issuance[. Other facts pertinent to the application].

(2) The following exhibits shall be filed with the application:
   (a) Financial exhibit (see Section 12 of this administrative regulation);
   (b) Copies of trust deeds or mortgages, if applicable, unless they have already been filed with the commission, in which case reference shall be made by case number to the proceeding in which the trust deeds or mortgages have been filed; and
   (c) Maps and plans of the proposed property and constructions together with detailed estimates in a form that they can be reviewed by the commission’s engineering division. Estimates shall be arranged according to the commission-prescribed uniform system of accounts for the various classes of utilities.

Section 19[18]. Application for Declaratory Order. (1) The commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.

(2) An application for declaratory order shall:
   (a) Be in writing;
   (b) Contain a complete, accurate, and concise statement of the facts upon which the application is based;
   (c) Fully disclose the applicant’s interest;
Section 20[19]. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed “Before the Public Service Commission,” shall establish the names of the complainant and[the name of] the defendant, and shall state:

(a) The full name and post office address of the complainant;
(b) The full name and post office address of the defendant[; and]
(c) Fully, clearly, and with reasonable certainty, the act or omission[thing done or omitted to be done], of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation[section and subsection], of which a failure to comply is alleged[a violation is claimed], and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure[; and]
(d) The relief sought[; violation. The complainant shall specifically establish the relief desired].

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint[. The complaint shall be signed by the complainant or his or her attorney, if applicable, and if signed by an attorney, shall show the attorney’s post office address]. A complaint by a corporation, association, or an other entity shall be signed by its[the entity’s] attorney.

(3) Number of copies required. When the complainant files his or her original complaint, the complainant shall also file two (2) more copies than the number of persons[or corporations] to be served.

(4) Procedure on filing of complaint. (a) Upon the filing of a complaint, the commission shall immediately examine the complaint[no copy]. to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds[is of the opinion] that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant[or his or her attorney to that effect] and provide the complainant an opportunity[shall be given] to amend the complaint within a specified time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order, provided that the commission may[. in particular cases,] require the answer to be filed within a shorter or longer period.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief[that which] the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, the case shall be dismissed[. Further proceedings shall not be taken].

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant[person complained of] shall file an answer to the complaint[. with certificate of service on other endorsed parties] within the time specified in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters[matter] constituting a defense.

(b) If the defendant[answering party] does not have information sufficient to enable him or her to answer an allegation of the complaint, [the answering party] may so state in the answer and place the denial upon that ground.

Section 21[20]. Informal Complaints. (1) An informal complaint shall be made to the commission’s division of consumer services in a manner that specifically states the complainant’s concerns and identifies the utility.

(2) The commission’s division of consumer services shall address by correspondence or other means the complaint. If an informal complaint is referred to a utility, the utility shall acknowledge to the commission’s division of consumer services referral of the complaint and shall report on its efforts to contact the complainant within three (3) business days of the referral, or a lesser period as commission staff may require. If commission staff requires a period less than three (3) business days for a response, that period shall be reasonable under the circumstances.

(3) Upon resolution of the informal complaint, the utility shall notify the commission’s division of consumer services.

(4) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding shall be held to be without prejudice to the complainant’s right to file and prosecute a formal complaint whereupon the informal proceedings shall be discontinued.

Section 22[21]. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 23[22]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) “FERC Form-1”, Annual Report of Major Electric Utilities, Licensees and Others, March 2007;
(b) “FERC Form-2”, Annual Report of Major Natural Gas Companies, December 2007;
(c) “Notice of Election of Use of Electronic Filing Procedures”, July 2012;
(d) “PSC Form-T (telephone)”, August 2005;
(e) “Form 8-K”, January 2012;
(f) “Form 10-K”, January 2012[; and]
(g) “Form 10-Q”, January 2012[; and]
(h) “Subpoena Form”, August 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission’s offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission’s Web site at http://psc.ky.gov.

DAVID L. ARMSTRONG, Chairman
APPROVED BY AGENCY: October 11, 2013
FILED WITH LRC: October 15, 2013 at 10 a.m.
CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email gerald.wuetcher@ky.gov.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald E. Wuetcher

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? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts; sewer districts; municipalities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation? KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.310 provides that hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect all utilities regulated by the Public Service Commission and all persons who appear or otherwise participate in Commission proceedings.

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 will not require additional actions by the utilities. With this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs to comply with this amendment. This amendment eliminates several filing requirements and reduces the number of documents that a party to a proceeding is required to file. It clarifies several uncertainties in the existing regulation and will likely lessen the number of actions that parties to a Commission proceeding must take to ensure compliance with the Commission's procedural rules.

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

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

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

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

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

8. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

9. TIERING: Is tiering applied? Yes. Section 12(1)(a) allows a utility with less than $5 million in gross annual revenue in the immediate past calendar year to file its financial exhibit for the consecutive twelve (12) month period contained in the utility's most recent annual report on file with the commission with its application. Many smaller jurisdictional utilities do not have accounting systems in place to produce a financial exhibit based on a consecutive twelve (12) month period ending not more than ninety (90) days prior to the date an application is filed. Moreover, past experience has shown that requiring more current financial exhibits for smaller utilities increases the expense of the filing without any corresponding benefit to the public.

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? Public Service Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation? KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.310 provides that all hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission.

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.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? There should be no increase in the Public Service Commission’s cost of operations related to the revision of the administrative regulation for the first year. The Public Service Commission will continue performing the same level of review and require the same number of employees to conduct its review.

(d) How much will it cost to administer this program for subsequent years? There should be no increase in the Public Service Commission’s cost of operations related to the revision of the administrative regulation for subsequent years. The Public
Service Commission will continue performing the same level of review and require the same number of employees to conduct its review.

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

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

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(Amended After Comments)

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

RELATES TO: KRS 278.010, 278.030, 278.160, 278.180, 278.185, 278.190, 278.310, 278.380
STATUTORY AUTHORITY: KRS 278.040(3), 278.160(1), 278.180, 278.185(4)
NECESSITY, FUNCTION AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement KRS Chapter 278. This administrative regulation establishes a simplified and less expensive procedure for small utilities to use to apply to the commission for rate adjustments.

Section 1. Definitions. (1) "Annual report" means the financial and statistical report incorporated by reference in 807 KAR 5:006, which requires a utility to file the annual report with the commission.

(2) "Annual report for the immediate past year" means an annual report that covers the applicant’s operations for either:
(a) The calendar year prior to the year in which the applicant’s application for rate adjustment is filed with the commission;
(b) The most recent calendar year period that 807 KAR 5:006, Section 4(1), requires the applicant to have on file with the commission as of the date of the filing of its application for rate adjustment.

(3) "Applicant" means a utility that is applying for an adjustment of rates.

(4) "Gross annual revenue" means:
(a) The total revenue that a utility derived during a calendar year;
(b) If the utility operates two (2) or more divisions that provide different types of utility service, the total amount of revenue derived from the division for which a rate adjustment is sought.

(5) "Rate" is defined by KRS 278.010(12).

(6) "Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).

(7) "Utility" is defined by KRS 278.010(3).

(8) "Water district" means a special district or special purpose governmental entity created pursuant to KRS Chapter 74.

(9) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Utilities Permitted to File Application. A utility may apply for an adjustment of rates using the procedure established in this administrative regulation if it:
(1) Had gross annual revenue in the immediate past calendar year of $5,000,000 or less;
(2) Maintained adequate financial records fully separated from a commonly-owned enterprise; and
(3)Filed with the commission fully completed annual reports for the immediate past year and for the two (2) prior years if the utility has been in existence that long.

Section 3. The Record upon which Decision Shall Be Made. The commission shall make its decision based on the:
(1) Applicant’s annual report for the immediate past year and the annual reports for the two (2) prior years, if the utility has been in existence that long;
(2) The application required by Section 4 of this administrative regulation;
(3) Information supplied by the parties in response to requests for information submitted by other parties to the proceeding or the commission;
(4) Written reports submitted by commission staff;
(5) Stipulations and agreements between the parties and commission staff;
(6) Written comments and information that the parties to the proceeding submitted in response to the findings and recommendations contained in a written report that commission staff submitted; and
(7) If a hearing is held, the record of that hearing.

Section 4. Application. (1) An application for alternative rate adjustment shall consist of:
(a) A completed ARF Form-1 that is made under oath and signed by the applicant or an officer who has knowledge of the matters established in the application;
(b) A copy of all outstanding evidences of indebtedness, such as mortgage agreements, promissory notes, and bond resolutions;
(c) A copy of the amortization schedule for each outstanding bond issuance, promissory note, and debt instrument;
(d) A depreciation schedule of all utility plant in service;
(e) A copy of the most recent state and federal tax returns of the applicant, if the applicant is required to file returns;
(f) A detailed analysis of the applicant’s customers’ bills showing revenues from the present and proposed rates for each customer class;
(g) A copy of the notice of the proposed rate change that is provided to customers of the applicant;
(h) A completed ARF Form-3 for each member of the utility’s board of commissioners or board of directors, each person who has an ownership interest of ten (10) percent or more in the utility, and the utility’s chief executive officer; and
(i) If a water district proposes to increase any current rate for service or implement a new rate for service, a statement from an authorized official of the district indicating the date the proposed rate increase or new rate was reported to the governing body of the county in which the largest number of its customers resides and the date it presented testimony, or is scheduled to present testimony, to that governing body;
(2) The application required by Section 4 of this administrative regulation is:
(a) A completed ARF Form-1 that is made under oath and signed by the applicant or an officer who has knowledge of the matters established in the application;
(b) A copy of all outstanding evidences of indebtedness, such as mortgage agreements, promissory notes, and bond resolutions;
(c) A copy of the amortization schedule for each outstanding bond issuance, promissory note, and debt instrument;
(d) A depreciation schedule of all utility plant in service;
(e) A copy of the most recent state and federal tax returns of the applicant, if the applicant is required to file returns;
(f) A detailed analysis of the applicant’s customers’ bills showing revenues from the present and proposed rates for each customer class;
(g) A copy of the notice of the proposed rate change that is provided to customers of the applicant;
(h) A completed ARF Form-3 for each member of the utility’s board of commissioners or board of directors, each person who has an ownership interest of ten (10) percent or more in the utility, and the utility’s chief executive officer; and
(i) If a water district proposes to increase any current rate for service or implement a new rate for service, a statement from an authorized official of the district indicating the date the proposed rate increase or new rate was reported to the governing body of the county in which the largest number of its customers resides and the date it presented testimony, or is scheduled to present testimony, to that governing body;
(3) If the applicant is a limited liability company, a certified copy of its articles of organization and all amendments thereto, or a written statement attesting that its articles and all amendments thereto have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding; and
(4) If the applicant is a limited partnership, a certified copy of its articles of organization and all amendments thereto, or a written statement attesting that its articles and all amendments thereto have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

(2) Except as provided in 807 KAR 5:001, Section 8(Section 13 of this administrative regulation) for electronic filings, the applicant shall:
(a) Submit one (1) original and five (5) paper copies of its application to the executive director of the commission; and
(b) Deliver or mail one (1) paper copy to the Office of Rate Intervention, Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204 or transmit by electronic mail an electronic copy in portable document format to the Office of Rate Intervention at rateintervention@ag.ky.gov.

(3)(a) If the application contains an individual’s Social Security number, including social media, which is accessible to the public.

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number, taxpayer identification number, birth date, or a financial account number, the applicant shall redact the document so the following information cannot be read:
1. The digits of the Social Security number or taxpayer identification number;
2. The month and day of an individual’s birth; and
3. The digits of the financial account number.

(b) To redact the document, the applicant shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read.

(4) The application shall not contain any request for relief from the commission other than an adjustment of rates.

(5) A utility may make written request to the executive director for commission staff assistance in preparing the application.

Section 5. Notice to Customers of Proposed Rate Changes

Upon (When) filing an application for an alternative rate adjustment, a utility shall provide notice as established in this section, follows:

1. The digits of the Social Security number or taxpayer identification number, birth date, or a financial account number, the applicant shall redact the document so the following information cannot be read:
   1. The digits of the Social Security number or taxpayer identification number;
   2. The month and day of an individual’s birth; and
   3. The digits of the financial account number.

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in a utility’s service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice’s publication; or

(c) If notice is published in a trade publication or newsletter devoted to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be in effect;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application and any related documents the utility has filed with the Public Service Commission at the offices of (utility address);

(f) A statement that a person may examine this application and any related documents at the commission’s offices located at 211 South Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission’s Web site at http://psc.ky.gov;

(g) A statement that comments regarding the application may be submitted to the Public Service Commission through the utility’s Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602; and

(h) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and

(i) A statement that if the commission does not receive a written request for intervention within thirty (30) days of initial publication or mailing of the notice, the commission may take final action on the application;

(j) An applicant that has more than twenty (20) customers and is not a sewage utility shall post at its place of business a sheet containing the information required by subsection (3) of this section and shall:

(a) Include notice with customer bills mailed no later than the date the application is filed;

(b) Publish notice in a trade publication or newsletter going to all customers by the date the application is filed;

(c) Publish notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the applicant’s service area, the first publication to be made by the date the application is filed; or

(d) It provides service in more than one (1) county, use a combination of the methods established in this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in a utility’s service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice’s publication; or

(c) If notice is published in a trade publication or newsletter devoted to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.
(a) If its notice is published in a newspaper of general circulation in the applicant’s service area, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice;
(b) If notice is published in a trade publication or newsletter going to all customers, an affidavit from an authorized representative of the utility verifying the trade publication or newsletter was mailed; or
(c) If the notice is mailed, an affidavit from an authorized representative of the utility verifying the notice was mailed.
(5) If an applicant maintains a Web site, the applicant shall:
(a) Post on its Web site within seven (7) days of the filed date of the application:
1. A notice containing the information provided in the written notice to its customers; and
2. A hyperlink to a copy of its application posted on the commission’s Web site; and
(b) Keep both items posted until the commission has finally determined the utility’s rates.

Section 6. Except as provided in 807 KAR 5-001, Section 8(2) of this administrative regulation, an applicant shall not be required to provide the commission with advance notice of its intent to file an application for rate adjustment using the procedure established in this administrative regulation.

Section 7. Effective Date of Proposed Rates. (1) An applicant shall not place the proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of its application, whichever occurs first.
(2) If the commission has not issued its order within six (6) months from the date of filing of the application, the applicant may place its proposed rates in effect subject to refund upon providing the commission with written notice of its intent to place the rates into effect.
(3) The applicant shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom a refund is due if the commission orders a refund.

Section 8. Amendment of Proposed Rates. (1) Except when responding to the findings set forth in a commission staff report filed in accordance with Section 11 of this administrative regulation, an applicant shall not amend the proposed rates set forth in its application unless the applicant:
(a) Files written notice of the proposed amendment with the commission; and
(b) Publishes notice of the amended proposed rates in the manner provided in Section 5 of this administrative regulation.
(2) An applicant shall not place its amended proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of the written notice of proposed amendment, whichever occurs first.
(3) If the commission has not issued an order within six (6) months from the date of filing of the notice of amended proposed rates, the applicant may place the amended proposed rates in effect subject to refund upon providing the commission with written notice of its intent to place the rates into effect but shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom a refund is due if the commission orders a refund.

Section 9. Test Period. The reasonableness of the proposed rates shall be determined using a twelve (12) month historical test period, adjusted for known and measureable changes, that coincides with the reporting period of the applicant’s annual report for the immediate past year.

Section 10(9). Discovery. (1) The minimum discovery available to intervening parties shall be as prescribed by this subsection.
(a) A party in the proceeding may serve written requests for information upon the applicant within twenty-one (21) days of an order permitting that party to intervene in the proceeding.
(b) Upon serving requests upon the applicant, the party shall file a copy of the party’s requests with the commission and serve a copy upon all other parties.
(c) Within twenty-one (21) days of service of timely requests for information from a party, the applicant shall serve its written responses upon each party and shall file with the commission one (1) original and five (5) copies.
(2) The commission may establish different arrangements for discovery if it finds different arrangements are necessary to evaluate an application or to protect a party’s rights to due process.

Section 11(10). Commission Staff Report. (1) Within thirty (30) days of the date that an application is accepted for filing, the commission shall enter an order advising the parties if commission staff will prepare a report on the application.
(2) If a commission staff report is prepared, the:
(a) Commission staff shall:
1. File the report with the commission; and
2. Serve a copy of the report on all parties of record; and
(b) Report shall contain the commission staff’s findings and recommendations regarding the proposed rates.
(3)(a) Each party shall file with the commission a written response to the commission staff report within fourteen (14) days of the filing of the report.
(b) This written response shall contain:
1. All objections to and other comments on the findings and recommendations of commission staff;
2. A request for hearing or informal conference, if applicable;
3. The reasons why a hearing or informal conference is necessary; and
4. A request for commission staff to produce and the applicant amends its application to request

Section 12(11). Notice of Hearing. (1) If the commission orders a hearing, the applicant shall publish in a newspaper or mail to the applicant’s customers notice of the hearing.
(2) The notice shall state the purpose, time, place, and date of the hearing.
(3) Newspaper notice shall be published once in a newspaper of general circulation in the applicant’s service area no fewer than seven (7) and no more than twenty-one (21) days prior to the
Section 14. Filing Procedures. (1) Unless the commission orders otherwise or the electronic filing procedures established in 807 KAR 5:001, Section 8, are used, if a document in paper medium is filed with the commission, five (5) additional copies in paper medium shall also be filed.

(2) All documents filed with the commission shall conform to the requirements established in this subsection.

(a) Form. Each filing shall be printed or typewritten, double spaced, and on one (1) side of the page only.

(b) Size. Each filing shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper.

(c) Font. Except for ARF Form-1 and ARF Form-3, each filing shall be in type no smaller than twelve (12) point, except footnotes, which shall be in type no smaller than ten (10) point.

(d) Binding. A side-bound or top-bound filing shall also include an identical unbound copy.

(3) Except as provided for in 807 KAR 5:001, Section 8, a filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

(4) A document submitted by facsimile transmission shall not be accepted.

Section 15[13]. Use of Electronic Filing Procedures in lieu of Submission of Paper Documents.[14] Upon an applicant’s timely election of the use of electronic filing procedures within the time limits established in 807 KAR 5:001, Section 8(2), the procedures established in 807 KAR 5:001, Section 8[This section] shall be used in lieu of other filing procedures established in this administrative regulation. At least seven (7) days prior to the submission of its application, an applicant shall:

(a) File with the commission written notice of the applicant's election using the ARE Form-2;

(b) If the applicant or its authorized agent does not have an account for electronic filing with the commission, register for an account at http://psc.ky.gov/Account/Register.

(3) Each pleading, document, and exhibit shall be filed with the commission by uploading an electronic version of the document using the commission's E-Filing System at http://psc.ky.gov. In addition, the filing party shall file the original with the commission as required by subsection (11) of this section.

(4) Each file in an electronic submission shall be:

(a) In portable document format;

(b) Search-capable;

(c) Optimized for viewing over the Internet;

(d) Bookmarked to distinguish sections of the pleading or document;

(e) If a scanned document, scanned at a resolution of no less than 300 dots per inch.

(5)(a) Each electronic submission shall include an introductory file in portable document format that is named "Read1st" and that contains:

1. General description of the filing;

2. List of all materials not included in the electronic filing; and

3. Statement attesting that the electronically filed documents are a true representation of the original documents.

(b) The "Read1st" file and any other document that normally contains a signature shall contain a signature in the electronically submitted document.

(c) The electronic version of the cover letter accompanying the paper filing may be substituted for a general description.

(d) If the electronic submission does not include all documents contained in the paper version, the absence of these documents shall be noted in the "Read1st" document.

(e)(a) An electronic transmission or uploading session shall not exceed twenty (20) files.

(b) An individual file shall not exceed fifty (50) megabytes.

(c) If a filing party's submission exceeds the limitations established in paragraph (a) or (b) of this subsection, the filing party shall make its electronic submission in two or more consecutive electronic transmission or uploading sessions.

(f) If filing a document with the commission, the filing party shall certify that:

(a) The electronic version of the filing is a true and accurate copy of each document filed in paper medium;

(b) The electronic version of the filing has been transmitted to the commission; and

(c) A copy of the filing in paper medium has been mailed to all parties that the commission has excused from participation by electronic means.

(8)(a) Upon completion of a party's uploading of an electronic submission, the commission shall cause an electronic mail message to be sent to all parties of record advising that an electronic submission has been made to the commission.

(b) Upon a party's receipt of this message, it shall be the receiving party's responsibility to access the commission's electronic file depository at http://psc.ky.gov and view or download a copy of the submission.

(10) If a party objects to the use of electronic filing procedures in its motion for intervention, a party granted leave to intervene shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all documents and pleadings, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date an order of the commission granting the party's intervention a written statement that:

1. The party waives the right to service of commission orders by United States mail; and

2. The party or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(11) If a party objects to the use of electronic filing procedures and good cause exists to excuse that party from the use of the electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001, Section 4(8).

(11)(a) A document shall be considered timely filed with the commission if the document:

1. Has been successfully transmitted in electronic medium to the commission within the time allowed for filing and meets all other requirements established in this administrative regulation and an order of the commission; and

2. Is filed in paper medium at the commission's offices no later than the second business day following the electronic filing.

(b) Each party shall attach to the top of the paper submission a paper copy of the electronic mail message from the commission confirming transmission and receipt of the party's electronic submission.

(12) Except as expressly provided in this section, a party making a filing in accordance with the procedures established in this section shall not be required to comply with a provision of this administrative regulation that requires service of a document or material filed with the commission on other parties in the case.

Section 16[14]. The provisions of 807 KAR 5:001, Sections 1 through 6, 8 through 10, 11, and 13, shall apply to commission proceedings involving applications filed pursuant to this administrative regulation.

Section 17[15]. Upon a showing of good cause, the commission may permit deviations from this administrative

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regulation. Requests for deviation shall be submitted in writing by letter to the commission.

Section 18[16]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Rate Adjustment before the Public Service Commission", ARF Form 1, November 2013[September 2012]; and

(b) "Notice of Election of Use of Simplified Filing", ARF Form 2, September 2011; and

(c) "Statement of Disclosure of Related Party Transactions", ARF Form 3, November 2013[September 2012].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission’s offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission’s Web site at http://psc.ky.gov/.

DAVID L. ARMSTRONG, Chairman
APPROVED BY AGENCY: October 11, 2013
FILED WITH LRC: October 15, 2013 at 10 a.m.
CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P. O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email gerald.wuetcher@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald E. Wuetcher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a simplified and less expensive procedure by which small utilities may apply to the commission for rate increases. A small utility may apply for rate adjustments using the formal procedure outlined in 807 KAR 5:001 or by using the procedure prescribed in this administrative regulation, which is intended to minimize the need for formal hearings, to reduce filing requirements, and to shorten the time period between application and commission order.

(b) The necessity of this administrative regulation: This regulation will assist the Public Service Commission in timely reviewing applications for rate adjustment, will reduce the expense of rate case proceedings, and is necessary to the Public Service Commission’s authority to regulate the rates of small utilities. This regulation reflects reporting requirements to the governing bodies of counties that the recent enactment of KRS 65A.100 imposes upon water districts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates of small utilities. This regulation establishes simplified procedures for utilities with annual gross revenues of less than $5 million, tiering has been applied. The regulation reflects reporting requirements to the governing bodies of counties that the recent enactment of KRS 65A.100 imposes upon water districts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a more cost effective and simplified means for small utilities to apply for rate adjustments. It provides clear guidance to small utilities on the documents necessary for a rate adjustment and simplifies the procedures necessary for a rate adjustment. It reminds a water district that is adjusting its rates of its statutory obligation to advise the governing bodies of the counties in which it serves of its proposed rate adjustment in accordance with KRS 65A.100.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides for revisions to ARF Form 1 to provide information regarding a water district’s compliance with KRS 65A.100. It revises ARF Form 3 to require the applicant to identify all employees who are related to the applicant’s owners or members of its governing body. The amendment defines “rate” to clarify that all rates may be adjusted under 807 KAR 5:076 procedures.

(b) The necessity of the amendment to this administrative regulation: ARF Form 1 did not reflect recent regulatory and statutory changes. ARF Form 3 did not address related transactions involving the employment of family members.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 .192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

(d) How the amendment will assist in the effective administration of the statutes: The revised forms seek to reduce confusion among utilities regarding filing procedures and notice requirements by conforming the forms to those in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect 240 water, natural gas, and sewer utilities whose annual gross revenues are $5 million or less and their customers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is necessary. The affected utilities may continue to use the rate filing procedures set forth in 807 KAR 5:001 in lieu of the alternative rate filing procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs to comply. The affected utilities may continue to use the rate filing procedures set forth in 807 KAR 5:001 in lieu of the alternative rate filing procedures.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendment should enhance public awareness of utility rate adjustment applications made by small utilities. It will foster better review of utility transactions, increase utility transparency, and ensure that inappropriate or unreasonable transactions are more easily identified.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

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

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

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

(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? To the extent that the regulation establishes simplified procedures for utilities with annual revenues of less than $5 million, tiering has been applied, The Public Service Commission believes that tiering is appropriate
because the operations of smaller utilities are less complex, their recordkeeping practices are simpler, and the amount of documentary evidence to verify their financial operations is less than that of larger utilities. Moreover, given the smaller number of customers over which small utilities must spread rate case expense, the use of the same procedures as used for larger utilities will result in larger rate increases for smaller utilities.

**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? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 -.192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.
   
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.
   
   (c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission’s cost of reviewing applications for rate adjustment or otherwise regulate small public utilities is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. No direct increase in costs will result from the adoption of proposed amendment for any governmental agency.
   
   (d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission’s cost of reviewing applications for rate adjustment or otherwise regulate small public utilities is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. No direct increase in costs will result from the adoption of proposed amendment for any governmental agency.

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

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

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services

(Amendment)

11 KAR 15:020. Student eligibility report.

RELATES TO: KRS 164.7885(4)
STATUTORY AUTHORITY: KRS 164.748(4), 164.7885(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.7885(7) requires the authority to promulgate administrative regulations for the administration of the Kentucky Educational Excellence Scholarship Program. This administrative regulation establishes the procedure for a participating institution to report renewal eligibility of a student for a Kentucky Educational Excellence Scholarship.

Section 1. Initial Eligibility Verification. (1) The participating institution shall submit to the authority an eligibility verification file after the beginning of the academic term.
(a) For each eligible student, the eligibility verification file shall contain:
1. The student’s name and Social Security number;
2. The full-time or part-time enrollment status, measured in credit hours or credit hour equivalent; and
3. The student’s highest ACT score attained by the date of graduation from high school unless the authority receives the ACT score directly from the testing services.
(b) The KEES program officer shall certify the eligibility of the eligible postsecondary student and transmit the file electronically to the authority according to instructions provided by the authority in accordance with subsection (2) of this section.
(2) The instructions provided by the authority shall specify:
(a) Conditions under which KEES funds shall be disbursed to the benefit of the eligible postsecondary student pursuant to 11 KAR 15:050; and
(b) Conditions under which KEES funds shall be returned to the authority pursuant to 11 KAR 15:060.
(3)(a) A participating institution that does not submit an eligibility verification file according to the instructions shall not receive KEES funds until it has satisfied the requirements in subsection (1) of this section.
(b) The authority may withhold any services and funds from the participating institution until the file and all funds advanced, that remain undisbursed to eligible postsecondary students, are received by the authority.

Section 2. Renewal Eligibility Verification. (1) The participating institution shall electronically submit to the authority a renewal eligibility file not later than June 30 after the completion of the award period. The renewal eligibility file shall contain the name, Social Security number, on track to graduate status, and the cumulative grade point average for all eligible students.
(2) A participating institution that does not submit a renewal eligibility file by June 30 shall not receive KEES funds until it has satisfied the requirement in subsection (1) of this section. The authority may withhold any services and funds from the participating institution and initiate action to terminate, suspend or limit participation of the institution pursuant to 11 KAR 4:020 until the file is received by the authority.

JOHN CHESHIRE, Chair
APPROVED BY AGENCY: October 9, 2013
FILED WITH LRC: October 11, 2013 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 25, 2013 at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, December 2, 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diana L. Barber
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedure for a participating institution to report renewal eligibility of a student for a Kentucky Educational Excellence Scholarship.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a procedure whereby a participating institution can report the renewal eligibility of its students for the KEES program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Authority is statutorily tasked with promulgating administrative regulations for the KEES program. This administrative regulation conforms to the content of those authorizing statutes by establishing the procedure for a participating institution to report renewal eligibility of a student for a Kentucky Educational Excellence Scholarship.
(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 a consistent procedure whereby participating institutions can report renewal eligibility for their students under the KEES program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by adding “on track to graduate status” to the list of data elements to be included in the renewal eligibility verification file from a participating institution.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to formally include “on track to graduate status” as a data element in the renewal eligibility file for the KEES program. This term is defined in KRS 164.7874 and is already included by the institutions pursuant to the Authority’s administrative reporting policy.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by incorporating this statutory defined term as a data element in the KEES renewal eligibility verification file.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by incorporating this statutory defined term as a data element in the KEES renewal eligibility verification file.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KEES award recipients seeking a renewal award will be affected in that their on track to
graduate status will now be reported to the Authority along with other renewal criteria. Likewise, participating institutions will theoretically be affected because this status will be added to their reporting requirements. However, this element has actually been included in the reporting since “on track to graduate” was added to the statute in 2009.

(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: While the formal reporting requirements for the participating institutions will be changed through this amendment requiring the institutions to include this additional data element in their renewal eligibility reporting, there will be no effective change as this is already being done through administrative policy.
(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 identified entities in complying with this amendment to the administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KEES award recipients whose on-track-to-graduate status will now be reported to the Authority and who satisfy all other renewal eligibility criteria will be eligible for renewal of their KEES awards.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: None.
(b) On a continuing basis: See 5(a) above.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.130.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor increase any existing fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.7874; 164.7877(3); 164.7879(1), (2), (3); 164.7881(4)(a), (c), (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? This regulation will not generate any revenue.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.
(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.
(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenses (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
( Amendment)

201 KAR 9:081. Disciplinary proceedings.

RELATES TO: 218A.205, KRS 311.530-311.620, 311.990
STATUTORY AUTHORITY: KRS 218A.205(3)(c), (d), (e); 311.565(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of licensees. KRS 311.595 and 311.597 authorize disciplinary action against licensees for specified offenses. KRS 218A.205(3)(c), (d), and (e) requires the board to promulgate an administrative regulation establishing procedures for disciplinary action against a licensee. This administrative regulation establishes the procedures to be followed in handling formal and informal disciplinary proceedings before the board, to conduct the proceedings with due regard for the rights and privileges of all affected parties.

Section 1. Definitions. (1) "Act" means the Kentucky Medical and Osteopathic Practice Act, KRS 311.550 to 311.620.
(2) "Board" is defined by KRS 311.550(1).
(3) "Charge" is defined by KRS 311.550(14).
(4) "Complaint" is defined by KRS 311.550(15).
(5) "Executive director" is defined by KRS 311.550(4).
(6) "General counsel" is defined by KRS 311.550(2).
(7) "Grievance" is defined by KRS 311.550(13).
(8) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any complaint or show cause order.
(9) "Relating to a controlled substance" means any conviction or plea to a criminal charge, regardless of adjudication or the title of the offense named in the plea or judgment of conviction, that is determined from all available facts to have been based upon or resulted from, in whole or part, an allegation of conduct involving the improper, inappropriate, or illegal use, possession, transfer, prescribing, or dispensing of a controlled substance.
(10) "Relating to prescribing or dispensing a controlled substance" means any conviction or plea to a criminal charge, regardless of adjudication or the title of the offense named in the plea or judgment of conviction, that is determined from all available facts to have been based upon or resulted from, in whole or part, an allegation of conduct involving the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance.
(11) "Show cause order" means an order issued pursuant to KRS 311.572.

Section 2. Reception of Grievances; Investigations. (1) A grievance may be submitted by any individual, organization, or entity.
Section 4. Complaints. The complaint issued by an inquiry panel shall:
1. Be signed and dated;
2. Be styled in regard to the matter of the license to practice in the Commonwealth of Kentucky held by the named physician and designated with an appropriate case number; and
3. Set forth:
   a. The board's jurisdiction in regard to the subject matter of the complaint; and
   b. In numerical paragraphs, sufficient information to apprise the named physician of the general nature of the charges.

Section 5. Show Cause Orders. The show cause order shall:
1. Be signed and dated by an officer of the board;
2. Be styled in regard to the license, application for license, or application for renewal, registration, or reregistration of a license to practice in the Commonwealth of Kentucky held by or submitted by the named physician, appropriately, and designated with an appropriate order number;
3. Set forth:
   a. The board's jurisdiction in regard to the subject matter of the order; and
   b. In numerical paragraphs, the information which the board accepts to be true and the statutory basis for the board's finding that grounds exist for the discipline of the named physician's license; and
4. Direct the named physician to show cause why disciplinary action should not be taken in view of the matters expressed in the order.

Section 6. Orders to Respond. Upon issuance of a complaint, the inquiry panel shall notify the charged physician that:
1. A response is due within thirty (30) days after receiving notice of the complaint; and
2. Failure to respond within that time period may be taken by the board as an admission of the charges.

Section 7. Notice and Service of Process. Each notice shall be issued as required by KRS 13B.050.

Section 8. Proceedings Pursuant to the Issuance of a Complaint or Show Cause Order. (1) Appointment of hearing officer. The board shall appoint a hearing officer in accordance with KRS 13B.030 and 13B.040.
(2) Appointment of the prosecuting attorney. The board's general counsel or assistant general counsel shall act as the prosecuting attorney in regard to any disciplinary proceeding, unless the board appoints a special prosecuting attorney. The prosecuting attorney shall not participate in any deliberations of the board pursuant to the issuance of a complaint, show cause order, or order of temporary discipline.
(3) Appointment of advisory counsel. The board may appoint a representative of the Attorney General's office, the board's general counsel, or other attorney to act as advisory counsel to the board in regard to any deliberations of the board pursuant to the issuance of a complaint, show cause order, or order of temporary discipline.
(4) The provisions of KRS Chapter 13B shall govern the conduct of each proceeding.

Section 9. Mandatory Reporting; Mandatory Disciplinary Sanctions; Emergency Action; Expedited Proceedings. (1)(a) Every applicant for initial licensing to practice medicine or osteopathy in any state, to include surrendering or placing the applicant's license in an inactive or retirement status to
(c) Every applicant for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky shall report to the board any criminal conviction or plea of guilt, nolo contendere, or Alford plea to any criminal charges, regardless of adjudication, within ten (10) days of the entry of judgment of conviction or the entry of the plea, entered into in any state. As part of this reporting requirement, the licensee shall provide a copy of the judgment of conviction or plea documents.

(b) If a licensee has been convicted of or entered a plea of guilt, an Alford plea, or a plea of nolo contendere to a misdemeanor offense relating to prescribing or dispensing a controlled substance or entered a plea of guilt, an Alford plea, or plea of nolo contendere to a misdemeanor offense relating to prescribing or dispensing a controlled substance, regardless of adjudication, in any state, the board shall exercise its normal discretion to grant or deny the application based upon all available information.

2. If the Board decides to grant the application, the board:
   a. Shall, at a minimum, ban the applicant from prescribing or dispensing controlled substances for a period of two (2) to five (5) years as an express condition of granting the license; and
   b. May impose other conditions in addition to that ban as express conditions of granting the license.

(b) If a licensee has been convicted of or entered a plea of guilt, an Alford plea, or a plea of nolo contendere to a misdemeanor offense relating to prescribing or dispensing a controlled substance, regardless of adjudication, in any state, the board shall exercise its normal discretion to grant or deny the application based upon all available information.

2. If the Board decides to grant the application, the board:
   a. Shall, at a minimum, ban the applicant from prescribing or dispensing controlled substances for a period of two (2) to five (5) years as an express condition of granting the license; and
   b. May impose other conditions in addition to that ban as express conditions of granting the license.

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not modify or amend the scope of the emergency order if there is substantial evidence to support the finding that the licensee failed to report a qualifying criminal conviction or disciplinary sanction as required by this section.

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

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

(c) The licensee:
   1. Shall not re-litigate either the criminal conviction or disciplinary sanction; and
   2. May offer as defense that the certification of the document is fraudulent.

(d) If the licensee has admitted the occurrence of the criminal conviction or disciplinary action in the response, an additional response shall not be given to the motion for summary disposition.

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

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

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

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

(a) "Information on Filing a Grievance", January 2013;
(b) "Consumer’s Guide to the KBML", January 2013;
(c) "Grievance Form", January 2013; and

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

PRESTON P. NUNNELLEY, M.D., President
APPROVED BY AGENCY: October 8, 2013
FILED WITH LRC: October 11, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2013 at 11:00 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by November 20, 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. 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 the close of business December 2, 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: C. Lloyd Vest II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

1. Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements.
   (b) The necessity of the amendment to this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements.
   (d) If this is an amendment to an existing regulation, provide a brief summary of:
      (a) How the amendment will change this existing administrative regulation; This amendment establishes a definition for "relating to prescribing or dispensing a controlled substance"; makes felony and misdemeanor charges for new applicants consistent; and makes disciplinary approach consistent for applicants and licensees.
      (b) The necessity of the amendment to this administrative regulation; It is necessary to promulgate this regulation to establish a definition for "relating to prescribing or dispensing a controlled substance"; makes felony and misdemeanor charges for new applicants consistent; and makes disciplinary approach consistent for applicants and licensees.
      (c) How the amendment conforms to the content of the authorizing statutes; This amendment acts specifically to establish a definition for "relating to prescribing or dispensing a controlled substance"; makes felony and misdemeanor charges for new applicants consistent; and makes disciplinary approach consistent for applicants and licensees.
      (d) How the amendment will assist in the effective administration of the statutes. This amendment acts specifically to establish a definition for "relating to prescribing or dispensing a controlled substance"; makes felony and misdemeanor charges for new applicants consistent; and makes disciplinary approach consistent for applicants and licensees.
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians licensed in Kentucky.
   (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this regulation, if not already by the changes made to this administrative regulation.
      (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians will be required to report disciplinary sanctions.
      (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this administrative regulation is not expected to incur any additional cost to the physicians.
      (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Board will be able to assist in curbing the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.205

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? None
(d) How much will it cost to administer this program for subsequent years? None

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

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

GENERAL GOVERNMENT
Department of Agriculture
Office of Agricultural Marketing and Product Promotion
(AMendment)

302 KAR 40:010. Certification of organic production, processing, or handling operations.

RELATES TO: KRS 260.020, 260.030, 260.038, 7 C.F.R. 205
STATUTORY AUTHORITY: KRS 260.020(3), 260.030(1)(k), 7 C.F.R. 205
NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.020(3) authorizes the commissioner of the Kentucky Department of Agriculture to promulgate administrative regulations to carry out any programs established under the Office for Agricultural Marketing and Product Promotion and to establish fees for the administration of those programs. KRS 260.030(1)(k) requires the Office for Agricultural Marketing and Product Promotion[Department of Agriculture] to establish an Organic Agricultural Product Certification Program. This administrative regulation establishes the procedures for certification of organically-produced agricultural products[foods].

Section 1. All producers, processors, and handlers of organic agricultural products shall comply with the requirements of 7 C.F.R. 205.

Section 2. Certification. (1) A producer, processor, or handler seeking to receive or maintain organic certification shall submit a completed application including all relevant supporting documents required under this administrative regulation—the organic certification program fee schedule, organic product profile, and organic certification withdrawal notification.

(2) A trained[certified] inspector shall complete a field inspection report of the organic production entity; and the applicant shall be present during the inspection. Upon receipt of a field inspection report, the department shall make a determination of certification and notify the applicant in writing of its decision. If the written application and the field inspection report demonstrate compliance with this administrative regulation and 7 C.F.R. 205, the department shall grant certification.

(3) The department shall conduct an annual inspection of every certified organic entity.

(4) Except as provided by subsection (5)(6) of this section and Section 3 of this administrative regulation, a producer shall pay a certification fee of $250[$125] for the initial certification scope and each year thereafter when renewed. Subsequent scopes beyond the initial shall be charged at $125 and each year thereafter when renewed. Except as provided by subsection (5)(6) of this section and Section 3 of this administrative regulation, processors and handlers shall pay an additional fee of $100 per each $100,000 increment of gross receipts that exceed $100,000[a certification fee of $125 plus $100 for each $100,000 of gross receipts for each organic product].

(5) Any production, processing, or handling operation with gross agricultural income from organic sales of less than $5,000 annually shall register with the department[Nonresident organic producers, processors, and handlers may be certified in Kentucky if they meet the following requirements:
(a) The organic products are sold, processed, or handled in Kentucky;
(b) The producers, processors, or handlers’ state of residence does not have an organic certification program; and
(c) The producers shall pay a certification fee of $250. Processors and handlers shall pay a certification fee of $250 plus $100 for each $100,000 of gross receipts for each organic product. In addition to the certification fee established for nonresident producers, processors, and handlers, the department shall be reimbursed for all expenses incurred as a result of the certification procedure.

(6) Any production, processing, or handling operation with gross agricultural income from organic sales of less than $5,000 annually shall register with the department and pay an annual fee of twenty-five (25) dollars.

Section 3. Nonprofit, Educational, and Charitable Organization. (1) If nonprofit, educational, and charitable organizations, as defined by the Internal Revenue Code, 26 U.S.C. 501(c)(3), have at least $5,000 gross sales of organic products, they shall be certified and pay the required fees in accordance with Section 2 of this administrative regulation.

(2) If nonprofit, educational, and charitable organizations, as defined by the Internal Revenue Code, 26 U.S.C. 501(c)(3), have less than $5,000 gross sales of organic products, they shall be registered for production, processing, or handling organic products except they shall not be required to pay a fee.

Section 4 [Nonresident Certifiers. (1) Kentucky producers, processors, and handlers of organic products may be certified by nonresident certifiers if the certifiers are registered with the Kentucky Department of Agriculture. Registration shall require the following:
(a) Name of the certifier;
(b) Address of certifier;
Section 5. Exports. The KDA shall additionally charge a fifty (50) dollar fee for each entity the National Organics Program has an established trade agreement with, for the preparation of documents. Section 7. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are available for inspection and copying, during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, at the Office of Agricultural Marketing and Product Promotion, 100 Fair Oaks, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C. 20402-0001.

Section 6.[a] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Organic Farm Certification Application", October 2013;
(b) "Organic Farm/Crop Certification Application (June 2003)";
(c) "Organic Process/Handling Plan Application", October 2013;
(d) "Organic Livestock Certification Application", October 2013;
(e) "Organic Certification Program Fee Schedule", October 2013;
(f) "Organic Product Profile", October 2013;
(g) "Voluntary Surrender of USDA National Organic Program Certification Application", October 2013;
(h) "KDA Organic Certification Program Quality Manual", October 2013;
[iand](i) "USDA National Organic Program Certification Review and Standards". Advisory Committee. (1) The Organic Agriculture Certification Review and Standards Advisory Committee shall consist of seven (7) members, including consumers, advocates, handlers, or processors of organic products and at least three (3) farmers who produce organic products.

(b) The necessity of the amendment to the administrative regulation: The amendment updates outdated language and references, and eliminates one fee and increases others.

(c) How this amendment conforms to the content of the statutes: This amendment conforms to KRS 260.030 by clearly establishing general provisions for the organic certification 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 updates outdated language and references, and eliminates one fee and increases others.

(b) The necessity of the amendment to the administrative regulation: This administrative regulation is necessary to comply with KRS 260.020, KRS 260.030, and KRS 260.038.

(c) How this amendment conforms to the content of the statutes: This administrative regulation conforms to KRS 260.030 by establishing the organic certification program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 260.030 by clearly establishing general provisions for the organic certification 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 updates outdated language and references, and eliminates one fee and increases others.

(b) The necessity of the amendment to the administrative regulation: This administrative regulation is necessary to comply with KRS 260.020, KRS 260.030, and KRS 260.038 by making changes to the regulation to conform with modern organic certification practices.

(c) How this amendment conforms to the content of the statutes: This amendment makes changes needed to keep the organic certification current with dynamic industry practices.

(d) How will this amendment assist in the effective administration of the statutes: This amendment, along with the revised materials incorporated by reference, greatly clarifies and details the certification process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KDA has 105 entities currently in the certification 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: Farm or business operations seeking organic certification will need to meet the requirements set forth by the regulation and incorporated references.

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

FILED WITH LRC: October 15, 2013
CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Clint Quarles
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation makes changes to keep the Kentucky organic certification program current, and modifies fees to help offset program costs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 260.020, KRS 260.030, and KRS 260.038.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 260.030 by establishing the organic certification program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 260.030 by clearly establishing general provisions for the organic certification program.

JAMES R. COMER, Commissioner
APPROVED BY AGENCY: October 15, 2013
FILED WITH LRC: October 15, 2013 at noon
question (3): The KDA fee structure is revised and incorporated by reference. The fee amount depends on the number of scopes the participant seeks to engage in, and if that entity wishes to export products outside the United States.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By seeking and maintaining organic certification, certified entities might command much higher than average market prices, or gain access to additional markets for their products.

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

(a) Initially: No new additional costs.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KDA shall use the fees collected by this regulation to offset a small fraction of the training and staff costs required to support the organic certification program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: One fee has been eliminated, one created for export processing, and the scope fee increased.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes. Fees are directly created by this amendment, and have been increased.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, Office for Agricultural Marketing and Product Promotion

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, 260.020, 260.030, KRS 260.038, 7 C.F.R. 205

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No fiscal changes will occur.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The KDA estimates $23,000 in revenue annually at current participation levels for the organic fund.

(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 KDA estimates $23,000 in revenue annually at current participation levels for the organic fund.

(c) How much will it cost to administer this program for the first year? Estimated cost for personnel (including salary and benefits) is an estimated $125,000. This includes two (2) full time personnel, and five (5) personnel with ten (10) percent commitment. Other costs vary, particularly with training and recertification audits, which will not always occur in a given year

(d) How much will it cost to administer this program for subsequent years? Estimated cost for personnel (including salary and benefits) is an estimated $125,000. This includes two (2) full time personnel, and five (5) personnel with ten (10) percent commitment. Other costs vary, particularly with training and recertification audits, which will not always occur in a given year

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

Revenues (+/-): $23,000 annually
Expenses (+/-): $125,000 annually
Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Amendment)


RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 700-645
STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 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 "Department of Juvenile Justice Policy and Procedures Manual: Health and Safety Services", October 11, 2013 [November 15, 2005], is incorporated by reference and includes the following:

400 Definitions[Health Services] (Amended 10/11/13 [7/15/05])
400.1 Health Services (Added 10/11/13)
401 Health Services Administration and Personnel (Amended 10/11/13 [7/15/05])
402 Access to Treatment and Continuity of Care (Amended 10/11/13 [7/15/05])
402.1 Continuity of Care and Medical Discharge (Added 10/11/13)
403 Medical Records (Amended 10/11/13 [7/15/05])
404 Admission Screening for Physical and Mental Challenges (Amended 10/11/13 [7/15/05])
404.2 Ectoparasite Control (Amended 10/11/13 [7/15/06])
404.3 Health Assessment and Physical Examination (Amended 10/11/13 [7/15/05])
404.4 Sick Call (Amended 10/11/13 [7/15/05])
404.5 Access to Diagnostic Services (Amended 10/11/13 [7/15/05])
404.6 Emergency Services (Amended 10/11/13 [7/15/05])
404.7 First Aid and First Aid Kits (Amended 10/11/13 [7/15/05])
404.8 Hospital Care (Amended 10/11/13 [7/15/05])
404.10 Special Needs Treatment Plans (Amended 10/11/13 [7/15/05])
404.11 Perinatal Care (Amended 10/11/13 [7/15/05])
404.12 Oral Screening and Oral Care (Amended 10/11/13 [7/15/05])
404.13 Preventative Health Care (Amended 10/11/13 [7/15/05])
404.14 Family Planning Services (Amended 10/11/13 [7/15/05])
405 Mental Health Services Administration and Personnel (Amended 10/11/13 [7/15/05])
405.1 Mental Health Assessment and Evaluation (Amended 10/11/13 [7/15/05])
405.2 Forced Psychotropic Medications (Amended 10/11/13 [7/15/05])
405.3 Referral for Mental Health Services (Amended 10/11/13 [7/15/05])
405.4 Suicide Prevention and Intervention (Amended 10/11/13 [7/15/05])
405.5 Mental Health Emergencies (Amended 10/11/13 [7/15/05])
405.6 Psychiatric Hospitalization (Amended 10/11/13 [7/15/05])
406 Therapeutic Restraints (Amended 10/11/13 [7/15/05])

1136
A. HASAN DAVIS, Commissioner
APPROVED BY AGENCY: October 9, 2013
FILED WITH LRC: October 11, 2013 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday November 22, 2013 at 10:00 a.m., at the Department of Juvenile Justice, 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.

VOLUME 40, NUMBER 5 – NOVEMBER 1, 2013

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: LaDonna Koebel, Staff Attorney
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Department of Juvenile Justice including the rights and responsibilities of the Department of Juvenile Justice employees and the residential population.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the program services of the Department of Juvenile Justice.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will assist in the implementation and enforcement of this administrative regulation: The amendment will help the Department of Juvenile Justice to operate more efficiently.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067.
(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or her authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Department of Juvenile Justice.
(4) Provide an analysis of how the entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of Juvenile Justice employees and volunteers will provide quality health care in accordance with standardized practice. The Department of Juvenile Justice youth shall receive health care prescribed by law and standardized by the American Correctional Association (ACA) and the National Commission on Correctional Health Care (NNCHC)
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of Juvenile Justice employees and volunteers will provide quality health care in accordance with standardized practice. The Department of Juvenile Justice youth shall receive health care prescribed by law and standardized by the American Correctional Association (ACA) and the National Commission on Correctional Health Care (NNCHC).
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No monetary cost will be incurred by the youth, employees, or volunteers of the Department of Juvenile Justice.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department will be accredited by both the ACA and NNCHC and will provide all medical care prescribed by law. The Department youth shall receive quality health care and reside within a safe environment.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: $5,000 for training staff
(b) On a continuing basis: $5,000 for training staff
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 2013-2014 biennium.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The “equal protection” and “due
process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065(1), 15A.067.

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

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

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

(c) How much will it cost to administer this program for the first year? The only expense regarding this regulation is the cost of staff training, which for the first year is approximately $5,000.

(d) How much will it cost to administer this program for subsequent years? There are no additional budgetary impacts in administering this program.

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

Revenues (+/-): This regulation provides a uniform written health services protocol for all youth committed to the Department of Juvenile Justice and will not generate any state or local revenues.

Expenditures (+/-): Except for cost of staff training this regulation does not change any budgeted funds.

Other Explanation: None.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**

**Kentucky Board of Education**

**Department of Education**

(Comment)

**VOLUME 40, NUMBER 5 – NOVEMBER 1, 2013**


RELATES TO: KRS 156.160(1)(a), (d), 158.142, 158.645, 158.6451

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), (d), 158.142

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. The content standards for the courses of study are established in the Kentucky core academic standards incorporated by reference in 704 KAR 3:303. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

Section 1. Definitions. (1) "Early graduation" means meeting the competency-based criteria outlined in Section 9 of this administrative regulation and doing so in three (3) academic years or less.

(2) "Early Graduation Certificate" means a certificate, awarded by the district and signed by the principal and superintendent, that shall make the recipient eligible for a scholarship award equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level, to be used at a Kentucky public two (2) year community and technical college or a Kentucky four (4) year public or non-profit independent institution accredited by the Southern Association of Colleges and Schools.

Section 2. Each student in a common school shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the content standards as provided in the Kentucky core academic standards, incorporated by reference in 704 KAR 3:303. Additional standards-based learning experiences shall align to the student’s individual learning plan and shall consist of standards-based content. The required credits and demonstrated competencies shall include the following minimum requirements:

(a) Language arts - four (4) credits (English I, II, III, and IV) to include the content contained in the Kentucky core academic standards for English and language arts.

(b) Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical course that prepares a student for a career path based on the student’s individual learning plan may be substituted for a traditional Algebra I, Geometry, or Algebra II course on an individual student basis if the course meets the content standards in the Kentucky core academic standards, incorporated by reference in 704 KAR 3:303.

(c) Mathematics - three (3) credits to include the content contained in the Kentucky core academic standards for mathematics and include the following minimum requirements:

(a) Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical course that prepares a student for a career path based on the student’s individual learning plan; and

(b) A mathematics course or its equivalent as determined by the district shall be taken each year of high school to ensure readiness for postsecondary education or the workforce; and

(d) If a student does not meet the college readiness benchmarks for mathematics as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take a mathematics transitional course or intervention, which is monitored to address remediation needs, before exiting high school.

(2) Social studies - three (3) credits to include the content contained in the Kentucky core academic standards for social studies.

(3) Science - three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky core academic standards for science.

(4) Science - three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky core academic standards for science.

(5) Health - one-half (1/2) credit to include the content contained in the Kentucky core academic standards for health.

(6) Physical education - one-half (1/2) credit to include the content contained in the Kentucky core academic standards for physical education.

(7) History and appreciation of visual and performing arts (or another arts course which incorporates this content) - one (1) credit to include the content contained in the Kentucky core academic standards for arts and humanities or a standards-based specialized arts course based on the student’s individual learning plan.

(8) Academic and career interest standards-based learning experiences - seven (7) credits including four (4) standards-based learning experiences in an academic or career interest based on the student’s individual learning plan; and

(9) Demonstrated performance-based competency in technology.

Section 3. [2] (1) A local board of education may substitute an integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060.
(2) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060. These shall be based on grade-level content standards and may be modified to allow for a narrower breadth, depth, or complexity of the general grade-level content standards.

Section 4.(a) A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address Vocational Studies Academic Expectations 2.36-2.38 as established in Academic expectations, 703 KAR 4:060.

(2) A district shall develop a method to evaluate the effectiveness and results of the individual learning plan process. The evaluation method shall include input from students, parents, and school staff. As part of the evaluation criteria, the district shall include indicators related to the status of the student in the twelve (12) months following the date of graduation.

(3) A feeder middle school and a high school shall work cooperatively to ensure that each student and parent receives information and advising regarding the relationship between education and career opportunities. Advising and guidance shall include information about financial planning for postsecondary education.

(4) A school shall maintain each student’s individual learning plan. The individual learning plan shall be readily available to the student and parent and reviewed and approved at least annually by the student, parents, and school officials.

(5) Beginning with a student’s eighth grade year, the individual learning plan shall set learning goals for the student based on academic and career interests and shall identify required academic courses, electives, and extracurricular opportunities aligned to the student’s postsecondary goals. The school shall use information from the individual learning plans about student needs for academic and elective courses to plan academic and elective offerings.

(6) Beginning with the graduating class of 2013, the development of the individual learning plan for each student shall begin by the end of the sixth grade year and shall be focused on career exploration and related postsecondary education and training needs.

Section 5.(a) A board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content standards described in the Kentucky core academic standards, incorporated by reference in 704 KAR 3:303, and a rigorous performance standards policy established by the board of education. A school shall establish performance descriptors and evaluation procedures to determine if the content and performance standards have been met.

(b) A board of education shall award credit toward high school graduation based on:

(1) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one (1) subject; or

(2) A standards-based performance-based credit, regardless of the number of instructional hours in one (1) subject.

(c) An alternative course of study that meets the high school graduation requirements established in Section 1 of this administrative regulation leading to receipt of a high school diploma, an alternative high school diploma, or a high school certificate.

(d) A board of education shall award credit for learning acquired outside of school or in prior learning; or

(e) A board of education shall award credit for learning acquired outside of school or in prior learning; or

Section 6.(a) A student who satisfactorily completes the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education or meets the requirements for early graduation as outlined in Section 9 of this administrative regulation shall be awarded a graduation diploma.

(b) The local board of education shall award the diploma.

Section 7. This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal, or teacher from awarding special recognition to a student.

Section 8.(a) Beginning with the graduating class of 2013, if the severity of an exceptional student’s disability precludes a course of study that meets the high school graduation requirements established in Section 1 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered. (1) This course of study shall be based upon student needs and the provisions specified in 704 KAR 3:303, Required core academic standards, and shall be reviewed at least annually.

(b) A student who completes this course of study shall receive an alternative high school diploma to be awarded by the board of education consistent with the graduation practices for all students.

(c) A local board of education may establish policies to award an alternative high school diploma to a former student who has received a certificate or certificate of attainment.
Section 9(1) Beginning in the 2014-2015 academic year, only students who meet the criteria outlined in this section shall be eligible for early graduation. Those students who meet the criteria for early graduation shall receive from the school district a diploma and an Early Graduation Certificate. Students wishing to graduate early shall indicate that intent to the school principal at the beginning of grade 9 or as soon as the intent is known, but within the first thirty (30) school days of the academic year in which they wish to graduate.

(a) A student’s intent to graduate early shall be entered into the student information system by the school district by October 1 of the year in which the student makes the declaration.

(b) All schools participating in early graduation programming shall follow the requirements for alternative programming outlined in 704 KAR 19:002. Therefore, students shall meet to graduate early and earn an Early Graduation Certificate are:

(a) Score proficient on the end of course exams required by the Kentucky Board of Education in 703 KAR 5:200; and
(b) Meet the college readiness exam benchmarks as set by the Council on Postsecondary Education in 13 KAR 2:020 for placement in credit-bearing courses without the need for remediation.

(3) A student who has indicated an intent to graduate early shall be permitted their state administration of the college readiness exam prior to the junior year, if needed.

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(6).

TERRY HOLLIDAY, Ph.D.
ROGER MARCUM, Chairperson
APPROVED BY AGENCY: October 15, 2013
FILED WITH LRC: October 15, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 25, 2013, at 2:00 p.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through close of business December 2, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation sets the minimum requirements for high school graduation and creates requirements for early high school graduation.

(b) The necessity of this administrative regulation: The regulation sets the minimum requirements for high school graduation and sets consistent standards for early graduation from high school pursuant to KRS 158.142.

(c) How this administrative regulation conforms to the content of the authorizing statute: The Kentucky Board of Education has the statutory authority under KRS 156.070 to set these requirements. SB 61 in the 2013 General Assembly created KRS 158.142 to implement the Early Graduation Program. This amendment to the existing regulation is required to implement KRS 158.142.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: The amendment to this regulation sets the minimum requirements and standards for early graduation from high school.

(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 creates Section 9 which contains the requirements for Early Graduation as required by KRS 158.142.

(b) The necessity of the amendment to this administrative regulation: KRS 158.142 requires that an Early Graduation Program be established, and required the Kentucky Board of Education to promulgate administrative regulations establishing the criteria for early graduation.

(c) How the amendment conforms to the content of the authorizing statute: The criteria for early graduation align with the requirements of KRS 158.142.

(d) How the amendment will assist in the effective administration of the statute: KRS 158.142 can be implemented through the criteria for early graduation established in this regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky public school districts and high school students who intend to graduate early.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each district will need to allow the opportunity to: a) permit prospective students to file an intent to graduate early; b) monitor students who choose this pathway; c) allow those students to take the ACT earlier than their junior year; and d) provide a certificate when students meet the performance expectations established by the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Per KRS 158.142, the Early Graduation Scholarship award amount shall be equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level. This amount has not yet been determined for the 2015-2016 school year. The current (2013-14 school year) statewide per pupil guaranteed base funding level is $3,827.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The student who graduates early in compliance with this regulation will receive their fourth year of Kentucky Educational Excellence Scholarship money and one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding for use as a scholarship to any two (2) or four (4) year Kentucky institution of higher education the academic year immediately following their early graduation. The district receives one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding despite the fact that the student is not longer enrolled in the district.

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

(a) Initially: Per KRS 158.142, the Early Graduation Scholarship award amount shall be equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level. This amount has not yet been determined for the 2015-2016 school year. The current (2013-14 school year) statewide per pupil guaranteed base funding level is $3,827. The agency will also have administrative costs associated with the implementation of this amended regulation through staff time to develop guidance and technical assistance to support the implementation of the amended regulation. (Estimated twenty (20) percent of staff time – forty-five (45) days).
The methods for presenting proof of motor vehicle insurance to a county clerk. KRS 304.39-117 requires the Department of Insurance to promulgate an administrative regulation to establish the manner for insurers to electronically report motor vehicle insurance information to the Department of Vehicle Regulation and to notify the Department of Vehicle Regulation if a binder, or other contract for temporary insurance or a commercial policy is terminated by cancellation or nonrenewal. This administrative regulation establishes the requirements for the proof of insurance[card] that an insured is required to give to an insured. KRS 186A.042 requires the vehicle owner to present proof of insurance to the county clerk if the Department of Vehicle Regulation’s database does not confirm coverage.

**PUBLIC PROTECTION CABINET**

**Kentucky Department of Insurance**

**Property and Casualty Division**

**(Amendment)**

806 KAR 39:070. Proof of motor vehicle insurance.

**RELATES TO:** KRS 186.021(3), 186A.040, 186A.042, 186A.095, 304.39-080, 304.39-083, 304.39-085, 304.39-087, 304.39-090, 304.39-117

**STATUTORY AUTHORITY:** KRS 186.021, 186A.042, 304.2-110(1), 304.39-083, 304.39-085, 304.39-087, 304.39-117, 304.39-300

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 186.021 requires the commissioner[Executive Director] of the Department[Office] of Insurance to promulgate an administrative regulation to establish the manner for presenting proof of motor vehicle insurance to a county clerk. KRS 304.39-117 requires the Department of Insurance to promulgate an administrative regulation to establish the manner for insurers to electronically report motor vehicle insurance information to the Department of Vehicle Regulation and to notify the Department of Vehicle Regulation if a binder or other contract for temporary insurance or a commercial policy is terminated by cancellation or nonrenewal. This administrative regulation establishes the requirements for the proof of insurance[card]; the methods for reporting coverage provided for personal motor vehicles insured on a personal lines motor vehicle policy[;] the methods for presenting proof of motor vehicle insurance to a county clerk; the requirements for notifying the Department of Vehicle Regulation if a binder, contract, or commercial policy of motor vehicle insurance is cancelled or not renewed.

**Section 1. Definitions.** (1) “Commissioner”[Executive Director] is defined by KRS 304.1-050(1).

(2) “Department” is defined by KRS 304.1-050(2).

(3) “Insurer” means an insurer or self-insurer who provides security covering a motor vehicle pursuant to KRS 304.39-080.

(4) “Motor vehicle insurance policy” means an insurance contract, or a certificate or similar evidence of insurance, that provides security covering a motor vehicle required to be registered pursuant to KRS 186.020 and insured pursuant to KRS 186.021 and 304.39-080.

(5) “Office” is defined by KRS 304.1-050(2).

(6) “Person” is defined by KRS 304.1-020.

(7) “VIN” means the vehicle identification number of a motor vehicle.

**Section 2. Proof of Insurance[Card] to be Provided by Insurers.**

(1) The proof of insurance[card] required by KRS 304.39-117 shall
be provided to the insured at the time a policy is issued, renewed, or amended to include a vehicle. An insurer shall provide a printed proof of insurance unless the insured requests to receive proof of insurance in electronic format.

(2) Printed proof of [Copies of the] insurance card.

(a) If the motor vehicle insurance policy covers four (4) or less vehicles, a single insurance card shall be provided for each motor vehicle. Two (2) copies of the printed proof of insurance card shall be provided for each motor vehicle insured under a motor vehicle insurance policy.

(b) Guidelines for size and format of the printed proof of insurance card.

1. The printed proof of insurance card shall be:
   a. A two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card;
   b. A two and one-fourth (2 1/4) inch by seven (7) inch card with a vertical fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card; or
   c. A four and one-half (4 1/2) inch by three and one-half (3 1/2) inch card with a horizontal fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card.

2. The printed insurance card may vary slightly from the dimension requirements established in subparagraph 1. of this paragraph.

3. The printed insurance card shall be on white paper with black or blue ink if the motor vehicle insurance policy covers five (5) or more vehicles, a copy of the insurance card shall be provided for each vehicle covered by the policy. Sufficient copies of the insurance card shall be provided to the policyholder so that the policyholder will have a single insurance card for the county clerk of each county in which the policyholder has motor vehicles registered.

(3) Proof of insurance in an electronic format.

(a) Proof of insurance in an electronic format shall include the display of an image on any portable electronic device, including a cellular phone or other device, depicting a current, valid, and enforceable policy. The image shall have been downloaded from or transmitted by the insurer or agent to the insured.

(b) Proof of insurance in an electronic format shall not include a photographic copy of a paper insurance card on a portable electronic device (Guidelines for size and format of the insurance card).

(a) The insurance card shall be:
   1. A two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card;
   2. A two and one-fourth (2 1/4) inch by seven (7) inch card with a vertical fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card; or
   3. A four and one-half (4 1/2) inch by three and one-half (3 1/2) inch card with a horizontal fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card.

(b) The insurance card may vary slightly from the dimension requirements established in paragraph (a) of this subsection.

(c) The insurance card shall be on white paper with black or blue ink.

(4) Mandatory contents of the proof of insurance card. In either paper or electronic format, the proof of insurance card shall prominently display the following information:

(a) Title of the document: “COMMONWEALTH OF KENTUCKY PROOF OF INSURANCE.”

(b) The name of the insurance company and its five (5) digit code number assigned by the National Association of Insurance Commissioners (NAIC), or the name of the Self-Insured Group and the group ID number provided by DOI.

(c) The name of the named insured[

(d) The effective date and expiration date of coverage. If the policy is amended to add an identified vehicle[issued] midterm, the effective date on the card shall indicate the effective date of the amendment[Coverage if different than the inception date of the policy].

(e) The policy number[

(f) The type of policy:

1. If the policy is a personal lines motor vehicle policy for which premium is reported on the NAIC Annual Statement line 19.1 or 19.2, the insurer shall indicate the policy type as “Personal” or “PL”; or
2. If the policy is a commercial lines motor vehicle policy for which premium is reported on the NAIC Annual Statement line 19.3 or 19.4, the insurer shall indicate the policy type as “Commercial” or “CL”; and
3. The vehicle(s) insured:
   - If the type of policy is personal lines (PL), insurance contract covers four (4) or fewer vehicles, the motor vehicle identification year, make, [or] model, and VIN of each motor vehicle.
   - If the type of policy is commercial lines (CL), the insurer may elect to include the [motor vehicle identification] year, make, [or] model, and the VIN of each motor vehicle.

(5) Other information to be provided to the insured. The insurer shall:

(a) Include the following information on the proof of insurance card if the information required by subsection (4) of this section is not observed:
   1. The insurer’s logo;
   2. A statement that establishes the procedure for contacting the insurer concerning a claim; and
   3. The insurer’s address; or

(b) Include the information listed in paragraph (a) of this subsection on a separate document or electronic image provided (mailed) with the proof of insurance card.

(6) An insurer shall furnish with the proof of insurance card the following information:

(a) Instructions that the insured shall keep a copy of the proof of insurance card in each motor vehicle covered by the policy at all times;

(b) Information as to whether or not the policy is a personal lines motor vehicle policy and whether or not the vehicle has been reported as an insured personal motor vehicle:
   1. If so, the insured shall be informed that:
      a. The proof of coverage information has been reported electronically to the Department of Vehicle Regulation; and
      b. If the VIN does not appear in the database, the insured may be required to present proof of the insurance card to the county clerk for issuance of a replacement plate, decal, or registration certificate or renewal as alternative evidence of proof of coverage; or
   2. If not, the insured shall be instructed to present proof of the insurance card to the county clerk for issuance of a replacement plate, decal, or registration certificate or renewal as evidence of proof of coverage; and

(c) Instructions to compare the VIN appearing on the registration, insurance policy and proof of insurance card to the VIN affixed to the vehicle.

1. If the VIN on the motor vehicle title and registration and the VIN on the motor vehicle do not match, the policyholder shall contact the county clerk to have the title and registration corrected.

2. If the VIN on the proof of insurance card and the motor vehicle do not match, the policyholder shall contact the insurer to have the insurance policy and card corrected. The insurer shall provide the name, address, and telephone number of an insurance representative to contact concerning a discrepancy. The telephone number shall be:
   a. The phone number of a local agent of the insurer; or
   b. A toll-free telephone number of the insurer.

Section 3. Methods of Proving Motor Vehicle Insurance. One (1) of the following methods shall be used to prove that motor vehicle insurance is in effect when registering a motor vehicle:

1. (1) The VIN appears as an insured motor vehicle in the Department of Vehicle Regulation’s database;

2. Proof of a copy of the current insurance in paper or electronic format.
(a) If the database does not list the VIN of a vehicle insured on a personal lines motor vehicle (PL) policy, the proof of coverage must indicate the proof is effective no more than forty-five (45) days prior to submission to the county clerk; and
(b) The county clerk may require the proof of coverage to be sent directly to the clerk by the agent or company[
(c)]

(3) A certificate of insurance issued by an insurance agent with a casualty line of authority licensed by Kentucky;

(4) An insurance contract with a declaration page attached showing that the policy is in effect at the time the motor vehicle is being registered or transferred;

(5) A letter from the Kentucky Automobile Insurance Plan serving as prima facie evidence of insurance in force;

(6) If the owner of the motor vehicle is serving in the armed forces outside Kentucky, an affidavit by the provost marshal of the base where the person is stationed stating that the motor vehicle is covered by an automobile liability insurance policy.

(7) A letter from the Kentucky Department of Insurance serving as prima facie evidence of self-insurance pursuant to KRS 304.39-080(7).

Section 4. Beginning January 1, 2006, and each month thereafter, an insurer shall submit information on each vehicle covered by a personal lines motor vehicle policy according to the rules contained in Section 2.1 of the Kentucky Automobile Liability Insurance Reporting Guide.

Section 5. For motor vehicles insured under a commercial lines or fleet policy, all insurers shall report cancellations pursuant to Part 2.2 of the Kentucky Automobile Liability Insurance Reporting Guide.

Section 6. An insurance agent shall submit to the Department of Vehicle Regulation a completed Form TC96-30 if the purchaser of a binder or temporary insurance contract cancels the binder or contract before the agent has submitted the application to the insurance company.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Automobile Liability Insurance Reporting Guide", Transportation Cabinet, Department of Vehicle Regulation (Version 1.6, 8/15/2005 edition); and

(b) "Form No. TC96-30, Motor Vehicle Insurance Agent Insurance Binder Cancellation Form (5/05 edition)", Kentucky Transportation Cabinet, Department of Motor Vehicle Regulation.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, the Department of Vehicle Regulation, P. O. Box 2014, 200 Mero Street, Frankfort, Kentucky 40622, Monday to Friday, 8 a.m. to 4:30 p.m. The material may also be obtained at the Transportation Cabinet Web site: http://transportation.ky.gov/mvl/home.htm. The material may also be obtained at the Department of Insurance Web site: http://insurance.ky.gov.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: October 9, 2013
FILED WITH LRC: October 15, 2013 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 25, 2013 at 9:00 a.m. Eastern Time at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 18, 2013, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, December 2, 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: D.J. Wasson, Staff Assistant, Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: D.J. Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for proof of motor vehicle insurance, the methods for reporting coverage provided for personal motor vehicles insured on a personal lines motor vehicle policy, the methods for presenting proof of motor vehicle insurance to a county clerk or peace officer, and the requirements for notifying the Department of Vehicle Regulation if a binder, contract, or commercial policy of motor vehicle insurance is cancelled or not renewed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the manner for presenting proof of motor vehicle insurance to a county clerk, to establish the proof required under the rules contained in the authorizing statutes: KRS 186.021 requires the Commissioner of the Department of Insurance to promulgate an administrative regulation to establish the manner for presenting proof of motor vehicle insurance to a county clerk. KRS 304.39-117 requires the Department of Insurance to promulgate an administrative regulation that establishes the requirements for the proof of insurance that an insurer is required to give to an insured, and to establish how an insurer or agent is to notify the Department of Vehicle Regulation if a binder, other contract for temporary insurance, or a policy is terminated by cancellation or nonrenewal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 186.021 requires the Commissioner of the Department of Insurance to promulgate an administrative regulation to establish the manner for presenting proof of motor vehicle insurance to a county clerk. KRS 304.39-117 requires the Department of Insurance to promulgate an administrative regulation that establishes the requirements for the proof of insurance that an insurer is required to give to an insured. KRS 304.39-083 and 304.39-085 require notification to the Department of Vehicle Regulation if a binder or other contract for temporary insurance or a policy is terminated by cancellation or nonrenewal.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all insurers regulated by the Department of Insurance of the policies and procedures for providing proof of insurance in conformity with the intent of the statutes. This administrative regulation informs County Clerks of the acceptable means of proof of insurance.

(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 reflects prior reorganization of the Public Protection Cabinet, sets out the required contents of both paper and electronic proof of insurance and restores the requirement that the paper or electronic image format must be submitted to the Department of Insurance, Property and Casualty Division for approval as a policy form.

(b) The necessity of the amendment to this administrative regulation: KRS 304.39-117 was amended by 13 RS HB 164, effective June 25, 2013 to permit proof of insurance to be provided and presented electronically. The current regulation only addresses paper proof of insurance cards. This amendment adds requirements to the contents of the proof of insurance to facilitate administration of KRS 186A.042 by county clerks. When this administrative regulation was last amended in 2005, the requirement that insurers file proof of insurance cards for approval was deleted as unnecessary. In retrospect, such filings are necessary to assure compliance.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 186.021 requires the Commissioner of the Department of Insurance to promulgate an administrative regulation to establish the manner for presenting proof of motor vehicle insurance to a county clerk. KRS 304.39-117 requires the Department of Insurance to promulgate an administrative regulation that establishes the requirements for the proof of insurance that an
insurer is required to give to an insured. KRS 304.39-083 and 304.39-085 require notification to the Department of Vehicle Regulation if a binder or other contract for temporary insurance or a policy is terminated by cancellation or nonrenewal.

(b) In complying with this administrative regulation or proof of insurance meeting the requirements of this administrative regulation, law enforcement and county clerks need to be aware that electronic coverage, whether electronic or paper, in their vehicle at all times.

To a customer's portable electronic device in a manner that depicts need to ensure that the proof of insurance is available for download. The implementation and enforcement of this administrative regulation: The implementation and enforcement of the amendments to this administrative regulation will continue to be funded by the existing filing fees charged by the Department of Insurance pursuant to 806 KAR 4.010.

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

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

(9) TIERING: Is tiering applied? Tiering is applied by the statutory distinctions between personal and commercial motor vehicle policies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation and, specifically, the Department’s Property and Casualty Division.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186.021, 186A.042, 304.2-110(1), 304.39-083, 304.39-085, 304.39-087, 304.39-117, 304.39-300

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the Department of Insurance 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 Department of Insurance for subsequent years.

(c) How much will it cost to administer this program for the first year? There should not be a cost to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There should not be a cost 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: The amendments to this administrative regulation permit insurers to offer proof of motor vehicle coverage through an electronic format. The Department will enforce these requirements through its existing complaint process.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

902 KAR 20:058. Operation and services; primary care center.

RELATES TO: KRS 216B.010, 216B.015, 216B.040, 216B.042, 216B.045-216B.055, 216B.075, 216B.105-216B.131, 216B.176, 216B.177, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.105[—EO 2004-728]

NECESSITY, FUNCTION, AND CONFORMITY: KRS
216B.042 requires that the Kentucky Cabinet for Health and Family Services regulate health facilities and health services. This administrative regulation provides licensure requirements for the operation of and services provided by primary care centers.[EO 2004.726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Office of Inspector General and its regulatory authority under the Cabinet for Health and Family Services.]

Section 1. Definitions. (1) "Center" means a primary care center.

(2) "Qualified diettian" or "nutritionist" means:
(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietitian by ADA; or
(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or
(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietitian.

Section 2. Requirement to Provide Services. (1) A primary care center shall:
(a) Have permanent facilities; and
(b) Provide basic health care services to patients of all ages.

(2) A primary care center shall provide:
(a) A variety of preventive, diagnostic, and therapeutic services by appropriately licensed or certified health professionals[members of the health professions] to meet usual health care needs in a manner that ensures the continuity of care; and
(b) Appropriate referrals to patients who require services that are above the level of basic health care services and not provided by the center.

Section 3. Administration and Operations. (1) Licensee.
(a) The licensee shall be legally responsible for the center and for compliance with federal, state and local laws and administrative regulations pertaining to the operation of the center.
(b) The licensee shall establish written policies[4] for the administration and operation of the center[service].

(2) Administrator.
(a) Each center[all centers] shall have an administrator who shall be responsible for the operation of the center;
(b) In the absence of the administrator, responsibility shall be delegated to a similarly qualified staff person[and shall delegate the responsibility in his absence].

(3) Policies.
(a) Administrative policies. The center shall have written administrative policies covering all aspects of the center's operation, including:
1. A description of organizational structure, staffing and allocation of responsibility and accountability;
2. A description of referral linkages with inpatient facilities and other providers;
3. Policies and procedures for the guidance and control of personnel performances;
4. A description of services directly provided by the center;
5. A description of the administrative and patient care records and reports;
6. A policy for an expense and accrual-based revenue accounting system following generally accepted accounting procedures; and
7. A policy to specify the provision of emergency medical services.
(b) Patient care policies. Patient care policies shall be developed by the medical director[staff physician] and other professional staff for all medical aspects of the center's program to include:
1. Written protocols, including[protocol(s), to include] standing orders, rules of practice, and medical directives which apply[applying] to services provided by the center. The protocols shall be signed by the medical director[licensed staff physician of the center];
2. The center shall have patient care policies for patients held in the center's holding-observation accommodations.
(c) A system shall be established to ensure that, if feasible, the patient is always cared for by the same health professional or health team, to assure continuity of care.
(d) Patient rights policies. The center shall adopt written policies regarding the rights and responsibilities of patients. These patient rights policies shall assure that each patient is:
1. Informed of these rights and of all rules and administrative regulations governing patient conduct and responsibilities, including a procedure for allowing the patient to voice a grievance or recommend changes in policies and services.
2. Is informed of services available at the center and of related charges including any charges not covered under Medicare, Medicaid, or other third-party payor arrangements[.]
3. Is informed of his or her medical condition, unless medically contraindicated[4] as documented in his or her medical record.
4. Is afforded the opportunity to participate in the planning of his or her medical treatment and to refuse to participate in experimental research[.]
5. [4-5] is encouraged and assisted to understand and exercise his or her patient rights;
6. To this end he may voice grievances and recommend changes in policies and services. Upon the patient's request, grievances and recommendations shall be conveyed within a reasonable time to an appropriate decision making level within the organization which has authority to take corrective action.
7. Is assured confidential treatment of his or her records and is afforded the opportunity to approve or refuse[4] release of the records to any individual not involved in the patient's[his] care, except as required by applicable[Kentucky State] law or third-party payment contract; and
8. Is treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in the care of his or her personal health needs.
(4) Personnel.
(a) Primary care provider team. Except for extensions described in Section 4(4) of this administrative regulation, the center shall have a minimum of one (1) or more full-time licensed physicians and:
1. One (1) or more full-time advanced practice registered nurses;
2. One (1) or more full-time physician assistants; or
3. One (1) or more full-time registered nurses.
(b) Medical Director. The center shall have a medical director who shall:
1. Be a licensed physician responsible for all medical aspects of the clinic; and
2. Provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311.
(c) Physicians. Each physician employed by or having an agreement with the center to perform direct medical services shall be:
1. Qualified to practice general medicine, including as a general practitioner, family practitioner, obstetrician/gynecologist, pediatrician, or internist, or qualified to practice psychiatry; and
2. A member of the medical staff or hold courtesy staff privileges at one (1) or more hospitals with which the center has a formal transfer agreement.
(d) Physician(s) and other one (1) or more full-time advanced practice registered nurse(s), one (1) or more physician assistant(s), or one (1) or more full-time registered nurse(s).
1. Physician. The physician shall be in active practice and shall be responsible for all medical aspects of the center, and shall provide direct medical services in accordance with KRS Chapter 311. Physicisns employed by or having an agreement with the
center to perform direct medical services shall be qualified to practice general medicine, for example, general practitioners, family practitioners, obstetricians and gynecologists, pediatricians, and internists. Physicians employed by or having an agreement with the center to perform direct medical services shall be members of the medical staff of, or hold at least courtesy staff privileges at, one (1) or more hospitals with which the center has a formal transfer agreement.

2) Nurse. An advanced practice registered nurse (a) or a registered nurse employed by the center directly or by contract shall provide services within his or her relative scope of practice pursuant to KRS Chapter 314.

(e) (2) Physician's assistant. A physician assistant shall provide services within his or her scope of practice pursuant to KRS Chapter 314.

(f) In-service training.

1. All personnel shall participate in ongoing in-service training programs relating to their respective job activities.

2. The training programs shall include thorough job orientation for new personnel and regular in-service training emphasizing professional competence and the human relationship necessary for effective health care.

5. Medical records.

(a) Ownership.

1. Medical records shall be the property of the center.

2. The original medical record shall not be removed from the center except by court order.

3. Copies of a medical record or portions of the record may be used and disclosed as permitted by this administrative regulation.

(b) Confidentiality and Security. Use and Disclosure.

1. The center shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8 and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The center may use and disclose medical records as permitted or required by HIPAA or as expressly provided for in this administrative regulation.

(c) Retention of records. After the patient's death or on request of the patient or his or her legal representative, the center shall retain medical records for a period of not less than fifty (50) years.
services shall be provided by the center at some time during the scheduled hours of operation, either directly or by contract on site. The center shall establish linkages with supplemental services which currently exist in the service area and which are not provided directly or by contract by the center, including:

1. Pharmacy: licensed pharmacist;
2. Dentistry: licensed dentist;
3. Optometry: licensed optometrist or ophthalmologist;
4. Midwifery services: certified nurse midwife;
5. Family planning;
6. Nutrition: qualified diettian or nutritionist;
7. Social service counseling: licensed social worker;
8. Home health: licensed home health agency; and
9. Behavioral health services.

(c) A [above listed] center which does not have a linkage agreement with the above listed supplemental services identified under paragraph (b) of this subsection, but which documents a good faith attempt to enter into the linkage agreement, shall be exempt from the linkage agreement requirement.

(4) Extension services.

(a) The center may provide primary care services on a temporary or regular basis in locations separate from its permanent facility.

(b) Except for an extension located at a school, each extension shall be staffed with at least:

1. One (1) full-time advanced practice registered nurse or physician assistant; and
2. One (1) physician who is:
   a. Present no less than once in every two (2) week period, except in extraordinary circumstances, to provide medical direction, medical care services, consultation, and supervision; and
   b. Available through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

(c) If a not-for-profit center's extension operates in a school, the center shall comply with the staffing requirements of KRS 216B.176(3) and (4).

(d) With the exception of an extension located at a school and operated under an agreement between the center and a board of education pursuant to KRS 216B.176, the extension shall comply with the minimum staffing requirements of Section 3(4) of this administrative regulation.

(e) The center shall have written policies and procedures pertaining to all aspects of the extension service, including:

1. Patient care;
2. Treatment protocols;
3. Patient rights;
4. Provided services;
5. Medical records;
6. Linkage agreements; and
7. Hours of operation and staffing.

(f) The extension service shall be located within the primary care center's service area.

(g) The center's utilization review program shall include any extension services.

(h) The activities of the extension service shall include outreach activities. The center or extension shall comply with the following requirements:

1. Outreach activities. The center or extension shall comply with the staffing requirements of KRS 216B.176(3) and (4).
2. Holding-observation accommodations. [Utilization of these accommodations shall not exceed twenty-four (24) hour [hours] medical observation or recuperation in anticipation of transfer to an inpatient facility or to the patient's home.]

(b) The decision to hold a patient shall be the responsibility of a physician employed directly or under contract with the medical staff of the center.

(c) A physician or a registered nurse shall be on duty at the center when a patient is held in the center's holding-observation accommodations beyond regular scheduled hours.

(7) Plan of care. The center shall establish and periodically update a written plan of care for all patients of the patient's family, reflecting staff discussion of all medical and social information obtained relative to the patient and the patient's family.

(8) Telephone screening and referral. The center shall provide telephone screening and referral services for prospective patients after regularly-scheduled hours of operation.

MARY REINLE BEGLEY, Inspector General
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: October 3, 2013
FILED WITH LRC: October 4, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2013, at 9:00 a.m. in Auditorium A, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 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 to:

CONTACT PERSON: Tricia Olm, 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 Persons: Mary Reinle Begley, Stephanie Brummer-Barnes,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensure requirements for the operation of, and services provided by primary care centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish licensure requirements for the operation of primary care centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities.

(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 setting forth the cabinet’s licensure requirements for primary care centers.

(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 a primary care center to staff an extension not located in a school with at least one (1) full-time advanced practice registered nurse or physician assistant, and one (1) physician who must be physically present no less than once in every two (2) weeks, except in extraordinary circumstances. Currently, this administrative regulation requires that extensions not located in schools be staffed with a full-time physician. Removing the requirement for a full-time physician via this amendment will help address concerns about the shortage of physicians in rural and underserved areas. Additionally, this
amendment clarifies that an extension located in a school must comply with the staffing requirements of KRS 216B.176(3) and (4), which requires that the school-based extension must be operated under the supervision of the medical director of the primary care center and be staffed with a physician, physician assistant, or advanced practice registered nurse and additional health care professionals appropriate for services being provided. This amendment also updates the requirements related to the maintenance and retention of medical records for compliance with HIPAA, adds behavioral health services to the list of supplemental services which may be provided by the primary care center, clarifies that psychiatry may be provided as a direct medical service, and allows a health professional other than a physician to provide outreach services.

(b) The necessity of the amendment to this administrative regulation: This amendment addresses physician shortage concerns by eliminating the requirement for a full-time physician at extension locations and allows health professionals other than a physician to provide outreach services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that licensure standards and procedures are satisfactory to ensure safe, adequate, and efficient health care facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by reinforcing the cabinet's licensure requirements for primary care centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects health care facilities licensed by the Cabinet's Office of Inspector General as primary care centers. There are currently 146 licensed primary care centers with 211 extension sites.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under this amendment, a primary care center will be allowed to staff an extension not located in a school with at least one (1) full-time advanced practice registered nurse or physician assistant, and one (1) physician who is physically present no less than once every two weeks.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred by any primary care centers for compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Removing the requirement for a full-time physician at extension locations will be especially beneficial to extensions located in rural or remote areas where a shortage of physician is more prevalent.

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

(a) Initially: No costs are necessary to implement this amendment.

(b) On a continuing basis: No costs are necessary to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from agency funds and state general funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who elect to be regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects health care facilities licensed by the Cabinet's Office of Inspector General as primary care centers. There are currently 146 licensed primary care centers with 211 extension sites.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

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? This amendment will not generate additional revenue for state or local government during the first year.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation
between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. Individuals to whom the technical eligibility requirements in this administrative regulation apply include children in foster care; aged, blind, or disabled individuals; and individuals who receive supplemental security income benefits.

Section 1. (Definitions. (1) "Cabinet" is defined by KRS 218A.010(2).

(2) "Child" means a person who:
   a. Is under the age of eighteen (18); or
   b. Is under age nineteen (19) if the person is:
      i. A full-time student in a secondary school or the equivalent level of vocational or technical training; and
      ii. Expected to complete the program before age nineteen (19);
   2. Is not self-supporting;
   3. Is not a member of the Armed Forces of the United States; and
   4. If previously emancipated by marriage, has returned to the home of his parents, or to the home of another relative; or
   b. Has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396(d)(1).

(3) "Evidencing identity" means:
   a. A current state driver's license or state identity document bearing the individual's picture;
   b. A certificate of Indian Blood or other United States American Indian or Alaska Native tribal document; or
   c. For a child who is age sixteen (16) or younger:
      1. A school identification card with a photograph;
      2. A military-dependent's identification card, if it contains a photograph;
      3. A school record that shows the:
         a. Date and place of birth; and
         b. Parent or parents' name;
      4. A clinic, doctor, or hospital record showing date of birth;
      5. A daycare or nursery school record showing date of birth or place of birth; or
   6. An affidavit signed under penalty of perjury by a parent or guardian attesting to the child's identity.

(4) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:
   a. Death;
   b. Continued voluntary or involuntary absence;
   c. Physical or mental incapacity of one (1) parent or step-parent if two (2) parents are in the home; or
   d. Unemployment of one (1) parent if both parents are in the home.

(5) "Medicaid works individual" means an individual who:
   a. But for earning in excess of the income limit established under 42 U.S.C. 1396 (1)(B), would be considered to be receiving supplemental security income;
   b. Is at least sixteen (16), but less than sixty-five (65), years of age;
   c. Is engaged in active employment verifiable with:
      1. Paycheck stubs;
      2. Tax returns;
      3. 1099 forms; or
      4. Proof of quarterly estimated tax;
   d. Meets the income standards established in 907 KAR 1.640; and
   e. Meets the resource standards established in 907 KAR 1.645.

(6) "Minor teenage parent" means an individual who:
   a. Has not attained eighteen (18) years of age;
   b. Is not married; and
   c. Has a minor child in his care.

(7) "Satisfactory documentary evidence of citizenship or nationality" means:
   a. A United States passport;
   b. A Certificate of Naturalization (DHS Form N-550 or N-570);
   c. A Certificate of United States Citizenship (DHS Form N-680 or N-561);
   d. One (1) of the following documents submitted with evidence of identity if a document identified in paragraphs (a) through (c) of this subsection is not available or cannot be obtained:
      1. A United States birth certificate;
      2. A Certification of Birth issued by the Department of State (Form DS-1350);
      3. A Report of Birth Abroad of a Citizen of the United States (Form FS-240);
      4. A Certification of Birth Abroad (FS-545);
      5. A United States Citizen Identification Card (DHS Form I-197);
      6. An American Indian Card (I-872);
      7. A final adoption decree;
      8. Evidence of civil service employment by the United States government before June 1976; or
      9. An official military record of service showing a United States place of birth;
   e. One (1) of the following documents submitted with evidence of identity if a document identified in paragraphs (a) through (d) of this subsection is not available or cannot be obtained:
      1. An extract of a United States military record of birth that:
         a. Was established at the time of a person's birth;
         b. Was created at least five (5) years before the initial application date; and
   c. Indicates a United States place of birth; or
   2. A life, health, or other insurance record that:
      a. Shows a United States place of birth; and
      b. Was created at least five (5) years before the initial application date; or
   f. One (1) of the following documents submitted with evidence of identity if a document identified in paragraphs (a) through (e) of this subsection is not available or cannot be obtained, the applicant alleges citizenship, and nothing exists to indicate the person is not a citizen:
      1. Federal or state census record showing:
         a. United States citizenship; or
         b. A United States place of birth;
      2. An affidavit that:
         a. Were created at least five (5) years before the initial application date, and
         b. Indicate a United States place of birth;
      3. Medical record that:
         a. Was created at least five (5) years before the initial application date, unless the application is for a child under age five (5) and
         b. Indicate a United States place of birth; or
      4. Written affidavit by at least two (2) individuals:
         a. Of whom one (1) is not related to the applicant, and
         b. Who have personal knowledge of the event establishing the applicant's claim of citizenship; and
      c. Who provide proof of their own citizenship and identity.

(8) "Qualified alien" means an alien who, at the time the alien applies for or receives Medicaid, meets the requirements established in Section 5(12) of this administrative regulation.

(9) "Veteran" is defined as 38 U.S.C. 101(2).

Section 2. The Categorically Needy. (1) An individual receiving Title IV-E benefits,SSI benefits, or an optional or a mandatory state supplement [Supplemental Security Income, or Optional or Mandatory State Supplementation] shall be eligible for Medicaid as a categorically needy individual.

(2) The following classifications of [needy] persons shall be considered included in the program as categorically needy individuals:
   a. A child in a foster family care or private nonprofit child-caring institution dependent on a governmental or private agency;
   b. A child in a psychiatric hospital, psychiatric residential treatment facility, or intermediate care facility for individuals with an
intellectual disability;
(c) A pregnant woman;
(d) A child of unemployed parents;
(e) A child in a subsidized adoption dependent on a governmental agency;
(f) A child (but not his parents) who:
  1. Would have been financially eligible for Aid to Families with Dependent Children benefits using the AFDC methodologies in effect on July 16, 1996; and
  2. Meets the definition of Section 1(2) of this administrative regulation;
(g) A qualified severely impaired individual as specified in 42 U.S.C. 1396a(a)(10)(A)(ii) and 1396d, (to the extent the coverage is mandatory in this state);
(h) An individual who loses SSI benefit eligibility but would be eligible for SSI benefits except for entitlement to or an increase in his child’s insurance benefits based on disability as specified in 42 U.S.C. 1383c;
(i) An individual specified in 42 U.S.C. 1383c who:
  1. Loses SSI benefits or state supplement benefits as a result of receipt of benefits pursuant to 42 U.S.C. 402(e) or (f);
  2. Would be eligible for SSI benefits or state supplement payments as an SSP except for these benefits; and
  3. Is not entitled to Medicare Part A benefits or hospital insurance benefits under the Medicare program;
(j) A disabled widow, widower, or disabled surviving divorced spouse, who would be eligible for SSI benefits except for entitlement to an OASDI [old-age, survivors, and disability insurance (OASDI)] benefit resulting from a change in the definition of disability;
(k) A child who:
  1. Was receiving SSI benefits on August 22, 1996; and
  2. Except for the change in definition of childhood disability would continue to receive SSI benefits except that the individual received a settlement in a class action lawsuit entitled “Factor VIII or IX Concentrate Blood Products Litigation”.
(3) The classifications of needy persons listed in this subsection shall be considered included in the program as categorically needy and thus eligible for Medicare participation as limited by the provisions of this subsection.
(a) A family which correctly received Medicaid for three (3) of the last six (6) calendar months, and would have been terminated from receipt of AFDC using AFDC methodologies in effect on July 16, 1996 as a result of new or increased collection of child or spousal support, shall be eligible for extended Medicaid coverage for four (4) consecutive calendar months beginning with the first month the family would have been ineligible for AFDC.
(b) A family which would have been terminated from AFDC assistance using the AFDC methodologies in effect on July 16, 1996 because of increased earnings, hours of employment or loss of earnings disregards shall be eligible for up to four (4) [twelve (12)] months of extended Medicaid.
(c) [A child born to a woman eligible for and receiving Medicaid shall be eligible for Medicaid as of the date of his birth if:
  1. The child:
    a. Has not reached his first birthday; and
    b. Resides in the household of the woman; and
  2. The woman remains, or would remain if pregnant, eligible for the assistance.
(d) [Except as provided in subparagraph 3 of this paragraph, an individual in an institution meeting appropriate patient status criteria who, if not institutionalized, would not be eligible for SSI benefits [supplemental security income (SSI)] or optional state supplemental benefits due to income shall be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income.
  2. Except as provided in subparagraph 3 of this paragraph, eligibility for a similar hospice participant or similar participant in a 1915(c) home and community based waiver program [in a waiver program home and community based services] for individuals with an intellectual disability [the mentally retarded] or the aged, blind, or disabled shall be determined using the method established in subparagraph 1 of this subsection.
  3. Eligibility of an institutionalized individual in an intermediate care facility for individuals with an intellectual disability (ICF ID) or supports for community living (ISCL) for an individual with an institutional disability or a developmental disability waiver meeting appropriate patient status criteria whose gross income exceeds 300 percent of the SSI benefit amount shall be determined by comparing the cost of the individual’s care to the individual’s income.

(2) Except as established in subsection (3) or (4) of this section, to satisfy the Medicaid:
(a) Citizenship requirement, an applicant or recipient shall be:
  1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility;
  2. Except as provided in subsection (3) of this section, a qualified alien who entered the United States before August 22, 1996, and is:
    a. Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;
    b. Granted asylum pursuant to 8 U.S.C. 1158;
    c. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;
    d. Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;
    e. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);
    f. A person with hemophilia who would be eligible for SSI in effect prior to April 1, 1990;
    g. An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;
    h. A battered alien pursuant to 8 U.S.C. 1641(c);
    i. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;
    j. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);
    k. The spouse or unmarried dependent child of an individual described in clause i. or j. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304 or 1305;
    l. An Amerasian immigrant pursuant to 8 U.S.C. 1912(a)(2)(A)(i)(v); or
    m. A qualified alien who entered the United States on or after August 22, 1996, and is:
      a. Granted asylum pursuant to 8 U.S.C. 1158;
      b. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;
      c. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h) as in effect prior to April 1, 1997 or 8 U.S.C. 1231(b)(3);
      d. An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;
      e. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;
      f. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);
      g. The spouse or unmarried dependent child of an individual described in clause e. or f. of this subparagraph or the unmarried...
surviving spouse of an individual described in clause e. or f. of this subparagraph if the marriage fulfills the requirements established in 58 U.S.C. 1304; h. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or i. An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and (b) Residency requirements, the applicant or recipient shall be a resident of Kentucky who meets the conditions for determining state residency pursuant to 42 C.F.R. 435.403. (3) A qualified or nonqualified alien shall be eligible for medical assistance as provided in this paragraph. (a) The individual shall meet the income, resource, and categorical requirements of the Medicaid Program: (1) The individual have, or have had within at least one (1) of the three (3) months prior to the month of application, an emergency medical condition: 1. Not related to an organ transplant procedure; and 2. Which shall be a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the individual’s health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part; (c1). Approval of eligibility shall be for a time limited period which includes, except as established in subparagraph 2 of this paragraph, the month in which the medical emergency began and the next following month. 2. The eligibility period shall be extended for an appropriate period of time upon presentation to the department of written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period. (d) The Medicaid benefits to which the individual is entitled shall be limited to the medical care and services, including limited follow-up, necessary for the treatment of the emergency medical condition of the individual; (e) The satisfactory documentary evidence of citizenship or nationality requirement in subsection (2)(a)1 of this section shall not apply to an individual who: 1. Is receiving SSI benefits; 2. Previously received SSI benefits but is no longer receiving them; 3. Is entitled to or enrolled in any part of Medicare; 4. Previously received Medicare benefits but is no longer receiving them; 5. Is receiving: a. Disability insurance benefits under 42 U.S.C. 423; or b. Monthly benefits under 42 U.S.C. 402 based on the individual’s disability pursuant to 42 U.S.C. 223(d); 6. Is in foster care and who is assisted under Title IV-B of the Social Security Act; or 7. Receives foster care maintenance or adoption assistance payments under Title IV-E of the Social Security Act. (b) The department’s documentation requirements shall be in accordance with the requirements established in 42 U.S.C. 1396b(x). (5) The department shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant’s or recipient’s behalf. (6) An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met. (a) A woman pregnant during pregnancy, and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy, child under six (6) years of age, as specified in 42 U.S.C. 1396a(ii)(1), shall meet the income requirements for this eligibility group as specified in 907 KAR 1:640. (b) If an eligible child is receiving covered inpatient services on a birthday which will make him ineligible due to age, the child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the child remains otherwise eligible except for age. (g) A child who has attained six (6) years of age but has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(ii)(1) shall meet income requirements established in 907 KAR 1:640. Section 2(2)(c). (h) If federal Medicaid matching funds are available to cover the costs of the program, an optional targeted low-income child as established in 907 KAR 4:020, Section 2(1), who has not attained the age of nineteen (19) years as specified in 42 U.S.C. 1396a(ii)(1) shall meet the income requirements established in 907 KAR 1:640 Section 2(2)(h). Section 3. The Medically Needy Who Qualify Via Spenddown. A medically needy individual(a) An individual, including a child pursuant to Section 2(2)(f) of this administrative regulation, who has sufficient income to meet the individual’s basic maintenance needs[,] may apply for Medicaid with need determined in accordance with the income and resource standards established in 907 KAR 20:020 though 907 KAR 20:045(4:640, through 907 KAR 1:665), if the individual meets: [1][a]. The income and resource standards of the medically needy program established in 907 KAR 20:020[4:640] and 907 KAR 20:025(1:645); and (b) Residency requirements, the applicant or recipient shall be a resident of Kentucky who meets the conditions for determining state residency pursuant to 42 C.F.R. 435.403. (2) The technical requirements of the appropriate medically needy group identified in Section 1(2) of this administrative regulation. (2) The medically needy eligible groups shall include: (a) A pregnant woman during the course of her pregnancy; (b) A woman who, while pregnant, is eligible for, has applied for, has received medical assistance, and shall be eligible to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated); and (c) A Medicaid works individual; Section 4. Qualified Medicare Beneficiaries, Qualified Disabled and Working Individuals, Specified Low-Income Medicare Beneficiaries, and Medicare Qualified Individuals Group 1 (QI-1).[QI] (1) Coverage shall be extended to a qualified Medicare beneficiary as specified in 42 U.S.C. 1396a(a)(10)(E); a. Subject to the income limits established in 907 KAR 20:020; b. Subject to the resource limits established in 907 KAR 20:055; and (c) For the scope of benefits specified for a QMB in 907 KAR 1:006. (a) Be eligible for or receive Medicare Part A and Part B benefits; (b) Be determined to be eligible for QMB benefits effective for the month after the month in which the eligibility determination has been made; and (c) Not be eligible for QMB benefits; 1. Retrospectively; or 2. For the month in which the eligibility determination was made. [3][QI] (2) A QMB shall: (a) Be eligible for and receive Medicare Part A and Part B benefits; (b) Be determined to be eligible for QMB benefits effective for the month after the month in which the determination is made; and (c) Not be eligible for QMB benefits as a qualified Medicare beneficiary individual: 1. Retrospectively; or 2. For the month in which the determination was made. [3][QI] (2) A qualified disabled and working individual as defined in 42 U.S.C. 1396d(c) shall be eligible under Medicaid for payment of the individual’s Medicare Part A premiums as established in
907 KAR 1:006.


(5)(4) A Medicare qualified individual group 1 (OI-1) [as established in 42 U.S.C. 1396a(a)(10)(E)(ii)] shall be eligible for payment of all of the Medicare Part B premium.

Section 5. Technical Eligibility Requirements. The technical eligibility factors for a family or individual included as categorically needy under Section 1(6) of this administrative regulation [or as medically needy under Section 3 of this administrative regulation] shall be as established in this section.

(1) A child in foster care, a private institution, psychiatric hospital, psychiatric residential treatment facility, or an intermediate care facility for individuals with an intellectual disability [or a retardation institution] shall meet the definition requirements of child as established in 907 KAR 20:001, Section 1(24)(Section 1(2) of this administrative regulation).

(2) [Except as provided by Section 2 of this administrative regulation, a pregnant woman shall be eligible upon medical proof of pregnancy.]

(3) At the time of application, unemployment relating to eligibility of both parents and children shall be determined using the following criteria:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if:

(1) The work is intermittent; and

(2) The excess is of a temporary nature as evidenced by the fact that the individual:

(i) Was under the 100-hour standard for the prior two (2) months; and

(ii) Is expected to be under the standard during the next month;

(b) Within twelve (12) months prior to application, a parent received unemployment compensation; or

(c) A parent is receiving or has been found ineligible for unemployment compensation.

(4) Subsection (3)(a) of this section shall not apply if a change is made in a Medicaid case or if a case is recertified.

(5) An aged individual shall be at least sixty-five (65) years of age.

(6) A blind individual shall meet the definition of blindness as contained in 42 U.S.C. 416 and 42 U.S.C. 1382c relating to Retirement, Survivors, and Disability Insurance or SSI benefits [or retirement, survivors, and disability insurance (RSDI) or supplemental security income (SSI)].

(7) A disabled individual shall meet the definition of permanent and total disability as established contained in 42 U.S.C. 423(d) and 42 U.S.C. 1382c(a)(3) relating to RSDI and SSI benefits.

(8) Using AFDC methodologies in effect on July 16, 1996, a family who loses Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to four (4) twelve (12) months of extended medical assistance for family members included in the medical assistance unit prior to losing Medicaid eligibility.

(b) The extended medical assistance shall be divided into two (2) transitional six (6)-month benefit periods. The family shall meet the eligibility and reporting requirements for the each transitional benefit period established in this subsection.

(e)(4) The first transitional six (6) month benefit period shall begin with the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996.

1. To be eligible for this transitional benefit period, the family shall:

(a) Have correctly received Medicaid assistance in three (3) of the six (6) months immediately preceding the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996;

(b) Have a dependent child living in the home; and

(c) Report earnings and child care costs no later than the 21st day of the fourth month.

2. If the family no longer has a dependent child living in the home, medical assistance shall be terminated the last day of the month the family no longer includes a dependent child.

(f) If the reporting requirements are not met, the Medicaid benefits shall be denied for the second transitional six (6) month benefit period.

(b) To continue to receive Medicaid for the optional second transitional six (6) month benefit period, the family shall:

(a) Have received medical assistance for the entire first transitional six (6) month period and met the reporting requirements;

(b) Have a dependent child living in the home;

(c) Have gross income minus child care costs equaling less than 185 percent of the federal poverty income level;

(d) Report earnings and child care costs no later than the 21st day of the fourth month, the seventh month, and the tenth month; and

(e) During the immediately preceding three (3) months, have a caretaker relative who shall have been:

(i) Employed; or

(ii) Unemployed in one (1) or more months, unemployed due to involuntary loss of employment, illness or other good cause established to the satisfaction of the Medicaid program in accordance with paragraph (c) of this subsection.

2. If a family no longer has a dependent child living in the home, Medicaid shall be terminated the last day of the month the family no longer includes a dependent child.

3. If the family's income exceeds the income standard for the month and the family no longer includes a dependent child, Medicaid shall be terminated the last day of the appropriate reporting month.

(c) Good cause shall exist under the following circumstances:

1. The specified relative was out of town for the reporting month;

2. An immediate family member living in the home was institutionalized or died during the reporting month;

3. The assistance group was the victim of a natural disaster including a flood, storm, earthquake or serious fire; or

4. The assistance group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form.

(9) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.

(a) If a parent is not included in the case, one (1) other caretaker relative may be included to the same extent he would have been eligible in the Aid to Families with Dependent Children program using the AFDC methodology in effect on July 16, 1996.

(b) A caretaker relative shall include:

1. Grandfather;

2. Grandmother;

3. Brother;

4. Sister;

5. Uncle;

6. Aunt;

7. Nephew;

8. Niece;

9. First cousin;

10. A relative of the half-blood;

11. A preceding generation denoted by a prefix of:

(a) Grand;

(b) Great;

(c) Great-great;

12. A stepfather, stepmother, stepbrother, or stepsister.

(40) An applicant who is deceased shall have eligibility determined in the same manner as if the applicant were alive to cover medical expenditures during the terminal illness.
same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member is pregnant, the unborn child shall be considered as a family member for budgeting purposes.

(12) The citizenship and residency requirements established in this subsection shall be applicable.

(a) To be eligible for Medicaid, an applicant or recipient shall be:

1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility. The cabinet:

(i) Shall exempt an applicant or recipient who currently receives Medicare or SSI or who no longer receives Medicare or SSI, but has received one (1) of them in the past, from providing further documentation of citizenship or nationality;

(ii) Shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant's or recipient's behalf; and

(iii) May use a cross match with the cabinet's Office of Vital Statistics to document a birth record or use a cross match with a federal state or local assistance law enforcement, or corrections agency's data system to establish identity if the agency establishes and certifies true identity of individuals;

b. Except as provided in paragraph (b) of this subsection, a qualified alien who entered the United States before August 22, 1996 and is:

(i) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

(ii) Granted asylum pursuant to 8 U.S.C. 1158;

(iii) A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

(iv) Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

(v) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(c) as in effect prior to April 1, 1997, or 8 U.S.C. 1221(b)(5);

(vi) Granted conditional entry pursuant to 8 U.S.C. 1182(a)(7), as in effect prior to April 1, 1980;

(vii) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;

(viii) A battered alien pursuant to 8 U.S.C. 1641(e);

(ix) A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

(x) On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

(xi) The spouse or unmarried dependent child of an individual described in subclause (vi) or (vii) of this clause or the unmarried surviving spouse of an individual described in subclause (vi) or (vii) of this clause if the marriage fulfills the requirements established in 38 U.S.C. 1304;

(xii) An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(ii) or (iii) who is a qualified alien who entered the United States on or after August 22, 1996 and is:

(i) Granted asylum pursuant to 8 U.S.C. 1158;

(ii) A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

(iii) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(c) as in effect prior to April 1, 1997 or 8 U.S.C. 1221(b)(5);

(iv) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;

(v) A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

(vi) On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

(vii) The spouse or unmarried dependent child of an individual described in subclause (vi) or (vii) of this clause or the unmarried surviving spouse of an individual described in subclause (vi) or (vii) of this clause if the marriage fulfills the requirements established in 38 U.S.C. 1304;

(viii) An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(ii) or (iii) who is a qualified alien lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and

2. A resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403.

(b) A qualified or nonqualified alien shall be eligible for medical assistance as provided in this paragraph.

1. The alien shall meet the income, resource and categorical requirements of the Medicaid Program.

2. The alien shall have, or have had within at least one (1) of the three (3) months prior to the month of application, an emergency medical condition not related to an organ transplant procedure, which shall be a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

3. Approval of eligibility shall be for a time limited period, with that period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibility period shall be extended for an appropriate period of time upon presentation to the department of written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period.

4. The Medicaid benefits to which the alien is entitled shall be limited to the medical care and services (including limited follow-up necessary for the treatment of the emergency medical condition of the alien).

13. An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met and the applicant is not enrolled in a managed care organization.

[(b) Except as provided in paragraphs (b) and (c) of this subsection. The effective date of Medicaid shall be the first day of the next month of eligibility.]

8 (a)(b) For an individual eligible on the basis of desertion, a period of desertion shall have existed for thirty (30) days, and the effective date of eligibility shall not precede the first day of the month of application.

(e) For an individual eligible on the basis of utilizing his excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met.

14. Benefits shall be denied to a family in which a parent with whom the child is living is, on the last day of the month, participating in a strike, and the individual's needs shall not be considered in determining eligibility for Medicaid for the family if, on the last day of the month, the individual is participating in a strike.

[b] A strike shall include a concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) or any concerted slowdown or other concerted interruption of operations by employees. [15] A caretaker relative, but not a child, removed from a family-related Medicaid-only case due to failure to meet a technical eligibility requirement shall not be eligible for Medicaid as a medically needy individual unless the individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which the individual has been removed.

16. A caretaker relative, but not a child, who is ineligible for K-TAP benefits for failure to comply with K-TAP work requirements shall not be eligible for medical assistance unless the individual is eligible as a pregnant woman.

Section 6. Institutional Status. An individual shall not be eligible
for Medicaid if the individual is a:
(1) Resident or inmate of a nonmedical public institution except as provided in Section 7 of this administrative regulation;
(2) Patient in a state tuberculosis hospital unless he has reached age sixty-five (65);
(3) Patient in a mental hospital or psychiatric facility unless the individual is:
(a) Under [age] twenty-one (21) years of age;
(b) Under age twenty-two (22) if the individual was receiving inpatient services on his or her 21st birthday;
(c) Sixty-five (65) years of age or over;
(d) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases, unless the individual has reached age sixty-five (65).

Section 7. Emergency Shelters or Incarceration Status. (1) An individual or family group who is in an emergency shelter for a temporary period of time shall be eligible for medical assistance, even though the shelter is considered a public institution, under the following conditions:
1. The individual or family group shall:
(a) Be a resident of an emergency shelter no more than six months in any nine (9) month period; and
(b) Not be in the facility serving a sentence imposed by the court, or awaiting trial; and
2. Be a resident of a medical institution and been an inpatient at the institution for at least twenty-four (24) consecutive hours.

Section 8. Application for Other Benefits. (1) As a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement, and disability benefit to which the applicant or recipient is entitled, unless the applicant or recipient can show good cause for not doing so.
(a) Good cause shall be considered to exist if other benefits have previously been denied with no change of circumstances or the individual does not meet all eligibility conditions.
(b) Annuities, pensions, retirement, and disability benefits shall include:
1. Veterans’ compensations and pensions;
2. Retirement and survivor disability insurance benefits;
3. Railroad retirement benefits;
4. Unemployment compensation; and
5. Individual retirement accounts.
(2) An applicant or recipient shall not be required to apply for federal benefits if:
(a) The federal law governing that benefit specifies that the benefit is optional; and
(b) The applicant or recipient believes that applying for the benefit would be to the applicant’s or recipient’s disadvantage.
(3) An individual who would be eligible for SSI benefits but has not made application shall not be eligible for Medicaid.

Section 9. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have made an assignment to the cabinet for Health and Family Services of any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 10. Third-party Liability as a Condition of Eligibility. (1)(a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the cabinet for Health and Family Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid program unless the individual has good cause for refusing to cooperate.
(b) Good cause for failing to cooperate shall exist if cooperation:
1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;
2. Is not in a child’s best interest because the child was conceived as a result of rape or incest; or
3. May interfere with adoption considerations or proceedings.
(2) Failure of the individual to cooperate without good cause shall result in eligibility of the individual.
(3) A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing maternity or securing support for her unborn child.

Section 11. Provision of Social Security Numbers. (1) Except as provided in subsections (2) and (3) of this section, an applicant or recipient of Medicaid shall provide a Social Security number as a condition of eligibility.
(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a Social Security number from the United States Social Security Administration if appropriate application for the number has been made.
(3) An individual who refuses to obtain a Social Security number due to a well-established religious objection shall not be required to provide a Social Security number as a condition of eligibility.

Section 12. Applicability. (1) The provisions and requirements of this administrative regulation shall:
(a) Apply to:
1. Children in foster care;
2. Aged, blind, or disabled individuals; and
3. Individuals who receive supplemental security income benefits; and
(b) Not apply to an individual:
1. Whose Medicaid eligibility is determined using the modified adjusted gross income standard; or
2. Between the ages of nineteen (19) and twenty-six (26) years who:
   a. Formerly was in foster care; and
   b. Aged out of foster care while receiving Medicaid coverage.
3. An individual whose Medicaid eligibility is determined using a modified adjusted gross income as the eligibility standard shall be an individual who is:
   a. A child under the age of nineteen (19) years, excluding children in foster care; and
   b. A caretaker relative with income up to 133 percent of the federal poverty level;
4. A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;
5. An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:
   a. Does not have a dependent child under the age of nineteen (19) years; and
   b. Is not otherwise eligible for Medicare benefits; or
6. A target low income child with income up to 150 percent of the federal poverty level if the parent or caretaker relative and the child, unless the child is a deemed eligible newborn, refuses to cooperate in obtaining a Social Security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failure to meet technical requirements.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2013 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2013, five (5) workdays prior to the hearing, of their
intend 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 or organization has an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business December 3, 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, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Marchetta Carmicle or Stuart Owen

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes technical eligibility requirements for Kentucky’s Medicaid program for children in foster care and certain former foster care group. The eligibility requirements apply to children in foster care; those who are blind, or disabled individuals; and individuals who receive supplemental security income (SSI) benefits. The requirements in this administrative regulation do not apply to individuals for whom a modified adjusted gross income, or MAGI, is the Medicaid income eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.

   (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program eligibility requirements in accordance with federal law and regulation and as authorized by KRS 194A.030(2) which establishes the Department for Medicaid Services as the commonwealth’s single state agency for administering the federal Social Security Act.

   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 194A.030(2), 194A.050(1) and 205.520(3) by establishing Medicaid program technical eligibility requirements in accordance with federal law and as authorized by KRS 194A.030(2).

   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 194A.030(2), 194A.050(1) and 205.520(3) by establishing Medicaid program technical eligibility requirements in accordance with federal law and as authorized by KRS 194A.030(2).

   (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: The amendment establishes that the technical eligibility requirements do not apply to individuals for whom a modified adjusted gross income (or MAGI) is the Medicaid eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. The Affordable Care Act bars the application of certain existing technical eligibility requirements to these populations. The requirements for MAGI individuals are being established in a separate administrative regulation – 907 KAR 20:100 – and the requirements for former foster care individuals are being established in another separate administrative regulation – 907 KAR 20:075. The MAGI group and former foster care group were created by the Affordable Care Act. An optional eligibility group which DMS has added to the former foster care group is created by the Affordable Care Act. The requirements for MAGI individuals are also affected as they are likewise exempt from the federal mandates. The newborn-related amendment conforms with 42 U.S.C. 1396a(e)(4) and to comply with the Affordable Care Act requirement regarding populations to which technical eligibility requirements apply. The citizenship requirement amendment is necessary to comply with changes in the federal requirements. The amendment which reduces the Medicaid benefit period for individuals who qualified for benefits via an eligibility option for individuals who received Aid to Families with Dependent Children (AFDC) from twelve (12) months to four (4) months is necessary as DMS anticipates that such individuals will be able to qualify for Medicaid benefits under the revised Affordable Care Act eligibility rules on a longer-term basis or be eligible to receive highly subsidized assistance with health insurance premiums via the Health Benefits Exchange being established in Kentucky as authorized by the Affordable Care Act.

   (b) How the amendment conforms to the content of the authorizing statutes: The MAGI-related amendment and former foster care individual-related amendment conform to the content of the authorizing statutes by complying with federal mandates. The newborn-related amendment conforms with 42 U.S.C. 1396a(e)(4) by eliminating the Medicaid requirement that, in order to receive coverage under Medicaid, newborns must live with the mother and that the mother must remain eligible for Medicaid. The amendment also reduces the Medicaid benefit period for individuals who qualified for benefits via an eligibility option for individuals who received Aid to Families with Dependent Children (AFDC) from twelve (12) months to four (4) months. DMS is reducing the period as it anticipates that such individuals will be able to qualify for Medicaid benefits under the revised Affordable Care Act eligibility rules on a longer-term basis or be eligible to receive highly subsidized assistance with health insurance premiums via the Health Benefits Exchange being established in Kentucky as authorized by the Affordable Care Act. Also, the citizenship requirements are revised. Also, the definitions are deleted from the administrative regulation as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations. The amendment also includes language and formatting revisions to comply with KRS Chapter 13A requirements.

   (c) How the amendment conforms to the content of the authorizing statutes: The MAGI-related amendment and former foster care individual-related amendment will assist in the effective administration of the authorizing statutes by complying with federal mandates. The newborn-related amendment conforms with 42 U.S.C. 1396a(e)(4) by eliminating the Medicaid requirement that, in order to receive coverage under Medicaid, newborns must live with the mother and that the mother must remain eligible for Medicaid. The amendment also reduces the Medicaid benefit period for individuals who qualified for benefits via an eligibility option for individuals who received Aid to Families with Dependent Children (AFDC) from twelve (12) months to four (4) months as necessary as DMS anticipates that such individuals will be able to qualify for Medicaid benefits under the revised Affordable Care Act eligibility rules on a longer-term basis or be eligible to receive highly subsidized assistance with health insurance premiums via the Health Benefits Exchange being established in Kentucky as authorized by the Affordable Care Act.

   (d) How the amendment will assist in the effective administration of the statutes: The MAGI-related amendment and former foster care individual-related amendment will assist in the effective administration of the authorizing statutes by complying with federal mandates. The newborn-related amendment conforms with 42 U.S.C. 1396a(e)(4) by eliminating the Medicaid requirement that, in order to receive coverage under Medicaid, newborns must live with the mother and that the mother must remain eligible for Medicaid. The amendment also reduces the Medicaid benefit period for individuals who qualified for benefits via an eligibility option for individuals who received Aid to Families with Dependent Children (AFDC) from twelve (12) months to four (4) months as necessary as DMS anticipates that such individuals will be able to qualify for Medicaid benefits under the revised Affordable Care Act eligibility rules on a longer-term basis or be eligible to receive highly subsidized assistance with health insurance premiums via the Health Benefits Exchange being established in Kentucky as authorized by the Affordable Care Act.

   (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals for whom a modified adjusted gross income is used as the income eligibility standard are affected as they are exempt from the requirements established in this administrative regulation. The Department for Medicaid Services (DMS) projects that the number of individuals, beginning January 1, 2014, for whom a modified adjusted gross income will be the Medicaid eligibility income standard will be 678,000. Former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage are also affected as they are likewise exempt from the
requirements. DMS projects that number could reach over 3,300
within twelve (12) months. Incarcerated individuals (most likely
those that are pregnant) are potentially affected in that any such
individual who is admitted to an inpatient hospital for at least
twenty-four (24) hours would qualify for Medicaid coverage.
Additionally, newborns are affected by gaining Medicaid eligibility
due to not having to live with their mother in order to be Medicaid
eligible.
(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. Individuals would need to apply for
Medicaid coverage in order to gain Medicaid coverage.
(b) In complying with this administrative regulation or
amendment, how much will it cost each of the entities identified in
question (3). This amendment imposes no cost on the regulated
entities or individuals.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3). Individuals exempt from the
requirements will benefit by being exempt from the requirements.
Incarcerated individuals (most likely pregnant individuals) who are
admitted to an inpatient hospital for at least twenty-four (24) hours
and meet Medicaid eligibility criteria would benefit by receiving
Medicaid coverage. Additionally, newborns who would not have
been eligible for Medicaid coverage due to the prior policy would
presumably be eligible as a result of the amendment to the policy.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: DMS projects no cost as a result of exempting the
MAGI population and former foster care individuals from the
requirements in this administrative regulation. Requirements for
those individuals are being established in separate administrative
regulations. Covering inpatient hospital care for qualifying
incarcerated individuals (most likely pregnant women) will reduce
state general fund expenditures as the Department of Corrections
currently pays for this care, but estimating the expenditure
reduction for this segment of the incarcerated population is
indeterminable.
(b) On a continuing basis: The response provided in paragraph
(a) regarding the initial cost also applies as a cost estimate 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 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 under the
Affordable Care Act and matching funds of general fund
appropriations.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative
regulation, if new, or by the change if it is an amendment. Neither
an increase in fees nor funding is necessary to implement the
amendments.
(8) State whether or not this administrative regulation
establishes any fees or directly or indirectly increases any fees:
The amendment to this administrative regulation neither
establishes any new fees nor increases any fees.
(9) Tiering: Is tiering applied? Tiering is applied in that the
technical eligibility requirements do not apply to populations who
are exempted from the requirements pursuant to the Affordable
Care Act.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal
mandate. 42 U.S.C. 1396a(e) and 42 U.S.C.
2. State compliance standards. KRS 205.520(3) states, "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. 42 U.S.C. 1396a(e)(4) eliminates the Medicaid
requirement that, in order to receive coverage under Medicaid,
newborns must live with the mother and that the mother must
remain eligible for Medicaid (or would remain eligible if still
pregnant).
42 U.S.C. 1396a(e) exempts the application of certain existing
technical eligibility requirements to individuals whose Medicaid
eligibility standard is a modified adjusted gross income.
42 U.S.C. 1396a(a)(10)(A)(i)(IX) creates the new eligibility group
comprised of former foster care individuals between the ages of
nineteen (19) and twenty-six (26) who aged out of foster care while
receiving Medicaid coverage.
4. Will this administrative regulation impose stricter
requirements, or additional or different responsibilities or
requirements, than those required by the federal mandate? The
amendment neither imposes stricter nor additional nor different
responsibilities nor 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
amendment does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government
(including cities, counties, fire departments, or school districts) will
be impacted by this administrative regulation? The Department for
Medicaid Services (DMS) will be impacted by the amendment.
2. Identify each state or federal regulation that requires or
authorizes the action taken by the administrative regulation. KRS
194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(a)(10)
and 42 U.S.C. 1396a(e)(4).
3. Estimate the effect of this administrative regulation on the
expenditures and revenues of a state or local government agency
(including cities, counties, fire departments, or school districts) for
the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation
generate for the state or local government (including cities,
counties, fire departments, or school districts) for the first year?
DMS anticipates no revenue being generated for the first year for
state or local government due to the amendment to this
administrative regulation.
(b) How much revenue will this administrative regulation
generate for the state or local government (including cities,
counties, fire departments, or school districts) for subsequent
years? DMS anticipates no revenue being generated for
subsequent years for state or local government due to the
amendment to this administrative regulation.
(c) How much will it cost to administer this program for the first
year? DMS projects no cost as a result of exempting the MAGI
population and former foster care individuals from the requirements
in this administrative regulation. Requirements for those individuals
are being established in separate administrative regulations. Covering
inpatient hospital care for qualifying incarcerated individuals (most likely pregnant women) will reduce state general fund expenditures as the Department of Corrections currently pays for this care, but estimating the expenditure reduction for this segment of the incarcerated population is indeterminable.
(d) How much will it cost to administer this program for
subsequent years? The response provided in paragraph (c)
regarding the first year cost also applies as for subsequent years.

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

Revenues (+/-): .
Expenditures (+/-): .
Other Explanation:
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(AMENDMENT)

907 KAR 20:010. Medicaid procedures for determining initial and continuing eligibility other than procedures related to a modified adjusted gross income eligibility standard or related to former foster care individuals.

RELATES TO: KRS 205.520, 42 C.F.R. 435.530, 435.531, 435.540, 435.541, 435.914, 435.916, 42 U.S.C. 416, 1382, 1396a,
b. d


NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky’s indigent citizens]. This administrative regulation establishes provisions relating to determining initial and continuing eligibility for assistance under the Medicaid Program except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals who aged out of foster care while receiving Medicaid coverage.

Section 1. (Definition. (1) “Department” means the Department for Medicaid Services or its designee.

(2) “First month of SSI payment” means the first month for which an SSI-related Medicaid recipient is determined to be eligible for SSI payments.

(3) “Partnership” means an entity that meets the criteria established in 907 KAR 1:706. Demonstration project: services provided through regional managed care partnerships (1115 Waiver). Section 5, and, under contract with the department in accordance with KRS Chapter 45A, agrees to provide, or arrange for the provision of health services to members on the basis of predetermined payment standards.

Section 2. (Eligibility Determination Process. (1)(a) Except as provided in subsection (3) or (5) of this section, eligibility shall be determined prospectively.

(b) To receive or continue to receive assistance, a household shall meet technical and financial eligibility criteria for the appropriate month of coverage, pursuant to:

1. This section;
2. Section 3 of this administrative regulation; and
3. As established in:
   a. 907 KAR 20:005;
   b. 907 KAR 20:020; and
   c. 907 KAR 20:025 the following administrative regulations for the appropriate month of coverage:
      a. 907 KAR 1:011, Technical eligibility requirements;
      b. 907 KAR 1:640, Income standards for Medicaid; and
      c. 907 KAR 1:645, Resource standards for Medicaid.

(2) A decision regarding eligibility or ineligibility for Medicaid shall be supported by facts recorded in the case record.

(a) The applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of financial and technical eligibility as required by 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025 the following administrative regulations:
   a. 907 KAR 1:011, Technical eligibility requirements;
   b. 907 KAR 1:640, Income standards for Medicaid; and
   c. 907 KAR 1:645, Resource standards for Medicaid; and
2. Give written consent to those contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(b)(1) The department may schedule an appointment with an applicant or recipient to receive specified information as proof of eligibility.

2. Failure to appear for the scheduled appointment or to furnish the requested information shall be considered a failure to present adequate proof of eligibility if the applicant or recipient was informed in writing of the scheduled appointment and the required information.

(3) Retroactive eligibility for Medicaid not related to the receipt of SSI benefits shall be effective no earlier than the third month prior to the month of application if:

(a) A Medicaid service was received;

(b) Technical and financial eligibility requirements were met as established in 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025 the following administrative regulations:

1. 907 KAR 1:011, Technical eligibility requirements;
2. 907 KAR 1:640, Income standards for Medicaid; and
3. 907 KAR 1:645, Resource standards for Medicaid; and

(c)(1) The applicant is excluded from managed care organization participation in accordance with 907 KAR 17:010 resides in a nonpartnership county; or

2. The applicant resides in a county served by a partnership and meets one (1) of the excluded categories as established in 907 KAR 1:705. Demonstration project: services provided through regional managed care partnerships (1115 Waiver).

(4) Eligibility for qualified Medicare beneficiary(QMB) coverage shall be effective the month after the month of case approval if technical and financial eligibility requirements were met as established in 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025 the following administrative regulations:

(a) 907 KAR 1:011, Technical eligibility requirements;
(b) 907 KAR 1:640, Income standards for Medicaid; and
(c) 907 KAR 1:645.

(5)(a)[4] Retroactive eligibility for specified low-income Medicare beneficiary(SLMB) benefits, Medicare qualified individual group 1 (O1-1)[individuals (O1) benefits, or qualified disabled and working individuals shall be effective no earlier than the third month prior to the month of application if the[a] individual meets technical and financial eligibility requirements as established in 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025 the following administrative regulations:

1. 907 KAR 1:011, Technical eligibility requirements;
2. 907 KAR 1:640, Income standards for Medicaid; and

(b) Retroactive eligibility for a qualified individual shall not include months of a prior year.

(6) An SSI-related recipient[age twenty-one (21) or older], in accordance with HCFA Program Issuance Transmittal Notice, Region IV, May 7, 1997, MCD-014-97, shall be eligible for Medicaid benefits effective the month prior to the first month of SSI payment if the individual[recipient]:

(a) Is eligible to be enrolled with a managed care organization in accordance with 907 KAR 17:010 [Resides in a partnership county]; and

(b) Meets Medicaid eligibility requirements for that month.

(7) An SSI-related recipient[age twenty-one (21) or older], in accordance with HCFA Program Issuance Transmittal Notice, Region IV, May 7, 1997, MCD-014-97, shall be retroactively eligible for Medicaid benefits effective no earlier than the third month prior to the first month of SSI payment if the individual[recipient]:

(a) Is excluded from managed care organization participation in accordance with 907 KAR 17:010 [Resides in a nonpartnership county]; and

(b) Meets Medicaid eligibility requirements for these months.

(8) For an SSI recipient under age twenty-one (21), Medicaid
coverage shall:
(a) Automatically begin with the month prior to the first month of
SSDI payment; and
(b) Be available for the three (3) preceding months if the
recipient meets Medicaid eligibility requirements for those three
months.

Section 2[3] Continuing Eligibility. (1) The recipient shall be
responsible for reporting within ten (10) days a change in circumstances which may affect eligibility.
(2)[In addition,] Eligibility shall be redetermined:
(a) Every twelve (12) months; or
(b) If a report is received or information is obtained about a
change in circumstances. (2) Pursuant to the waiver granted by the
Secretary, United States Department of Health and Human
Services, and promulgated at 420 KAR 1:705, Demonstration
project services provided through regional managed care
partnerships (1115 Waiver), a recipient shall have a one (1) time
guarantee of six (6) months of eligibility regardless of a loss of
technical eligibility for Medicaid during that six (6) month time
period if the recipient:
(a) Resides in a county included in a partnership;
(b) Did not meet either of the excluded categories established
in 1158 KAR 1:705-20, Demonstration project services provided
through regional managed care partnerships (1115 Waiver);
(c) Did not receive Medicaid in any of the twelve (12) months
preceding participation in a partnership;
(d) Participated in a partnership for less than six (6) months;
(e) Continued to reside in a partnership region during the
guaranteed six (6) month eligibility period; and
(f) Is not:
1. An incarcerated recipient;
2. An alien who is eligible for emergency Medicaid; or
3. A recipient requesting discontinuance of Medicaid.

Section 3[4] Determination of Incapacity or Permanent and
Total Disability. (1) Except as provided in subsections (2) and (3) of
this section, a determination that a parent with whom the needy
child lives is incapacitated, or that the individual requesting
Medicaid due to disability is both permanently and totally disabled,
shall be made by the medical review team following review of both
medical and social reports.
(2) A parent shall be considered incapacitated without a
determination from the medical review team if:
(a) The parent declares physical inability to work;
(b) The worker observes some physical or mental limitation; and
(c) The parent:
1. Is receiving SSI benefits (supplemental security income
SSI);
2. Is age sixty-five (65) years or over;
3. Has been determined to meet the definition of blindness or
permanent and total disability as contained in 42 U.S.C. 1382 or
416 by either the Social Security Administration or the medical
review team;
4. Has previously been determined to be incapacitated or both
permanently and totally disabled by the medical review team,
hearing officer, appeal board, or court of proper jurisdiction
without a reexamination requested; and
5. Is receiving Retirement, Survivors, and Disability Insurance
(RSDI) benefits, federal black lung benefits, or railroad
retirement benefits based on disability as evidenced by an award
letter;
6. Is receiving Veterans Affairs (VA) benefits based on 100 percent
disability, as verified by an award letter; or
7. Is currently hospitalized and a statement from the
attending physician indicates that incapacity will continue for at
least thirty (30) days.
(b) If application was made prior to the admission, the physician
shall indicate if incapacity existed as of the application date.
(3) An individual shall be considered permanently and totally
disabled without a determination from the medical review team if
the individual:
(a) Receives RSDI or railroad retirement benefits based on
disability;
(b) Received SSI benefits based on disability during a portion
of the twelve (12) months preceding the application month and
discontinuance was due to income or resources and[,] not to
improvement in physical condition;
(c) Has been determined to meet the definition of blindness or
both permanent and total disability as contained in 42 U.S.C. 416
or 1382 by the Social Security Administration; or
(d) Has previously been determined to be permanently and
totally disabled by the medical review team, hearing officer, appeal
board, or court of proper jurisdiction without a reexamination
requested; and
2. There is no visible improvement in condition.
(4)[a] A child who was receiving SSI (supplemental security
income) benefits on August 22, 1996 and who, but for the change
in definition of childhood disability established by 42 U.S.C.
1396a(a)(10) would continue to receive SSI benefits, shall continue
to meet the Medicaid definition of disability.
(b) If a redetermination is necessary, and in accordance with
921 KAR 5:470, the definition of childhood disability effective on
August 22, 1996 shall be used.

Section 4[5] Disqualification. An adult individual shall be
disqualified from receiving Medicaid for a specified period of time if
the department or a court determines the individual has committed
an intentional program violation in accordance with 907 KAR
1:675, Program Integrity.

Section 5. Applicability. (1) The provisions and requirements of
this administrative regulation shall not apply to an individual:
(a) Whose Medicaid eligibility is determined using the modified
adjusted gross income as the income standard; or
(b) Between the ages of nineteen (19) and twenty-six (26)
years who:
1. Formerly was in foster care; and
2. Aged out of foster care while receiving Medicaid coverage.
(2) An individual whose Medicaid eligibility is determined using
the modified adjusted gross income as an income standard shall be
an individual who is:
(a) A child under the age of nineteen (19) years, excluding
children in foster care;
(b) A caretaker relative with income up to 133 percent of the
federal poverty level;
(c) A pregnant woman, with income up to 185 percent of the
federal poverty level, including the postpartum period up to sixty
(60) days after delivery;
(d) An adult under age sixty-five (65) with income up to 133
percent of the federal poverty level who:
1. Does not have a dependent child under the age of nineteen
(19) years; and
2. Is not otherwise eligible for Medicaid benefits; or
(e) A targeted low income child with income up to 150 percent
of the federal poverty level.

Section 6. Incorporation by Reference. (1) "HCFA Program
Issuance Transmittal Notice Region IV", May 7, 1997, MCD-014-97, is incorporated by reference.
(2) This material may be:
(a) Inspected, copied, or obtained, subject to applicable
copyright law, at the Department for Medicaid Services, 275 East
Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8
a.m. to 4:30 p.m.; or

LAWRENCE KISSNER, Commissioner
AUBREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2013 at 9:00 a.m. in the Health Services
Contact Person: Stuart Owen

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment establishes that the eligibility determination procedures do not apply to individuals for whom a modified adjusted gross income (or MAGI) is the income eligibility standard or to former foster care individuals who aged out of foster care while receiving Medicaid coverage; removes definitions from the administrative regulation as those are now being established in a definitions administrative regulation for all administrative regulations within the new chapter – Chapter 20 – which will house Medicaid eligibility administrative regulations; and contains language and formatting revisions to comply with KRS Chapter 13A standards.

(b) The necessity of the amendment: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with Affordable Care Act mandates, by clarifying policy, and by revising language and formatting to ensure that it complies with KRS Chapter 13A standards.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by complying with Affordable Care Act mandates, by clarifying policy, and by revising language and formatting to ensure that it complies with KRS Chapter 13A standards.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A recipient who wishes to appeal a Medicaid service denial shall comply with the appeal provisions established in this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are exempted from the requirements will benefit from not being subject to the requirements for Medicaid eligibility purposes.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: DMS anticipates no cost as a result of exempting the MAGI individuals or former foster care individuals from the requirements in this administrative regulation.

(b) On a continuing basis: The answer provided in paragraph (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is only applied in that the provisions do not apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals as the Affordable Care Act prohibits this.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for
Medicaid Services will be affected by the amendment.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 435.906 and this administrative regulation authorize the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the income standards established in this administrative regulation from exempting former foster care individuals from the standards.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the MAGI individuals from the income standards established in this administrative regulation nor from exempting the former foster care individuals from the income standards.

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

Expenditures (+/-):

Revenues (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. The cabinet, by administrative regulation, may establish the provisions and procedures necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth and necessary to operation of the programs and fulfill the responsibilities vested in the cabinet. The cabinet shall 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 cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.

3. Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state’s Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of income disregard, or any asset or resource test. The populations exempted from the new requirements (and to whom the old requirements continue to apply) include aged individuals [individuals over sixty-five (65) years of age or who receive Social Security Disability Insurance; individuals eligible for Medicaid as a result of being a child in foster care; individuals who are blind or disabled; individuals who are eligible for Medicaid via another program; individuals enrolled in a Medicare savings program; and medically needy individuals. 42 U.S.C. 1396a(a)(10)(A)(i)(IX) creates the new eligibility group comprised of former foster care individuals and bars the application of certain existing Medicaid eligibility requirements to this population.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services
Division of Policy and Operations

(AMENDMENT)

907 KAR 20:015. Medicaid right to apply and reapply for individuals whose Medicaid eligibility is not based on a modified adjusted gross income eligibility standard or who are not former foster care individuals.

RELATES TO: KRS 205.520


NECESSITY, FUNCTION, AND CONFORMITY—[EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds for the provision of medical assistance to Kentucky’s indigent citizenry. This administrative regulation establishes the provisions necessary to determine Medicaid eligibility for former foster care individuals.

Section 1. Right to Apply or Reapply. (1) Each individual wishing to do so shall have the opportunity to apply or reapply for Medicaid through the Department for Community Based Services [Social Insurance (SSI)].

(2) An individual eligible for TANF, mandatory state supplements, optional state supplements, or SSI benefits [Aid to Families with Dependent Children (AEDC), State Supplementation or Supplemental Security Income (SSI)] through the Social Security Administration shall be eligible for Medicaid without a separate application.

Section 2. Application Process. (1) An application shall be
considered to have been made; (a) When the individual or individual’s authorized representative has signed, under penalty of perjury, the application form prescribed by the Department for Community Based Services[DSI] or the Social Security Administration, for SSI benefits;[a] and 2. The application has been received at the appropriate office; or

(2) An application shall also be considered to be made based on the date of contact with the Department for Community Based Services[DSI] or the Social Security Administration for SSI benefits, by a person with a physical or mental impairment who needs special accommodation due to the impairment. (3) If the applicant is unable to come to the office to apply, the applicant may designate an authorized representative to apply for the applicant or request a home visit to complete the application process. (4) An applicant may be: (a) Assisted by an individual of the applicant’s choice in the application process; and (b) Accompanied by this individual in all contacts with the agency. (5) Deaf and hard of hearing services shall be provided in accordance with 920 KAR 1:070(000-KAR-1:020). (6) Interpreter services shall be provided for persons who do not speak English, utilizing procedures and forms specified by 920 KAR 1:070(000-KAR-1:020).

Section 3. Who May Sign an Application. (1) An application for Medicaid shall be signed by the individual requesting assistance, the relative with whom the child lives if the applicant is a child, or an authorized representative, or an interested party acting on behalf of the applicant. (2) An application for Medicaid for a child (child[a] in foster care or for a private child caring institution shall be signed by the: (a) Representative of the agency to which the child is committed; or (b) Institution in which the child is placed.

Section 4. Where Applications are Filed and Processed. (1) An application: (a) May be filed at any Department for Community Based Services[DSI] office; and (b) Shall be processed in the county of residence except that any application for SSI benefits and Medicaid shall be filed in the service area office of the Social Security Administration. (2) If an individual is applying for nursing facility or psychiatric facility services, the Department for Community Based Services[DSI] office in the county where the facility is located shall take and process the application. (3) If an individual is applying in a county other than the county of residence and is hospitalized, the Department for Community Based Services[DSI] office in the county of: (a) Hospitalization shall take the application and transfer the pending application to the county of residence; and (b) And the DSI office in the county of residence shall process the application using the original application date. (4) If an individual is applying in a county other than the county of residence and is not hospitalized, the Department for Community Based Services[DSI] office in the receiving county shall: 1. Partially complete the application; 2. Transfer the application to the county of residence on the same day the application is taken; and 3. Describe the application; and (b) The Department for Community Based Services[DSI] office in the county of residence shall: 1. Schedule a face-to-face interview; and 2. Process the application using the original application date. (5) If a Kentucky resident is temporarily out of state, a letter from the applicant, an interested party, or an out-of-state agency shall be accepted as the initiation of the application process when: 1. An emergency arises from accident or sudden illness; 2. Care and services are needed immediately;[a] and 3. The individual’s health would be endangered if the individual undertook to return to the state. (b) Upon notification of the emergency, the official application form shall be forwarded to the initiating party.

Section 5. Action on Applications. (1)(a) A decision shall be made on each Medicaid application within forty-five (45) days, except that an application requiring a disability determination, (b) An application requiring a disability determination shall be made within sixty (60) days. (2) An exception to the timeframes referenced in subsection (1) of this section shall be made if the time frame exceptions: (a) The applicant is cooperating but is unable to obtain necessary verification for an eligibility decision to be made; or (b) Delay is beyond the control of staff (such as failure or delay on the part of the applicant or examining physician or because of some administrative or other emergency that could not be controlled by staff). (3) A case record shall document the cause for the time frame delay. (4) Failure to process an application within the above time frames referenced in this section shall not be used as the basis for denial.

Section 6. Voter Registration. (1) An applicant or recipient meeting all of the following criteria: shall be provided the opportunity at the Department for Community Based Services[Social Services] office to complete an application to register to vote or update current voter registration if the applicant or recipient is: (a) Age eighteen (18) or over; (b) Present in the office at the time of the interview or if a change of address is reported; and (c) Not registered to vote or not registered to vote at the applicant’s current address. (2) The following individuals shall not be permitted to register to vote by the process established in this administrative regulation: (a) An individual not included in the Medicaid application; (b) A Medicaid payee only; (c) An authorized representative of a Medicaid recipient; or (d) An individual acting as a responsible party. (3) An individual providing voter registration services who seeks to unlawfully influence an applicant’s political preference or party registration as prohibited by KRS 116.048(4) may be fined or imprisoned, not to exceed five (5) years, or both. (4) Forms and information utilized in the voter registration process shall: (a) Remain confidential; and (b) Be used only for voter registration purposes. (5) Only Board of Elections officials may view forms and information utilized directly in the voter registration process. (6) Completion of the voter registration form is an application to apply to register to vote. (b) The State Board of Elections shall: 1. Approve or deny the application to register to vote; and (c) Send a confirmation or denial notice to the applicant. Section 7. Applicability. (1) The provisions and requirements of this administrative regulation shall: (a) Apply to: 1. Children in foster care; 2. Aged, blind, or disabled individuals; and 3. Individuals who receive supplemental security income benefits; and (b) Not apply to individuals: 1. Whose Medicaid eligibility is determined using the modified adjusted gross income standard; or 2. Between the ages of nineteen (19) and twenty-six (26) years who formerly were in foster care and were receiving Medicaid.
benefits at the time that they aged out of foster care.

(2) An individual whose Medicaid eligibility is determined using a modified adjusted gross income as the eligibility standard shall be an individual who is:

(a) A child under the age of nineteen (19) years, excluding children in foster care;

(b) A caretaker relative with income up to 133 percent of the federal poverty level;

(c) A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;

(d) An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:

1. Does not have a dependent child under the age of nineteen (19) years; and

2. Is not otherwise eligible for Medicaid benefits; or

(e) A targeted low income child with income up to 150 percent of the federal poverty level [Materials Incorporated by Reference].

(1) Forms necessary for application for benefits under the Medicaid Program are incorporated effective April 1, 1995. These forms include the PA 1, revised October 1992; PA 1A, revised March 1991; PA 1C, revised October 1991; PA 1F, revised April 1992; PA 1P, revised May 1991; and the KIM 100, revised March 1994.

(2) These forms may be reviewed at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m. Copies may be obtained upon payment of an appropriate fee which shall not exceed approximate cost.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2013 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business December 2, 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, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Marchetta Carmicle or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid program provisions regarding applying for Medicaid benefits except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program provisions regarding applying for Medicaid benefits except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing Medicaid program provisions regarding applying for Medicaid benefits except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid program provisions regarding applying for Medicaid benefits except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.

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

(a) How the amendment will change this existing administrative regulation: The amendment replaces the reference to an obsolete agency (Department for Social Insurance) with the current agency (Department for Community Based Services); establishes that the provisions regarding applying for Medicaid benefits do not apply to individuals for whom a modified adjusted gross income is the Medicaid income eligibility standard or to individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care but aged out of foster care while receiving Medicaid benefits at the time; deletes the definitions; deletes the incorporated material; and contains language and formatting revisions to comply with KRS Chapter 13A requirements.

Individuals for whom a MAGI is the Medicaid income eligibility standard are children under nineteen (19) – except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level.

(b) The necessity of the amendment to this administrative regulation: The amendment replacing the agency title Department of Social Insurance with Department for Community Based Services is necessary to correct an obsolete reference; the amendments that establish that the provisions do not apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or to former foster care individuals are necessary to comply with an Affordable Care Act mandate; removing the definitions is necessary as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations; deleting the incorporated material is necessary as DMS does not utilize the incorporated material; and language and formatting revisions are necessary to comply with KRS Chapter 13A standards.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with a federal mandate and by complying KRS Chapter 13A standards.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by complying with a federal mandate and by complying KRS Chapter 13A standards.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.

(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
State whether or not this administrative regulation
an increase in fees nor funding is necessary to imp lement the
regulation, if new, or by the change if it is an am endment: Neither
action taken by 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 cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are exempted from the requirements will benefit from not being subject to the requirements for Medicaid eligibility purposes.

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

(a) Initially: DMS anticipates no cost as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the Medicaid application provisions of this administrative regulation as some related requirements and provisions (established in another administrative regulation) will apply to this population. Those requirements are being established in a new administrative regulation – 907 KAR 20:100, Modified adjusted gross income (MAGI) Medicaid eligibility standards. DMS projects a cost of $907 as a result of exempting former foster care individuals from the requirements in this administrative regulation; however, the Department for Community Based Services (DCBS) has been purchasing health insurance for 700 of those individuals at an annual cost of $1 million. Covering those individuals through the Medicaid program, as mandated by federal law, will procure federal matching funds at a seventy (70) percent match rate for those individuals’ health care.

(b) On a continuing basis: The answer provided in paragraph (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds of general and agency appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is only applied in that the provisions do not apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals as the Affordable Care Act prohibits this.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation, 42 C.F.R. 435.906 and this administrative regulation authorize the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the requirements in this administrative regulation nor from exempting former foster care individuals from the requirements.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the MAGI individuals from the requirements in this administrative regulation nor from exempting the former foster care individuals from the requirements.

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.

FEDERAL MANDATE ANALYSIS COMPARISON


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

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 435.906 mandates that a Medicaid program must "afford an individual wishing to do so the opportunity to apply for Medicaid without delay."

42 C.F.R. 435.908 requires a Medicaid program to "allow an individual or individuals of the applicant's choice to accompany, assist, and represent the applicant in the application process or a redetermination of eligibility."

42 U.S.C. 1396w-3 requires a Medicaid program to enable individuals who are eligible to apply for Medicaid or a health insurance premium subsidy through a health benefit exchange to be able to apply through the Internet.

Section 1413 of the Affordable Care Act and a bulletin issued by the Center for Medicaid and CHIP Services (CMCS) within the Centers for Medicare and Medicaid Services (CMS), dated April 30, 2013 regarding the application process for individuals applying for health insurance through the Health Insurance Marketplace or Affordable Insurance Exchange (labeled the Health Benefit Exchange in Kentucky) references mandate that individuals must be able to file an application online, by mail, over the telephone or in person. Only Medicaid eligible individuals whose Medicaid eligibility income standard is a modified gross adjusted income can ultimately complete the application process in any of these ways. 42 U.S.C. 1396w-3(b)(3) addresses this requirement as follows: "The State Medicaid agency and State CHIP agency shall participate in and comply with the requirements for the system established under section 1413 of the Patient Protection and
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Affordable Care Act (relating to streamlined procedures for enrollment through an Exchange, Medicaid, and CHIP).

42 U.S.C. 1396(a)(10)(A)(i)(IX) creates the new eligibility group comprised of former foster care individuals and bars the application of certain existing Medicaid eligibility requirements to this population.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations

(Amendment)

907 KAR 20:020. Income standards for Medicaid other than modified adjusted gross income (MAGI) standards or for former foster care individuals.

RELATES TO: KRS 205.520, 38 U.S.C. 5503, 42 U.S.C. 1382a, 1396(b)(b), 1397aa, 9902(2)
STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 435, 42 U.S.C. 1396a, 1396b, 1396v, 1396w, 1396y-1, 1396z-5, 1397aa, 1398a, 194A.050(1), 1396x, 1396a(e), 1396d(q)(2)(B)
NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-1396d, 1397aa 194A.050(1), 205.520(3), 42 C.F.R. 435, 42 U.S.C. 1396a, 1396b, 1396v, 1396w, 1396y-1, 1396z-5, 1397aa, 1398a, 1396a(e), 1396d(q)(2)(B)]
(revised July 8, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with 42 U.S.C. 1396 through 1396v. 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 for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the income standards by which Medicaid eligibility is determined, except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals who aged out of foster care while receiving Medicaid coverage.

Section 1. Definitions. (1) “ABD” means an individual who is aged, blind, or disabled.

(2) “AFDC” means the Aid to Families with Dependent Children Program as it existed on July 18, 1996.

(3) “Child” means a person who:
(a) Is under the age of eighteen (18); or
(b) Is under the age of nineteen (19), if the person is:
(i) In high school or the same level of vocational or training school; and
(ii) Expected to graduate before or during the month of his 19th birthday;

(4) “Family alternatives diversion payment” means a lump sum payment made to a K-TAP applicant to meet short-term emergency needs.

(5) “Incapacity” means a condition of mind or body making a parent physically or mentally unable to provide the necessities of life for a child.

(6) “Income” means money received from statutory benefits (including Social Security, Veterans’s Administration pension, black lung benefits, or railroad retirement benefits), pension plans, rental property, investments, or wages for labor or services.

(7) “Lump sum income” means money received at one (1) time which is normally considered as income, including accumulated back payments from Social Security, unemployment insurance, or workman’s compensation; back pay from employment; money received from an insurance settlement, gift, inheritance, or lottery winnings; proceeds from a bankruptcy proceeding; or money withdrawn from an IRA, KEOGH plan, deferred compensation, tax deferred retirement plan, or other tax deferred asset.

(8) “Medicaid works individual” means an individual who:
(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(a)(10)(B), would be considered to be receiving supplemental security income;
(b) Is a least sixteen (16), but less than sixty-five (65), years of age;
(c) Is engaged in active employment verifiable with:
1. Paycheck stubs;
2. Tax returns;
3. 1099 forms; or
4. Proof of quarterly estimated tax;
(d) Meets the income standards established in this administrative regulation; and
(e) Meets the resource standards established in 907 KAR 1:645.

(9) “Minor parent” means a parent under the age of twenty-one (21).

(10) “Official poverty income guidelines” means the poverty income guidelines which are:
(a) Updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 U.S.C. 9002(2); and
(b) The latest poverty guidelines available as of March 1 of the particular state fiscal year.


Section 2. Income Limitations. (1)(a) [For the medically needy as described in 907 KAR 1:011.] Income shall be determined by comparing adjusted income as required by Section 2(3) of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse, and minor dependent children with the following scale of income protected for basic maintenance:

<table>
<thead>
<tr>
<th>Size of Family</th>
<th>Annual</th>
<th>Monthly</th>
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<tbody>
<tr>
<td>1</td>
<td>$2,600</td>
<td>$217</td>
</tr>
<tr>
<td>2</td>
<td>3,200</td>
<td>267</td>
</tr>
<tr>
<td>3</td>
<td>3,700</td>
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<td>5,400</td>
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<td>6</td>
<td>6,100</td>
<td>508</td>
</tr>
<tr>
<td>7</td>
<td>6,800</td>
<td>567</td>
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(b) For each additional family member, $720 annually or sixty (60) dollars monthly shall be added to the scale.

(2) The following special factor[actors] shall apply to a pregnant woman or child eligible pursuant to 42 U.S.C. 1396a(e):
(a) A pregnant woman or a child under age one (1) shall have family income not exceeding 185 percent of the official poverty income guidelines;
(b) A child age one (1) or over but under age six (6) shall have family income not exceeding 133 percent of the official poverty income guidelines;
(c) A child born after September 30, 1983, who has attained six (6) years of age but has not attained nineteen (19) years of age shall have family income, not exceeding 100 percent of the official poverty income guidelines;

(3) A pregnant woman or child who would be eligible under provisions of 42 U.S.C. 1396a(l) or 1397(b) except for income in excess of the allowable standard shall not become eligible by spending down to the official poverty guidelines as described in Section 2(3) of this administrative regulation;

(4) A pregnant woman or child who would be eligible under provisions of 42 U.S.C. 1396a(l) or 1397(b) except for income in excess of the allowable standard shall not become eligible by spending down to the official poverty guidelines as described in Section 2(3) of this administrative regulation;

(5) A change of income that occurs after the determination of eligibility of a pregnant woman shall not affect the pregnant woman’s eligibility through the remainder of the pregnancy.
including the postpartum period which ends at the end of the month containing the 60th day of a period beginning on the last day of the pregnancy.

(4) A targeted low-income child as specified in 907 KAR 1:011, Section 2(3)(b), shall have family income not exceeding 150 percent of the official poverty income guidelines.

(3) The following special income limits and provisions shall apply for a determination of eligibility of a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled and working individual, or Medicare qualified individual group 1 (QI-1):

(a) A qualified Medicare beneficiary shall have income not exceeding 100 percent of the official poverty income guidelines.

(b) A specified low-income Medicare beneficiary shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

(c) A Medicare qualified individual group 1 (QI-1) shall have income greater than 120 percent of the official poverty income guidelines but less than or equal to 135 percent of the official poverty income guidelines.

(d) A qualified disabled and working individual shall have income not exceeding 200 percent of the official poverty income guidelines.

(4) Income shall be limited to the allowable amounts for the SSI program for:

(a) A child who lost eligibility for SSI[supplemental security income] benefits due to the change in the definition of childhood disability as established in 42 U.S.C. 1396a(a)(10); or

(b) A person with hemophilia who received a class action settlement as established in 42 C.F.R. 435.122.

(5) Income shall be limited to the allowable amounts for the mandatory or optional state supplement[State Supplementation] program for a pass through recipient as established in 42 C.F.R. 435.135.

(6) The following special income factors shall apply for a Medicaid works individual:

(a) Income for a Medicaid works individual’s spouse shall not exceed $45,000 per year.

(b) A Medicaid works individual’s unearned income shall be less than the SSI standard plus twenty (20) dollars monthly; and

(c) The combination of earned and unearned income for a Medicaid works individual shall be less than 250 percent[54] of the official poverty income guidelines.

Section 2(3). Income Disregards. In comparing income with the scale established in Section 1(2) of this administrative regulation, gross income shall be adjusted as established in this section follows:

(1) In a TANF[an AFDC] or family related Medicaid case;

[a.] The standard work expense of an adult member or out-of-school child shall be deducted from gross earnings;

[b.] For a person with either full-time or part-time employment, the standard work expense deduction shall be ninety (90) dollars per month; and

[c.] Earnings of an attending school who is a child or parent under age nineteen (19) or a child under age eighteen (18) who is a high school graduate shall be disregarded.

(2) For an ABD Medicaid case or a Medicaid works individual, the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b) shall apply.

(3) For an individual in a Medicaid eligibility group subject to 42 U.S.C. 1396a(10)(E)(ii), (ii), or (iv) or 42 U.S.C. 1396d(p), if an annual Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment, or federal poverty level cost-of-living adjustment causes an individual to be ineligible for Medicaid benefits:

[a] The individual’s most recent Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment, or federal poverty level cost-of-living adjustment shall be disregarded; and

[b] The disregard referenced in paragraph (a) of this subsection shall continue until the individual loses Medicaid eligibility for any other reason for three (3) consecutive months.

(4) In a TANF[an AFDC] or family related Medicaid case, a dependent child care work expense shall be allowed for a child in the home of the caretaker and is related to the caretaker in accordance with 907 KAR 1:011, Section 5(9)(b), for full-time or part-time employment.

(a) The dependent child care work expense shall be deducted after all other disregards have been applied.

(b) The dependent child care work expense allowed shall not exceed:

1. $200 for full-time or part-time employment per child under age two (2); and

2. $175 for full-time employment or $150 for part-time employment per;

a. Child age two (2) or above; or

b. Incapacitated adult.

(3) For an AFDC-related Medicaid case, a thirty (30) dollar and one-third (1/3) deduction of earned income shall be allowed in accordance with 921 KAR 2:016.

(4) Income disregards. The income disregards:

(a) An ABD Medicaid case shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1396a(b)(1)(a) and

(b) A Medicaid works individual shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1396a(b).

Section 3.4. Income of the Stepparent or Parent of a Minor Parent referred to as a “Grandparent”. An incapacitated stepparent’s income, or a grandparent’s income, shall be considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. If the stepparent or grandparent living in the home is not being included in the family case, the stepparent’s gross income shall be considered available to the spouse or the grandparent’s gross income shall be considered available to the minor parent in accordance with the requirements established in this section. The following disregards and exclusions from income shall be applied:

(1) The first ninety (90) dollars of the gross earned income of the stepparent or grandparent who is employed full-time or part-time;

(2) An amount equal to the appropriate income limitations scale established in Section 2 of this administrative regulation for the appropriate family size, for the support of the stepparent or grandparent and other individuals (not including the spouse or minor parent) living in the home whose needs are not taken into consideration in the Medicaid eligibility determination, but are claimed by the stepparent or grandparent as dependents for purposes of determining federal personal income tax liability;

(3) Any amount actually paid by the stepparent or grandparent to an individual not living in the home who is claimed by him as a dependent for purposes of determining his personal income tax liability;

(4) A payment by the stepparent or grandparent for alimony or child support with respect to an individual not living in the household;

(5) Income of a stepparent or grandparent receiving SSI; and

(6) Verified medical expenses for the stepparent or grandparent and his dependents in the home. Section 5. Lump Sum Income. Except as established in Section 8 of this administrative regulation, for a Medicaid case, lump sum income shall be considered as income in the month received.

Section 4.6. Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill an approved plan to achieve self support, IRWE deduction, or BWE deduction for achieving self support, impairment related work expense (IRWE) deduction, or the blind work expense (BWE) deduction shall be excluded from consideration.

(2) A payment or benefit from a federal statute, other than SSI benefits, shall be excluded from consideration as income if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.

(3) A cash payment intended specifically to enable an applicant or recipient to pay for medical or social services shall not be
considered as available income in the month of receipt.

(4) A Federal Republic of Germany reparation payment shall not be considered as available income for a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled and working individual, or Medicaid qualified individual group 1 (QI-1), until after the month following the month in which the official poverty guideline promulgated by the United States Department of Health and Human Services (U.S. Government) is published.

(5) A Social Security cost of living adjustment on January 1 of each year shall not be considered as available income for a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled and working individual, or Medicaid qualified individual group 1 (QI-1), until after the month following the month in which the official poverty guideline promulgated by the United States Department of Health and Human Services (U.S. Government) is published.

(6) Any amount received from a victim compensation fund established by a state to aid victims of crime shall be excluded as income.

(7) A veteran or the spouse of a veteran residing in a nursing facility who is receiving a Veterans Administration (VA) benefit shall have ninety (90) dollars:

(a) Excluded as income in the Medicaid eligibility determination; and

(b) Excluded as income in the post eligibility determination process.

(8) Veterans Administration payments for unmet medical expenses (UMME) and aid and attendance (A&A) shall be excluded in a Medicaid eligibility determination for a veteran or the spouse of a veteran residing in a nursing facility.

(a) Veterans Administration payments for unmet medical expenses (UMME) and aid and attendance (A&A) shall be excluded in the post eligibility determination for a veteran or the spouse of a veteran residing in a nonstate-operated nursing facility.

(b) Veterans Administration payments for unmet medical expenses (UMME) and aid and attendance (A&A) shall be excluded in the post eligibility determination process for a veteran or the spouse of a veteran residing in a state-operated nursing facility.

(9) An Austrian Social Insurance payment based, in whole or in part, on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.

(a) Any amount received from a victim compensation fund established by a state to aid victims of crime shall be excluded as income.

(b) An individual who would otherwise be eligible for an SSI benefit, mandatory state supplement, or optional state supplement (or state supplementary payment) shall remain eligible for the full scope of program benefits with no spend-down requirements, as established in Section 7(9) of this administrative regulation.

(S) For an individual who applied by July 1, 1988, the additional amount specified in 42 U.S.C. 1393c(b) shall be disregarded, meaning that amount of Social Security benefits to which a specified widow or widower was entitled as a result of the recertification of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) an individual would be eligible for federal SSI benefits.

Section 7(9). Spend-down Provisions. (1) A technically eligible individual or family shall not be required to utilize protected income for medical expenses before qualifying for Medicaid.

2(1) An individual with income in excess of the basic maintenance scale established in Section 1(1) shall be excluded from Medicaid eligibility if:

(a) The individual would otherwise be eligible for an SSI benefit, mandatory state supplement, or optional state supplement (or state supplementary payment).

(b) Medical expenses incurred in a period prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income if the medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses.

Section 8. Individual Retirement Account. (1)(a) If an individual reaches the point where the individual is eligible to begin withdrawing from an IRA without suffering a penalty, the individual shall begin withdrawing from the IRA at least the minimum amount determined by the financial institution holding the IRA.

(b) If an individual does not begin withdrawing from an IRA pursuant to paragraph (a) of this subsection, the individual shall be ineligible for Medicare benefits.

(2) If an individual withdraws funds from an IRA prior to reaching the point where the individual would suffer no penalty for withdrawing funds, the withdrawal shall be considered non-recurring lump sum income.

(3) If an individual withdraws income pursuant to subsection (1)(a) of this section, the income shall be prorated over the period of time income covers (for example monthly, quarterly, or annually).

Section 9. Applicability. (1) The provisions and requirements of this administrative regulation shall:

(a) Apply to:

1. A child in foster care;

2. An aged, blind, or disabled individual; and

3. An individual who receives supplemental security income benefits; and

(b) Not apply to an individual:

1. Whose Medicare eligibility is determined using the modified adjusted gross income standard; or

2. Between the ages of nineteen (19) and twenty-six (26) years who:

a. Formerly was in foster care; and

b. Aged out of foster care while receiving Medicaid coverage.
(2) An individual whose Medicaid eligibility is determined using a modified adjusted gross income as the eligibility standard shall be an individual who is:

(a) A child under the age of nineteen (19) years, excluding children in foster care;

(b) A caretaker relative with income up to 133 percent of the federal poverty level;

(c) A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;

(d) An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:

1. Does not have a dependent child under the age of nineteen (19) years; and

2. Is not otherwise eligible for Medicaid benefits; or

(e) A targeted low income child with income up to 150 percent of the federal poverty level;

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 23, 2013

FILED WITH LRC: September 30, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing defining administrative regulation shall, if requested, be held on November 21, 2013 at 9:00 a.m. in the Health Services Auditorium, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business December 2, 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, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marchetta Carmicle or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to Medicaid eligibility income standards except for Medicaid eligibility categories for which the modified adjusted gross income standard is the income standard.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to Medicaid eligibility income standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the intent of the authorizing statutes by establishing provisions related to Medicaid eligibility income standards.

(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 provisions related to Medicaid eligibility income 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: This amendment establishes that the income standards in this administrative regulation do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income (or MAGI) as the income standard or to former foster care individuals who aged out of foster care while receiving Medicaid coverage. Additionally, it contains an amendment which allows for a MAGI definition. It also establishes that FPL cost-of-living adjustment (COLA) cause ineligibility for Medicaid benefits; clarifies how individual retirement account (IRA) withdrawals/disbursements are treated; deletes the definitions; and contains language and formatting revisions to comply with KRS Chapter 13A standards. Early IRA withdrawals (meaning withdrawals made before an individual can withdraw funds without being penalized) are treated as lump sum income for the month in which the individual withdrew the money, while income from an IRA withdrawal made after the individual has reached the age where no penalty exists for the withdrawal will be prorated over the period of time the withdrawal covers [quarterly - prorated over three (3) months - or annually - over twelve (12) months - for example.] Individuals for whom a MAGI is the Medicaid income eligibility standard are children under nineteen (19) years except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women (including through day sixty (60) of the postpartum period) with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and some children with income up to 150 percent of the federal poverty level.

(b) The necessity of the amendment to this administrative regulation: Exempting the MAGI population and former foster care individuals from the income standards in this administrative regulation is necessary to comply with an Affordable Care Act mandate. The Affordable Care Act mandate (which establishes a MAGI income eligibility standard for certain individuals and bars the historical Medicaid income standards from being applied to the MAGI population and bars the use of any income standard to the former foster care population. The Social Security/railroad retirement/FPL COLA amendment is necessary to restore Medicaid eligibility for individuals adversely affected by their Social Security/Railroad Retirement COLA exceeding the federal poverty level COLA. Deleting the definitions is necessary as DMS is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations. The IRA withdrawal/disbursement amendment is necessary to clarify existing policy.

(c) How the amendment conforms to the content of the authorizing statutes: The MAGI and former foster care group exemptions conform to the content of the authorizing statutes by complying with Affordable Care Act mandates. The Social Security/railroad retirement/FPL COLA amendment conforms to the content of KRS 194A.050(1) by protecting individuals from losing Medicaid coverage as a result of a Social Security or Railroad Retirement COLA exceeding the federal poverty level COLA.

(d) How the amendment will assist in the effective administration of the statutes: The MAGI and former foster care group exemptions will assist in the effective administration of the authorizing statutes by complying with Affordable Care Act mandates. The Social Security/railroad retirement COLA amendment will assist in the effective administration of KRS 194A.050(1) by protecting individuals from losing Medicaid coverage as a result of a Social Security or Railroad Retirement COLA exceeding the federal poverty level COLA. Deleting the definitions is necessary as DMS is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations. The IRA withdrawal/disbursement amendment is necessary to clarify existing policy.

(e) How the amendment affects Medicaid recipients and other individuals, businesses, organizations, or state and local government affected by this administrative regulation: The following will be affected by the amendment: Medicaid recipients who would have lost eligibility without the amending regarding the cost-of-living adjustment and individuals previously ineligible for Medicaid but who gained eligibility due to the income and resources requirements in this administrative regulation not applying to them. Additionally, the cost-of-living amendments preserve eligibility for anyone now or in the future (indeterminable) who would have lost eligibility. Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates
that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No actions are required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Those that are exempt from the existing Medicaid income standards will benefit from having standardized (nationwide) and simplified income eligibility standard or no income standard. This will also help lower administrative costs associated with determining eligibility for individuals.

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

(a) Also applies here

(b) On a continuing basis: The answer provided in paragraph (a) also applies here

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Source of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is only applied in that the requirements are not applied.

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 agency (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government agency (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard or former foster care individuals as the Affordable Care Act prohibits this.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all 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 and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall 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."

3. Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state’s Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations exempted from the new requirements (and to whom the old requirements continue to apply) include aged individuals [individuals over sixty-five (65) years of age or who receive Social Security Disability Insurance; individuals eligible for Medicaid as a result of being a child in foster care; individuals who are blind or disabled; individuals who are eligible for Medicaid via another program; individuals enrolled in a Medicare savings program; and medically needy individuals. Also, states are prohibited from continuing to use income disregards, asset tests, or resource tests for individuals who are eligible via the modified adjusted gross income standard. States are also required to create and adopt an income threshold (under the modified adjusted gross income) that ensures that individuals who were eligible for Medicaid benefits prior to January 1, 2014 (the date that the modified adjusted gross income standard is adopted) do not lose Medicaid coverage due to the modified adjusted gross income standard taking effect.

42 U.S.C. 1396a(gg)(2) requires state Medicaid programs to continue (not eliminate or reduce) eligibility standards for individuals under nineteen (19) until October 1, 2019. This provision is known as a "maintenance of effort" provisions and the Centers for Medicare and Medicaid Services (CMS) has also provided guidance establishing the same maintenance of effort requirement for pregnant women.

42 U.S.C. 1396a(a)(10)(A)(i)(IX) creates the new eligibility group comprised of former foster care individuals and bars the application of certain existing Medicaid eligibility requirements to this population.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment to this administrative regulation.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government agency (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government agency (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the MAGI individuals from the income standards in this administrative regulation nor from exempting the former foster care individuals from the standards.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the MAGI individuals from the income standards in this administrative regulation nor from exempting the
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)


NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds for the provision of medical assistance to Kentucky's indigent citizens. This administrative regulation establishes the resource standards for determining eligibility for Medicaid benefits.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or has a disability.
(2) "Department" means the Department for Medicaid Services or its designee.
(3) "Homestead" means property which an individual:
   (a) Has an ownership interest in; and
   (b) Uses as his or her principal place of residence.
(4) "Individual development account" means an account containing funds for the purpose of continuing education, purchasing a first home, business capitalization, or other purposes allowed by federal regulations or clarifications which meets the criteria established in 907 KAR 2:025.
(5) "KCTAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:
   (a) Death;
   (b) Continued voluntary or involuntary absence;
   (c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or
   (d) Unemployment of one (1) parent if both parents are in the home.
(6) "Liquid resource" means cash, savings accounts, checking accounts, money market accounts, certificates of deposit, bonds and stocks.
(7) "Long-term care partnership insurance" is defined by KRS 304.14-640(4).
(8) "Long-term care partnership insurance policy" means a policy meeting the requirements established in KRS 304.14-642(2).
(9) "Medicaid works individual" means an individual who:
   (a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B) would be considered to be receiving supplemental security income;
   (b) Is at least sixteen (16), but less than sixty-five (65), years of age;
   (c) Is engaged in active employment verifiable with:
      1. Paycheck stubs;
      2. Tax returns;
      3. 1099 forms; or
      4. Proof of quarterly estimated tax;
   (d) Meets the income standards established in 907 KAR 1:640;
   (e) Meets the resource standards established in this administrative regulation.
(10) "Permanent institutionalization" means residing in a nursing facility or intermediate care facility for the mentally retarded and developmentally disabled for six (6) months or more.
(11) "Poverty level guidelines" means the poverty income guidelines updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).
(12) "Real property" means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.
(13) "Resources" mean cash, money, and other personal property or real property that:
   (a) An individual:
      1. Owns; and
      2. Has the right, authority, or power to convert to cash; and
   (b) Is not legally restricted for support and maintenance.
(14) "SSI" means the Social Security Administration Program called supplemental security income.

Section 2. Resource Limitations. (1) For an individual whose Medicaid eligibility is determined using a resource standard the medically needy as established in 907 KAR 1:011, the upper limit for resources for a family size of:
   (a) One (1) and for a family size of two (2) shall be $2,000; or
   (b) Two (2) shall be $4,000 (respectively, with fifty (50) dollars added for each additional member.
   (2) For a pregnant woman or a child meeting the following criteria, resources shall be disregarded for:
      (a) A child under age one (1);
      (b) A child who is at least age one (1) but under age six (6);
      (c) A child who is at least age six (6) but under age nineteen (19) who is eligible under federal poverty level guidelines; or
      (d) A targeted low income child, as defined in 42 U.S.C. 1397j(b), from birth to age nineteen (19).
(3) For a qualified disabled and working individual (Medicare beneficiary), specified low-income Medicare beneficiary, qualified working disabled individual, or a Medicare qualified individual, resources shall be limited to the low income subsidy limits established by the Centers for Medicare and Medicaid Services pursuant to 42 U.S.C. 1395w-14(a)(3)(D)[twice the allowable amount for the SSI program].
(4) For a qualified Medicare beneficiary, a specified low-income Medicare beneficiary, or a Medicare qualified individual group 1(OI-1), resources shall be limited to three (3) times the allowable amount for the SSI program.
(5) Resources shall be limited to the amounts allowed in the SSI program for:
   (a) A pass-through recipient, as established in 907 KAR 20:005.
   (b) A person with hemophilia who received a settlement in a class action lawsuit as described in 907 KAR 20:005(1:011) or
   (c) A child who lost supplemental security income eligibility due to the change in definition of childhood disability as established in 907 KAR 20:005(1:011), resources shall be limited to the allowable amounts for the SSI Program.
(6) For an AFDC-related Medicaid case, the resource limit shall be $1,000.
(7) In accordance with 42 U.S.C. 1396p, an individual shall not be eligible for Medicaid nursing facility services or other Medicaid long-term care services if the individual's equity interest in his or her home exceeds the amount established in 42 U.S.C. 1396p(4)=$500,000 unless:
   (a) The individual has a spouse who is lawfully residing in the individual's home;
   (b) The individual has a child under the age of twenty-one (21) who is lawfully residing in the individual's home;
   (c) The individual has a child of any age who is blind or permanently and totally disabled who is lawfully residing in the individual's home.

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There shall be no resource test or standard for:
(a) An individual for whom a modified adjusted gross income is the Medicaid eligibility standard; or
(b) An individual between the ages of nineteen (19) and twenty-six (26) years who:
1. Formerly was in foster care; and
2. Aged out of foster care while receiving Medicaid coverage.

Section 2 Resource Exclusions. (1)(a) A homestead, household or personal effects, or farm equipment shall be excluded from consideration without limitation on value.

(b) After permanent institutionalization, property shall cease to be a homestead unless:
1. A spouse or other dependent family member continues to reside there; or
2. A signed statement verifies that the permanently-institutionalized individual intends to return to the homestead.

(c) The signed statement shall:
1. Be signed by:
   a. The permanently-institutionalized individual;
   b. A representative payee;
   c. A person who has power of attorney for the individual;
   d. The individual’s guardian; or
   e. Another legal representative; and
2. Be renewed annually.[b. Require annual renewal.]

(2) For an adult Medicaid case or a Medicaid works individual:
(a)1. Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, shall be excluded from consideration.
2. The value of property, including the tools of a tradesperson or the machinery or livestock of a farmer, shall be excluded from consideration as a resource if the property:
   a. Is essential for self-support for the individual or spouse, or family group in the instance of a family with a child; and
   b. Is used in a trade or business or by the individual or member of the family group as an employee.
(b) Except as provided in paragraph (c) of this subsection, equity of $4,500 in automobiles shall be excluded from consideration.

(c) If an automobile is used as a home, for employment, to obtain medical treatment of a specific or regular medical problem, or is specially equipped for use by an individual with a disability, the total value of the automobile shall be excluded from consideration.

(d) A payment or benefit from a federal statutory program, other than an SSI benefit, shall be excluded from consideration as a resource if precluded from consideration in an SSI determination of eligibility by the specific terms of the statute.

(3) For an ABD Medicaid case:
(a) Real property or nonreal property shall be excluded from consideration if it can be demonstrated the individual is making a reasonable effort to sell the property at fair market value or for other valuable consideration.

(b)1. Property which previously was a homestead shall no longer be considered a homestead at the point an individual becomes permanently institutionalized.

2. a. Non-homestead property[,] which was previously the homestead property of a permanently institutionalized individual shall be excluded for six (6) months if there is a verified effort to sell the property at fair market value.
   b. If a party on behalf of the permanently institutionalized individual demonstrates to the department, every six (6) months subsequent to the initial six (6) month period, a continuing effort to sell the property referenced in clause (a) of this subparagraph at fair market value, the department shall continue to exclude the property from resource consideration. Additional time to sell the property may be allowed, on a case-by-case basis, if it can be demonstrated that a reasonable effort to sell the property at fair market value within the specified time frame has failed.

3. Reasonable effort to sell the property shall consist of:
   a. Listing the property with a real estate agent if the agent:
      (1)[4.] Places a “For Sale” sign on the property which is clearly visible from the nearest public road; and
      (2) Advertises the property in the local newspaper, on local television or radio station, or the internet.
   b. A combination of at least two (2) of the following actions:
      (1) Advertising the property in the local newspaper or on local television or radio stations;
      (2) Placing a “For Sale” sign on the property which is clearly visible from the nearest public road;
      (3) Distributing flyers advertising the property for sale;
      (4) Posting notices regarding availability of the property on community bulletin boards; or
      (5) Showing the property to interested parties on a continuing basis.
   c. Proceeds from the sale of a home shall be excluded from consideration for three (3) months from the date of receipt if used to purchase another home.

(d) For an AFDC-related Medicaid case, $1,000 in resources shall be excluded from consideration.

(5) A burial reserve of up to $1,500 per individual, which may be in the form of a burial agreement, prepaid burial or similar arrangement, trust fund, life insurance policy, savings account, checking account, or other identifiable fund, shall be excluded from consideration.

(a) For an adult Medicaid case, the cash surrender value of life insurance shall be considered if determining the total value of burial reserves.

(b) If a burial fund is commingled with another fund, the applicant shall have thirty (30) days to separately identify the burial reserve amount.

(c) Interest or other appreciation of value of an excluded burial reserve or space shall be excluded as a resource if the amount is left to accumulate as a part of the burial reserve or space.

(6) A burial trust, burial space, plot, vault, crypt, mausoleum, urn, casket, or other repository which is customarily and traditionally used for the remains of a deceased person shall be excluded from consideration as a countable resource without regard to value.

(7) Resources of an individual who is blind or has a disability shall be excluded if the resources are included in an approved plan for achieving self-support (PASS).

(8) An individual development account up to a total of $5,000, excluding interest accruing, shall be excluded from consideration as a resource.

(9) Disaster relief assistance shall be excluded from consideration.

(10) Cash in-kind replacement or return of an excluded resource shall be excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(11) A life interest that a Medicaid applicant or recipient has in real estate or other property shall be excluded from consideration as an available resource.

(12) Real property other than the homestead shall be excluded from consideration if:

(a) The property is jointly owned and its sale would cause loss of housing for the other owner or owners;
(b) Its sale is barred by a legal impediment; or
(c) The owner’s reasonable efforts to sell by informing the public of his intention to sell the property at fair market value have been unsuccessful.

(13) A cash payment intended specifically to enable an applicant or recipient to pay for a medical or social service shall not be considered as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it shall be considered a resource.

(14) An amount received which is a result of an underpayment or a retroactive payment of benefits from Retirement, Survivors, and Disability Insurance (RSDI)-benefits or
Section 3.[4] Resource Exemptions. (1) A resource which is exempted from consideration for purposes of computing eligibility for SSI shall be excluded from consideration by the department.

(2) For an AFDC-related or a family-related Medicaid case, all nonliquid resources shall be excluded.

(3) Resources excluded from consideration during a long-term care eligibility application process and subsequently protected from estate recovery due to payments rendered by a long-term care partnership insurance policy shall:

(a) Be issued on or after the effective date of this administrative regulation; and

(b) Be approved by the Department of Insurance as a long-term care insurance policy in accordance with KRS 304.14-120, 304.14-640, 304.642, 806 KAR 14:007, 806 KAR 17:081, and 806 KAR 17:083.

(4) The exclusion referenced in subsection (2) of this section shall be based on a one (1) dollar for one (1) dollar amount of benefits paid as a direct reimbursement to providers for long-term care expenses or benefits paid on a per diem basis issued directly to the individual.

(5) In accordance with 42 U.S.C. 1396a(r)(2), an individual shall not have to exhaust the benefits of the policy prior to applying for assistance through the department.

(a) This exclusion shall be limited to the amount paid to the applicant or on behalf of the applicant at the time beginning with the month of application for Medicaid benefits.

(b) An applicant shall identify the resources to be excluded to the benefit received from the policy when applying for long-term care services through the department.

(c) This exclusion shall not impact an applicant's eligibility for payment for nursing facility services or other long-term care services if the individual's equity interest in the individual's home property exceeds the limits established in 42 U.S.C. 1396p(f) and in Section 1(5)(2)(b) of this administrative regulation.

Section 4. Not Applicable to Individuals Whose Eligibility Is Determined Using a Modified Adjusted Gross Income. (1) Resources shall not be considered for eligibility purposes for an individual:

(a) For whom a modified adjusted gross income is the Medicaid eligibility standard; or

(b) Between the ages of nineteen (19) and twenty-six (26) years old who:

1. Formerly was in foster care; and

2. Aged out of foster care while receiving Medicaid coverage.

(2) An individual whose Medicaid eligibility is determined using a modified adjusted gross income as the eligibility standard shall be an individual who is:

(a) A child under the age of nineteen (19) years, excluding children in foster care;

(b) A caretaker relative with income up to 133 percent of the federal poverty level;

(c) A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;

(d) An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:

1. Does not have a dependent child under the age of nineteen (19) years; and

2. Is not otherwise eligible for Medicaid benefits; or

(e) A targeted low income child with income up to 150 percent of the federal poverty level.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Marchetta Carmicle or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid eligibility provisions regarding resource standards.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid eligibility provisions regarding resource standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid eligibility provisions regarding resource standards.

(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 eliminating Medicaid eligibility provisions regarding resource standards.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies that the resource requirements do not apply to individuals

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whose Medicaid eligibility is determined using a modified adjusted gross income (MAGI) standard as the eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. Also, the definitions are deleted and there are language and formatting changes to comply with KRS Chapter 13A requirements and standards. Individuals for whom a MAGI is the Medicaid income eligibility standard are children under nineteen (19) – except for children in foster care; caretakers relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level.

(b) The necessity of the amendment to this administrative regulation: The amendments exempting the MAGI population and former foster care individuals are necessary to comply with Affordable Care Act mandates. Deleting the definitions is necessary as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation for Chapter 20—the new chapter which will house Medicaid eligibility administrative regulations. Language and formatting revisions are necessary to comply with KRS Chapter 13A requirements and standards.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the Affordable Care Act by establishing that resource requirements do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income as the Medicaid eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the Affordable Care Act by establishing that resource requirements do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income as the Medicaid eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.

(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. Individuals who wish to be eligible for Medicaid benefits will continue to need to comply with the Medicaid resource requirements except for individuals whose Medicaid eligibility will be determined using a modified adjusted gross income as the Medicaid eligibility standard.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Those in the MAGI group or former foster care group will benefit by being exempt from the Medicaid resource standards.

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

(a) Initially: DMS anticipates no cost as a result of exempting the MAGI individuals or former foster care individuals from the requirements in this administrative regulation.

(b) On a continuing basis: The answer provided in paragraph (a) also applies here.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XXI of the Social Security Act and state matching funds of general and agency appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is only applied in that the provisions do not apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or to former foster care individuals as the Affordable Care Act prohibits tiering.

FEDERAL MANDATE ANALYSIS COMPARISON


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

3. Minimum or uniform standards contained in the federal mandate. The federal law prohibits the application of a resource test to the MAGI population or to the former foster care population.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. It does not impose stricter, additional, or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 20:030. Trust and transferred resource requirements for Medicaid.

RELATES TO: KRS 205.520, 205.619, 205.6322, 304.14-640, 304.14-642, 42 U.S.C. 1396p(b)-1


NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family 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 for the provisions of medical assistance to Kentucky's indigent citizenry. KRS 205.6322 requires the cabinet to promulgate administrative regulations to prohibit the sheltering of assets in medical assistance long-term care cases. This administrative regulation establishes trust and transferred resource requirements for Medicaid eligibility determinations for individuals for whom resources are considered for Medicaid eligibility purposes.

Section 1.[Definitions. (1) "Baseline date" means the date the institutionalized individual was institutionalized and applied for Medicaid. (2) "Cabinet" means the Cabinet for Health and Family Services. (3) "Fair market value" means an estimate of the value of an asset if sold at the prevailing price at the time it was actually transferred. (4) "Income" means money received from: (a) Statutory benefits, for example, Social Security, Veterans Administration pension, black lung benefits, or railroad retirement benefits; (b) Pension plans; (c) Rental property; (d) Investments; or (e) Wages for labor or services. (5) "Institutionalized individual" means an individual with respect to whom payment is based on a level of care provided in a nursing facility (NF) who is: (a) An inpatient in: 1. A nursing facility (NF); 2. An intermediate care facility for individuals with an intellectual disability (ICF IID); or 3. A medical institution. (b) Receiving home and community based services (HCBS). (6) "Long-term care partnership insurance" is defined by KRS 304.14-640(4). (7) "Long-term care partnership insurance policy" means a policy meeting the requirements established in KRS 304.14-642(2). (8) "Qualifying Income Trust" or "QIT" means an irrevocable trust established for the benefit of an identified individual in accordance with 42 U.S.C. 1396p(d)(4)(B). (9) "Resources" mean money and other personal property or real property that an institutionalized individual or institutionalized individual's spouse: (a) Owns; (b) Has the right, authority or power to convert to cash; and (c) is not legally restricted from using for support and maintenance. (10) "Transferred resource factor" means an amount that is: (a) Equal to the average monthly cost of nursing facility services in the state at the time of application. The average monthly cost shall be the average of the private pay rates for semi-private rooms of all Medicaid-participating nursing facilities; and (b) Adjusted annually. (11) "Trust" means a legal instrument or agreement valid under Kentucky state law in which (a) A grantor transfers property to a trustee or trustees with the intention that it be held, managed, or administered by the trustee or trustees for the benefit of the grantor or certain designated individuals or beneficiaries; and (b) A trustee holds a fiduciary responsibility to manage the trust's corpus and income for the benefit of the beneficiaries. (12) "Uncompensated value" means the difference between the fair market value at the time of transfer, less any outstanding loans, mortgages, or other encumbrances on the asset, and the amount received for the asset.]

Section 2.[Transferred Resources. (1) Transfer of resources on or before August 10, 1993. (a) If an institutionalized individual applies for Medicaid, a period of ineligibility shall be computed if during the thirty (30) month period immediately preceding the application, but on or before August 10, 1993, the individual or the spouse disposed of property for less than fair market value. (b) The period of ineligibility shall begin with the month of the transfer and shall be equal to the lesser of: 1. Thirty (30) months; or 2. The number of months derived by dividing the total uncompensated value of the resources transferred by the transferred resource factor at the time of the application. (2) Transfer of resources after August 10, 1993 and before February 8, 2006. (a) If an institutionalized individual applies for Medicaid, a period of ineligibility for NF services, ICF IID services, or 1915(c) home and community based services[or ICF MR-DD services, or HCBS] shall be computed if: 1. During the thirty-six (36) month period immediately preceding the baseline date, but after August 10, 1993, and before March 9, 2007, assets were transferred; or 2. During the sixty (60) month period immediately preceding the baseline date, but after August 10, 1993, and before March 9, 2007, a trust was created whereby the individual or the spouse disposed of property for less than fair market value. (b) The period of ineligibility shall: 1. Begin with the month of the transfer; and 2. Be equal to the number of months derived by dividing the total uncompensated value of the resources transferred by the transferred resource factor at the time of the application. (3) Transfer of resources on or after February 8, 2006. (a) If an institutionalized individual applies for Medicaid, a period of ineligibility for NF services, ICF IID services, or 1915(c) home and community based services[or ICF MR-DD services, or HCBS] shall be computed if: 1. During the sixty (60) month period immediately preceding the baseline date, but on or after February 8, 2006, assets were transferred; or 2. During the sixty (60) month period immediately preceding the baseline date, but on or after February 8, 2006, a trust was created whereby the individual or the spouse disposed of property for less than fair market value. (b) The period of ineligibility shall: 1. Begin with the month of Medicaid eligibility for NF services, ICF IID services, or home and community based services[or ICF...]

year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the resource standards in this administrative regulation nor from exempting former foster care individuals from the standards. 

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the MAGI individuals from the resource standards in this administrative regulation nor from exempting the former foster care individuals from the standards. 

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:
a. Does not provide substantially equal monthly payments; and
b. Has a balloon or deferred payment of principal or interest.

Payments shall be considered substantially equal if the total annual payment in any year varies by five (5) percent or less from the payment in the previous year.

(11) The policies in this subsection shall apply regarding the transfer of home property.

(a) Transfer of home property to an individual listed in this paragraph (b) of this subsection shall not constitute a transfer of resources for less than fair market value.

(b) Home property may be transferred to:

1. The spouse;
2. A child who is:
   a. Under age twenty-one (21); or
   b. Blind or disabled;
3. A sibling who has:
   a. An equity interest in the home and lived with the institutionalized individual for one (1) year prior to institutionalization; or
   b. A child who:
      i. Resided with the institutionalized individual for two (2) years prior to institutionalization; and
      ii. Provided care to the individual to prevent institutionalization.

c([b]) Transfer of home property to any individual not listed in paragraph (b) of this subsection shall constitute a transfer of resources for less than fair market value.

(12)(a) For multiple or incremental transfers prior to February 8, 2006, the ineligibility periods shall accrue and run consecutively beginning with the month of the initial transfer.

(b) For multiple or incremental transfers made on or after February 8, 2006, the ineligibility period shall begin with the month of Medicaid eligibility for NF services, ICF IID services, or 1915(c) home and community based services or HCBS.

(13) An individual shall not be ineligible for Medicaid or an institutional type of service:

(a) By virtue of subsections (1) to (10) of this section to the extent that the conditions specified in 42 U.S.C. 1396p(c)(2)(B), (C), and (D) or 907 KAR 20:035 are met; or

(b) Due to transfer of resources for less than fair market value except in accordance with this section.

(14)[Disposal of a resource.]

(a) The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual:

1. Shows the transfer was in accordance with 42 U.S.C. 1396p(c)(2)(B) or (C); or
2. Presents convincing evidence that the disposal was exclusively for some other purpose.

(b) The value of the transferred resource shall be disregarded:

1. The transfer is in accordance with 42 U.S.C. 1396p(c)(2)(B) or (C); or
2. A beneficiary in the second position after the community spouse or a minor or disabled child; and
b. A beneficiary in the first position if the community spouse or a representative of the child disposes of any remainder for less than fair market value.

(10) The purchase of an annuity shall be considered a transfer of resources if:

(a) The expected return on the annuity is commensurate with the life expectancy of the beneficiary, the annuity shall be:
   1. Actuarially sound; and
   2. [shall] Not be considered a transfer of resources for less than fair market value.

(b) In accordance with 42 U.S.C. 1396p(c)(1)(F), the purchase of an annuity occurring on or after February 8, 2006 shall be treated as the disposal of assets for less than fair market value unless the cabinet is named:

1. As the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant; or
2. A. A beneficiary in the second position after the community spouse or a minor or disabled child; and
   b. A beneficiary in the first position if the community spouse or a representative of the child disposes of any remainder for less than fair market value.

(15) After determining that the purpose of a transfer was to become or remain Medicaid eligible, the cabinet shall add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility.

For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if nonhomestead property was transferred, the uncompensated equity value of the transferred property shall be counted against the permissible amount for nonhomestead property.
(b) If retention of the resource would not have resulted in ineligibility, the value of the transferred resource shall be disregarded.

(c) If retention would result in ineligibility, the cabinet shall compute a period of ineligibility for Medicaid or an institutional type of service as provided for in subsections (1) to (10) of this section.

(16)(a) Uncompensated value shall be excluded from consideration if good cause or undue hardship exists.

(b) A waiver of consideration of the uncompensated amount shall be granted subject to the criteria established in this subsection.

(c)(a) Good cause shall be determined to exist if an expense or loss was incurred by the individual or family group due to:

1. A natural disaster, for example fire, flood, storm, or earthquake;
2. Illness resulting from accident or disease;
3. Hospitalization or death of a member of the immediate family;
4. Civil disorder or other disruption resulting in vandalism, home explosions, or theft of essential household items.

(d) An undue hardship shall be determined to exist if:

1. Application of transferred resource penalties deprive an individual of:
   a. Medical care which shall result in an endangerment to the individual's health or life; or
   b. Food, clothing, shelter, or other necessities of life; or
2. The cabinet determines that:
   a. The transfer of resources is not recoverable;
   b. The transfer of resources was not intended by the applicant to result in Medicaid coverage;
   c. The transfer of resources was made in circumstances beyond the applicant's control; or
   d. The applicant would be unable to receive necessary medical care unless an undue hardship exemption is granted.

(e) The exclusions shall not exceed the amount of the incurred expense or loss.

2. The amount of the uncompensated value to be excluded shall not include any amount which is payable by Medicaid, Medicare, or other insurance.

(f) If an institutionalized individual is subject to a period of ineligibility because the individual or individual's spouse disposed of property, assets, or resources for less than fair market value, the cabinet shall notify the individual in writing and include an explanation of:

1. The criteria upon which an undue hardship waiver may be granted;
2. The process for seeking an undue hardship waiver; and
3. How to appeal an adverse action in accordance with Section 5 of this administrative regulation.

(g) Upon consent of the institutionalized individual or individual's personal representative, the facility in which the individual resides may:

1. Request an undue hardship waiver on behalf of the institutionalized individual;
2. Present information to the cabinet regarding the institutionalized individual's case; and
3. File an appeal in accordance with Section 4[5] of this administrative regulation on behalf of the institutionalized individual if the cabinet denies the facility's request for an undue hardship waiver.

(h) If the cabinet suspends or terminates a recipient's eligibility because the cabinet discovers that the recipient or recipient's spouse transferred resources for less than fair market value and an undue hardship waiver is requested on behalf of the recipient, the cabinet shall provide payments for nursing facility services in order to hold the bed at the facility for up to, but not more than, thirty (30) days from the date of suspension or termination.

(i) If the cabinet decides in favor of a recipient's request for an undue hardship waiver and reverses its previous decision to suspend or terminate eligibility, the cabinet shall cover the recipient's nursing facility services at the facility's full rate for the period the individual is eligible under the undue hardship waiver.

(j) Disclaiming of an inheritance by an individual entitled to the inheritance shall be considered a transfer of resources.

Section 2[4]: Treatment of Resources for a Long-Term Care Applicant who has Long-Term Care Partnership Insurance.

1. The amount of benefits paid by the long-term care partnership insurance policy as a direct reimbursement to providers for long-term care expenses or benefits paid on a per diem basis issued directly to the individual shall be used during the eligibility determination process to determine the amount of resources the applicant shall have excluded from the eligibility determination and protected from estate recovery in accordance with 907 KAR 20:025[907 KAR 1:645].

2. If an applicant disposed of a resource for less than fair market value resulting in a transfer penalty, the applicant may choose to apply the allowable exclusion, dollar-for-dollar, to the transferred resources for the purpose of avoiding a penalty.

Section 3[4]: Treatment of Trusts. (1) Regarding a Medicaid qualifying trust created on or before August 10, 1993, if an individual, or the spouse for the individual's benefit, creates, other than by will, a trust or similar legal device with amounts payable to the same individual, the trust shall be considered a "Medicaid qualifying trust" if the trustee of the trust is permitted to exercise discretion as to the amount of the payments from the trust to be paid to the individual.

(a) Except as provided by paragraph (b) of this subsection, the amount considered available to the trust beneficiary shall be the maximum amount the trustee may, using the trustee's discretion, pay in accordance with the terms of the trust, regardless of the amount actually paid.

(b) The cabinet may consider as available only that amount actually paid if to do otherwise would create an undue hardship upon the individual in accordance with Section 1(16)(d)(2)(b) of this administrative regulation.

(2) For purposes of determining eligibility in accordance with Section 1(16)(a) to (10) of this administrative regulation regarding trust agreements, the rules provided for under 42 U.S.C. 1396p(d)(3) shall be met and shall apply to a trust created after August 10, 1993 and established by an individual subject to 42 U.S.C. 1396p(d)(4).

(a) An individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the individuals described under 42 U.S.C. 1396p(d)(2)(A)(i), (ii), (iii), and (iv) established the trust other than by will.

(b) If the corpus of a trust includes income or resources of any other person or persons, the trust rules shall apply to the portion of the trust attributable to the income or resources of the individual.

2. In determining countable income and resources, income and resources shall be prorated based on the proportion of the individual's share of income or resources.

(c) Subject to 42 U.S.C. 1396p(d)(4), the trust provisions in 42 U.S.C. 1396p(d) shall be applied in a manner consistent with 42 U.S.C. 1396p(d)(2)(C).

(d) Payments made from revocable or irrevocable trusts to or on behalf of an individual shall be considered as income to the individual with the exception of payments for medical costs.

2. Payments for medical care or medical expenses shall be excluded as income.

(e) A trust which is considered to be irrevocable and terminates if action is taken by the grantor shall be considered a revocable trust.

(f) An irrevocable trust which may be modified or terminated by a court shall be considered a revocable trust.

(g) Payment from a revocable or irrevocable trust may be made under any circumstance, the amount of the full payment that could be made shall be considered as a resource including amounts that may be disbursed in the distant future.

(h) Placement of an excluded resource into an irrevocable trust shall not change the excluded nature of the resource.

(i) Placement of a countable resource into an irrevocable trust
shall constitute a transfer of resources for less than fair market value.

(3) The treatment of trusts established in this section of this administrative regulation shall be waived if undue hardship criteria is met as established in Section 1(15)(b)(2)(15)(b) of this administrative regulation.

(4) Regarding subsection (1), (2), or (3) of this section, for trusts created on or prior to August 10, 1993, any resources transferred into a previously established trust after August 10, 1993 shall be considered a transfer of resources and subject to an ineligibility period as provided for under Section 1(2) of this administrative regulation using the thirty-six (36) month transfer rules.

(5) An individual may create a qualifying income trust, in accordance with this subsection, to establish financial eligibility for Medicaid:

(a) A transfer of resources shall not apply to a qualifying income trust if:
1. The trust is established in Kentucky for the benefit of an individual;
2. The trust is composed solely of the income of the individual, including accumulated interest in the trust;
3. Upon the death of the individual, the department receives all amounts remaining in the trust, up to an amount equal to the total medical assistance paid on behalf of the individual by Medicaid; and
4. The trust is irrevocable.

(b) The money in a qualifying income trust shall:
1. Be maintained in a separate account; and
2. Not be commingled with any other checking or savings account.

(c) The corpus of a qualifying income trust and interest generated by the trust shall not be counted as available income for an individual for the determination of Medicaid eligibility.

(d) A qualifying income trust shall state that the funds may only be used for:
1. Valid medical expenses, including patient liability; or
2. The community spouse income allowance established in accordance with 907 KAR 20:035.

(e) All expenditures from a qualifying income trust shall require verification by the department that the expenditures are allowable expenditures.

(f) Allowable payments from a qualifying income trust shall be made:
1. Every month; or
2. By the end of the month following the month the funds were placed in the trust.

(g) If payments by the qualifying income trust are made for medical care, the individual shall be considered to have received fair market value for income placed in the trust.

Section 4. Applicability. (1)(a) The provisions and requirements established in this administrative regulation shall not apply to an individual:

1. Whose Medicaid eligibility is determined using the modified adjusted gross income standard; or
2. Between the ages of nineteen (19) and twenty-six (26) years who:
   a. Formerly was in foster care; and
   b. Aged out of foster care while receiving Medicaid coverage.
   (b) An individual whose Medicaid eligibility is determined using a modified adjusted gross income as the eligibility standard shall be an individual who is:
   a. A child under the age of nineteen (19) years, excluding children in foster care;
   b. A caretaker relative with income up to 133 percent of the federal poverty level; or
   c. A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;
   d. An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:
      1. Does not have a dependent child under the age of nineteen (19) years; and
      2. Is not otherwise eligible for Medicaid benefits; or
   e. A targeted low income child with income up to 150 percent of the federal poverty level.

Section 5. Appeal Rights. An appeal of a department decision regarding Medicaid eligibility of an individual based upon application of this administrative regulation shall be in accordance with 907 KAR 40:035.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2013 at 9:00 a.m. in the Health Services Auditorium, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business December 2, 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 S W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Marchetta Carmicle or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid provisions and requirements regarding trusts and transferred resources for Medicaid eligibility determinations except for individuals for whom the Medicaid eligibility standard is a modified adjusted gross income.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid provisions and requirements regarding trusts and transferred resources for Medicaid eligibility determinations except for individuals for whom the Medicaid eligibility standard is a modified adjusted gross income.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid provisions and requirements regarding trusts and transferred resources for Medicaid eligibility determinations except for individuals for whom the Medicaid eligibility standard is a modified adjusted gross income.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid provisions and requirements regarding trusts and transferred resources for
Medicaid eligibility determinations except for individuals for whom the Medicaid eligibility standard is a modified adjusted gross income.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that the provisions and requirements do not apply to individuals for whom the Medicaid eligibility standard is a modified adjusted gross income (or MAGI) or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. Individuals for whom a MAGI is the Medicaid income eligibility standard are children under nineteen (19)—except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level.

The amendment also deletes the definitions.

(b) The necessity of the amendment to this administrative regulation: The amendments exempting the MAGI population and former foster care individuals are necessary to comply with Affordable Care Act mandates. Deleting the definitions is necessary as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation for Chapter 20—the new chapter which will house Medicaid eligibility administrative regulations. Language and formatting revisions are necessary to comply with KRS Chapter 13A requirements and standards.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the Affordable Care Act by establishing that resource requirements do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income as the Medicaid eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the Affordable Care Act by establishing that resource requirements do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income as the Medicaid eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out of foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.

(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. Individuals who wish to be eligible for Medicaid benefits will continue to need to comply with the Medicaid resource requirements except for individuals whose Medicaid eligibility will be determined using a modified adjusted gross income as the Medicaid eligibility standard or former foster care individuals.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals whose income standard is a modified adjusted gross income or former foster care individuals will benefit due to being exempt from resource requirements.

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

(a) Initially. DMS anticipates no cost as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard or former foster care individuals from the trust and transferred resource requirements established in this administrative regulation.

(b) On a continuing basis: The response in paragraph (a) also applies here.

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

The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is only applied in that the definitions do not apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or to former foster care individuals as the Affordable Care Act prohibits this.

FEDERAL MANDATE ANALYSIS COMPARISON


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

3. Minimum or uniform standards contained in the federal mandate. The federal law prohibits the application of a resource test to the MAGI population or to the former foster care population.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. It does not impose stricter, additional, or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation: 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? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the trust and transferred resource requirements established in this administrative regulation nor from exempting former foster care individuals from the standards.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the trust and transferred resource requirements established in this administrative regulation nor from exempting former foster care individuals from the standards.

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 Policy and Operations
(Amendment)

907 KAR 20:035. Spousal impoverishment and nursing facility requirements for Medicaid.


NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family 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 [for the provision of medical assistance to Kentucky’s indigent citizens]. This administrative regulation establishes spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resources are considered for Medicaid eligibility purposes.

Section 1. Definitions. (1) "Assigned support right" means the assignment of the support right of an institutionalized individual to the state or Medicaid Program.

(2) "Community spouse" means the spouse of an institutionalized spouse, who remains at home in the community and is not living in a medical institution or nursing facility or participating in a home and community based services (HCBS) waiver program.

(3) "Community spouse maintenance standard" means the income standard to which a community spouse’s otherwise available income is compared for purposes of determining the amount of the allowance used in the posteligibility calculation.

(4) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home or both and may include thirty (30) consecutive days of receipt of HCBS or a combination of both.

(5) "Countable resources" means resources not subject to exclusion in the Medicaid Program.

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

(7) "Dependent child" means the couple’s child, including a child gained through adoption, who lives with the community spouse and is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(8) "Dependent parent" means a parent of either member of a couple who lives with the community spouse and is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(9) "Dependent sibling" means a brother or sister of either member of a couple, including a half brother, half sister or sibling gained through adoption, who resides with the community spouse and is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(10) "Excess shelter allowance" means an amount equal to the difference between the community spouse’s verified shelter expenses and the minimum shelter allowance.

(11) "Gross income" means nonexcluded income which would be used to determine eligibility prior to income disregards.

(12) "Income" means money received from statutory benefits (Social Security, Veterans Administration pension, black lung benefits, railroad retirement benefits), pension plans, rental property, investments or wages for labor or services.

(13) "Institutionalized individual" means an individual with respect to whom payment is based on a level of care provided in a nursing facility and who is:

(a) An inpatient in:
1. A nursing facility (NF);
2. An intermediate care facility for individuals with an intellectual disability (ICF-ID); or
3. A medical institution;
or
(b) Receiving home and community based services (HCBS).

(14) "Institutionalized spouse" means an institutionalized individual who is in a medical institution or nursing facility, participates in an HCBS waiver program and who:

(a) Has a spouse who is not an institutionalized individual; and
(b) Is likely to remain institutionalized for at least thirty (30) consecutive days while the community spouse remains out of a medical institution or nursing facility, or intermediate care facility for individuals with an intellectual disability.

(15) "Minimum shelter allowance" means an amount that is thirty (30) percent of the standard maintenance amount.

(16) "Minor" means the couple’s minor child who:

(a) Is under age twenty-one (21); or
(b) Lives with a community spouse; and
(c) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(17) "Monthly income allowance" means an amount:

(a) Deducted in the posteligibility calculation for maintenance needs of a community spouse or other family member; and
(b) Equal to the difference between a spouse’s and other family member’s income and the appropriate maintenance standards.

(18) "Monthly income allowance" means an amount that is thirty (30) percent of the standard maintenance amount.

(19) "Other family member" means a relative of either member of a couple who is:

(a) Minor or dependent child;
(b) Dependent parent; or
(c) Dependent sibling.

(20) "Otherwise available income" means income to which the community spouse has access and control, including gross income that would be used to determine eligibility under Medicaid without benefit of disregards for federal, state and local taxes; child support...
payments; or other court ordered obligation.
(2) "Resource assessment" means the assessment, at the
beginning of the first continuous period of institutionalization of the
institutionalized spouse upon request by either spouse, of the joint
resources of a couple if a member of the couple enters a medical
institution or nursing facility or becomes a participant in an HCBS
waiver program.

(25) "Resources" mean money and personal property or real
property that an institutionalized individual or institutionalized
individual's spouse:
(a) Owns;
(b) Has the right, authority or power to convert to cash; and
(c) Is not legally restricted from using for support and
maintenance.

(26) Significant financial duress" means a member of a couple
has established to the satisfaction of a hearing officer that the
community spouse needs income above the level permitted by the
community spouse maintenance standard to provide for medical,
remedial, or other support needs of the community spouse to
permit the community spouse to remain in the community.

(27) "Spousal protected resource amount" means resources
deducted from a couple's combined resources for the community
spouse in an eligibility determination for the institutionalized
spouse.

(28) "Spousal share" means one-half (1/2) of the amount of a
couple's combined countable resources, up to a maximum of
$60,000 to be increased for each calendar year in accordance with
42 U.S.C. 1396r-5(g).

(29) "Spouse" means a person legally married to an other
person.

(30) "Standard maintenance amount" means one
multiplied by 150 percent.

(31) "State spousal resource standard" means the
amount of a property that an institutionalized individual or insti-
tutionalized spouse upon request by either spouse, of the joint
resources of a couple if a member of the couple enters a medical
institution or nursing facility or becomes a participant in an HCBS
waiver program.

(3) "State law." Resources and computation of the spousal share.

1. The institutionalized spouse has assigned to the department
resources held by either the institutionalized spouse,
the community spouse, or both, shall be considered to be available to
the institutionalized spouse.

2. a. The spousal share which shall not exceed a maximum of
$60,000 to be increased for each calendar year in accordance with
42 U.S.C. 1396r-5(g); or
b. The state resource standard; and
2.a. If applicable, an additional amount transferred under a
court support order; or

3. The department determines that denial of eligi-
bility would work an undue hardship.

(c) The institutionalized spouse shall not be ineligible by reason of
resources determined under paragraphs (a) and (b) of this
subsection to be available for the cost of care in the following
circumstances:
1. The institutionalized spouse has assigned to the department
his right to support from the community spouse;
2.a. The institutionalized spouse lacks the ability to execute an
assignment due to physical or mental impairment; and
b. The state has the right to bring a support proceeding against
a community spouse without the assignment; or
3. The department determines that denial of eligibility would
work an undue hardship.

(d) After eligibility for benefits is established for the individual:
1. During the continuous period in which an institutionalized
spouse is in an institution and after the month in which an
institutionalized spouse is determined to be eligible for a Medicaid
benefit, the resources of the community spouse shall not be
deemed available to the institutionalized spouse; and

2. Resources of the institutionalized spouse protected for the
needs of the community spouse shall be considered available to
the institutionalized spouse if the resources are not transferred to
the community spouse within six (6) months of the initial eligibility
determination.

(e) The equity value of an automobile in excess of the limits
established by 907 KAR 20:025(1:645) shall not be included as a
countable resource.

(3) The provisions established in this subsection shall apply
with regard to protecting income for all community spouses.

(3) "State law." Resources and computation of the spousal share.

1. The institutionalized spouse has assigned to the department
resources held by either the institutionalized spouse,
the community spouse, or both, shall be considered to be available to
the institutionalized spouse.

2. a. The spousal share which shall not exceed a maximum of
$60,000 to be increased for each calendar year in accordance with
42 U.S.C. 1396r-5(g); or

2. a. If applicable, an additional amount transferred under a
court support order; or
b. The state resource standard; and

2. a. If applicable, an additional amount designated by a hearing
officer.

(c) The institutionalized spouse shall not be ineligible by reason of
resources determined under paragraphs (a) and (b) of this
subsection to be available for the cost of care in the following
circumstances:
1. The institutionalized spouse has assigned to the department
his right to support from the community spouse;
2.a. The institutionalized spouse lacks the ability to execute an
assignment due to physical or mental impairment; and
b. The state has the right to bring a support proceeding against
a community spouse without the assignment; or
3. The department determines that denial of eligibility would
work an undue hardship.

(d) After eligibility for benefits is established for the individual:
1. During the continuous period in which an institutionalized
spouse is in an institution and after the month in which an
institutionalized spouse is determined to be eligible for a Medicaid
benefit, the resources of the community spouse shall not be
deemed available to the institutionalized spouse; and

2. Resources of the institutionalized spouse protected for the
needs of the community spouse shall be considered available to
the institutionalized spouse if the resources are not transferred to
the community spouse within six (6) months of the initial eligibility
determination.

(e) The equity value of an automobile in excess of the limits
established by 907 KAR 20:025(1:645) shall not be included as a
countable resource.

(3) The provisions established in this subsection shall apply
with regard to protecting income for all community spouses.

1. The institutionalized spouse has assigned to the department
resources held by either the institutionalized spouse,
the community spouse, or both, shall be considered to be available to
the institutionalized spouse.
3. A family allowance determined in accordance with the
definition of other family member's maintenance standard; and
4. An amount for incurred expenses for medical or remedial
care for the institutionalized spouse.

(b) Establishment of the community spouse income
allowance.1. The community spouse income allowance shall be
the sum of the standard maintenance amount and the excess
shelter allowance, not to exceed the community spouse
maintenance standard;
2. The community spouse maintenance standard shall be set at
$1,500 per month, to be increased for each calendar year in
accordance with 42 U.S.C. 1396r-5(g).
   (c) If a court has entered an order against an institutionalized
spouse for monthly income for the support of the community
spouse, the community spouse income allowance for the spouse
shall not be less than the amount ordered.
4. The provisions established in this subsection shall apply
regarding with regard to a transfer of resources from an
institutionalized spouse.

(a) An institutionalized spouse may, without regard to the
prohibition against disposal of assets for less than fair market
value, transfer to the community spouse, or to another for the sole
benefit of the community spouse, an amount equal to the spousal
protected resource amount to the extent the resources of the
institutionalized spouse are transferred to, or for the sole benefit of,
the community spouse.
2. The transfer shall be made as soon as practicable after the
initial determination of eligibility, taking into account the time
necessary to obtain a court order under paragraph (c) of this
subsection.
(b) Establishment of the spousal protected resource amount.1. The
spousal protected resource amount shall be the greater of:
   a. The spousal share which shall not exceed a maximum of
      $60,000 to be increased for each calendar year in accordance
      with 42 U.S.C. 1396r-5(g); or
   b. The state spousal resource standard.
2. The state spousal resource standard shall be set at
$20,000.
3. For an individual, the spousal protected resource amount
may be a higher amount established by a hearing officer 1 or a
higher amount transferred under a court order as specified in
paragraph (c) of this subsection.
(c) If a court has entered an order against an institutionalized
spouse for the support of a community spouse, the prohibition
against disposal of assets for less than fair market value shall not
apply to the amount of resources transferred pursuant to the order
for the support of the spouse.
(5) Except for a transfer of resources to the community spouse
as specified in subsection (4) of this section, the transfer of
resource policies established by 907 KAR 20:020 will apply.

(a) The department shall send the notice specified in
paragraph (b) of this subsection to both spouses upon a:
1. Determination of eligibility for Medicaid of an institutionalized
spouse; or
   2. Request by:
      a. The institutionalized spouse;
      b. The community spouse; or
   c. A representative acting on behalf of either spouse.
(b) The notice shall state:
1. The amount of community spouse monthly income
allowance;
2. The amount of a family allowance, if any;
3. Method of computing the amount of the community
spouse resources allowance; and
4. Spouse's right to a fair hearing in accordance with 907 KAR
20:065.

(a) Both the institutionalized spouse and community spouse
shall be entitled to a fair hearing in accordance with 907 KAR
20:065 if the spouse is dissatisfied with the action of the
agency including determination of the following:
1. The community spouse monthly income allowance;
2. The amount of monthly income determined to be otherwise
available to the community spouse;
3. The attribution of resources at the time of the initial eligibility
determination; or
4. The determination of the community spouse resource
allowance.

(b) If either the institutionalized spouse or community spouse
establishes during the hearing that the community spouse needs
income above the level otherwise provided by the monthly
maintenance needs allowance, due to an exceptional circumstance
resulting in significant financial duress, an amount adequate to
provide the necessary additional income shall be substituted for
the monthly maintenance needs allowance.

(c) If either spouse established during the hearing process that
the community spouse resource allowance, in relation to the
amount of income generated by an allowance, is inadequate to
raise the community spouse's income to the monthly
maintenance needs allowance, there shall be substituted for the
community spouse resource allowance an amount adequate to provide
the monthly maintenance needs allowance.

Section 3.1. Specified Individuals in Nursing Facilities. For an
individual who is aged, blind, or has a disability and who is in a
medical institution or nursing facility but does not have a
community spouse, the requirements established in this section
with respect to income limitations and treatment of income shall
apply.

1. In determining:
   a. Eligibility, the appropriate medically needy standard or
      special income level, disregards, and exclusions from income shall
      be used in determining.[In determining]
   b. Patient liability for the cost of institutional care, gross
      income shall be used as provided in subsections (2) and (3) of
      this section.
   (a) Income protected for basic maintenance shall be forty
      (40) dollars monthly plus mandatory withholdings.
   (b) Mandatory withholdings shall:
      1. Include minimum state and federal taxes; and
      2. Not include court-ordered child support, alimony, or
      similar income resulting from an action by the recipient.
   (3)(a) An amount excluded under a plan to achieve self-
      support trash_simpson as established by 907 KAR 20:020 shall apply.
   (4) Income in excess of the amount protected for basic
      maintenance shall be applied to the cost of care except as
      provided in this subsection:
      (a) Available income in excess of the basic maintenance
      allowance shall be first conserved as needed to provide for the
      needs of a minor child up to the appropriate family size amount
      from the scale as established by 907 KAR 20:020, Section
      1(1)[1:640. Section 1(1)
      (b) Remaining available income shall be applied to the incurred
costs of medical and remedial care that are not subject to payment
by a third party (except that the incurred costs may be reimbursed
under another public program of the state or political subdivision
of the state), including Medicare and health insurance premiums or
medical care recognized under state law but not covered under the
state's Medicaid plan.
   (5) The basic maintenance standard allowed to the individual
during the month of entrance into or exit from the nursing facility
shall take into account the home maintenance costs.

(6) If an individual loses eligibility for a supplementary payment
due to entrance into a participating nursing facility, and the
supplementary payment is not discontinued on a timely basis, the
amount of an overpayment shall be considered as available income to
offset the cost of care to the Medicaid Program.

(a) An SSI benefit payment, mandatory state supplement
payment, or optional state supplement is not discontinued on a timely basis, the
amount of an overpayment shall be considered as available income to
offset the cost of care to the Medicaid Program.

7(a) An SSI benefit payment, mandatory state supplement
payment, or optional state supplement, a supplemental security income (SSI) or state supplementation payment received by a
specified institutionalized Medicaid eligible individual in accordance
with 42 U.S.C. 1382(e)(1)(G) shall be excluded from consideration

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as either income or a resource.

(b) The payment shall not be used in the posteligibility process

to increase the patient liability.

(8)(a) Ninety (90) dollars of Veterans Affairs[Veterans's

Administration] benefits received by a veteran or the spouse of

a veteran shall be excluded from consideration as income.

(b) The ninety (90) dollars shall not be counted in the eligibility

or the posteligibility calculation.

(9)(a) Veterans Affairs[Administration] payments for unmet

medical expenses and aid and attendance shall:

(a) Be excluded in a Medicaid eligibility determination for a

veteran or the spouse of a veteran residing in a nursing facility;

(b) Veterans Administration payments for unmet medical

expenses and aid and attendance shall be excluded in the

posteligibility determination for a veteran or the spouse of a

veteran residing in a nonstate-operated nursing facility; and

(c) [Veterans Administration payments for unmet medical

expenses and aid and attendance shall] Not be excluded in the

posteligibility determination process for a veteran or the spouse

of a veteran residing in a state-operated nursing facility.

10 Income placed in a qualifying income structured in

accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030,

Section 3(5);[1450; Section 4(5)], shall be counted in the

posteligibility determination.

Section 4.5 Special Needs Contributions for Institutionalized

Individuals. (1) A voluntary payment made by a relative or other

party on behalf of a nursing facility resident or patient shall not be

considered as available income if made to obtain a special

privilege, service, or item not covered by the Medicaid Program.

(a) Special service or item shall include television or
telephone service, private room or bath, or a private duty nursing

service.

Section 5. Applicability. (1)(a) The provisions and requirements

established in this administrative regulation shall not apply to an

individual:

1. Whose Medicaid eligibility is determined using the modified

adjusted gross income standard; or

2. Between the ages of nineteen (19) and twenty-six (26) years

who:

a. Formerly was in foster care; and

b. Aged out of foster care while receiving Medicaid coverage.

(b) Resources shall not be considered for eligibility purposes

for individuals:

1. Whose Medicaid eligibility is determined using the modified

adjusted gross income standard; or

2. Between the ages of nineteen (19) and twenty-six (26) years

who:

a. Formerly was in foster care; and

b. Aged out of foster care while receiving Medicaid coverage.

(2) An individual whose Medicaid eligibility is determined using

a modified adjusted gross income as the eligibility standard shall

be an individual who is:

(a) A child under the age of nineteen (19) years, excluding

children in foster care;

(b) A caretaker relative with income up to 133 percent of the

federal poverty level;

(c) A pregnant woman, with income up to 185 percent of the

federal poverty level, including the postpartum period up to sixty

(60) days after delivery;

(d) An adult under age sixty-five (65) with income up to 133

percent of the federal poverty level who:

1. Does not have a dependent child under the age of nineteen

(19) years; and

2. Is not otherwise eligible for Medicaid benefits; or

(e) A targeted low income child with income up to 150 percent of

the federal poverty level.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 p.m.
(b) The necessity of the amendment to this administrative regulation: The MAGI-related amendment and former foster care individual amendment is necessary to comply with an Affordable Care Act mandate. Deleting the definitions is necessary as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation for Chapter 20 – the chapter which will house Medicaid eligibility administrative regulations. The language and formatting amendments are necessary to comply with KRS Chapter 13A standards.

(c) How the amendment will assist in the effective administration of the statutes: The MAGI-related amendment and former foster care individual amendment will assist in the effective implementation of the authorizing statutes by complying with an Affordable Care Act mandate. The language and formatting amendments conform to the content of the authorizing statutes by complying with KRS Chapter 13A standards.

(d) How the amendment will assist in the effective administration of the statutes: The MAGI-related amendment and former foster care individual amendment will assist in the effective implementation of the authorizing statutes by complying with an Affordable Care Act mandate. The language and formatting amendments conform to the content of the authorizing statutes by complying with KRS Chapter 13A standards.

FEDERAL MANDATE ANALYSIS COMPARISON


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

3. Minimum or uniform standards contained in the federal mandate. The federal law prohibits the application of a resource test to the MAGI population or to the former foster care population.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment neither imposes stricter nor additional nor different responsibilities nor 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 amendment does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be impacted by the amendment.

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

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

   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

   (c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the requirements established in this administrative regulation not from exempting former foster care individuals from the requirements.

   (d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the requirements established in this administrative regulation.

   (e) 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 1. Definitions. (1) “ABD” means a person who is aged, blind, or disabled. (2) “Adult scale” means the scale located in 907 KAR 1:640, Section 2(1), establishing Medicaid income limits by family size. (3) “AFDC” means aid to families with dependent children. (4) “AFDC-related case” means a Medicaid-eligible, categorically needy individual or group based upon AFDC Program requirements effective since July 15, 1986. (5) “After the month of separation” means the first day of the month that follows the month in which an individual ceases living in the same household of a Medicaid eligible family. (6) “Family-related case” or “family case” means a Medicaid-eligible, medically needy group based on deprivation and within the medically needy income level. (7) “Medically needy income level” or “MNIL” means the basic maintenance standard used in the determination of Medicaid eligibility for the medically needy. (8) “Month of separation” means the month in which an individual ceases living in the same household of a Medicaid eligible family. (9) “SSI” means supplemental security income. (10) “SSI essential person, spouse, or nonspouse” means an individual necessary to an SSI recipient to enable the SSI recipient to be self-supporting.

Section 2. Treatment of Income and Resources for a Parent, Dependent Child, ABD Applicant, or Recipient. (1) A spouse shall be considered responsible for a spouse. (2) A parent shall be considered responsible for a dependent minor child. (3) Excluding a child who is at least (a) eighteen (18) years of age, (b) blind or disabled and for purposes of determining income and resources, a child under age twenty-one (21) years living with a parent shall be considered a dependent minor child even if the child is emancipated under state law. (4) Responsibility regarding income and resources shall be determined as follows: (a) For an ABD applicant or a recipient living with an eligible spouse, income from the ineligible spouse shall be deemed as available to the eligible spouse as outlined below. (b) For an ABD applicant or a recipient living with an ineligible spouse, income from the ineligible spouse shall be deemed as available to the eligible spouse as outlined below. (c) For an ABD applicant or a recipient living with an eligible spouse, income from the ineligible spouse shall be deemed as available to the eligible spouse as outlined below.
parent. Beginning with the 31st day in a facility, a child shall be considered living apart from his or her parent.

2. A child who is institutionalized in a psychiatric facility but is legally committed to or in the custody of the Cabinet for Health and Family Services will not be considered as living with a parent.

(i) Excluding a child, if an AFDC-related Medicaid recipient has income and resources considered in relation to family size and enters a nursing facility, his or her income and resources shall be considered in the case for up to one (1) year with the individual allowed the basic maintenance standard as established in 907 KAR 20:035(1-655), Section 3(2)(4)(2).

(j) If a child in an AFDC-related Medicaid case is in a nursing facility, eligibility of the child shall continue in the case for up to a year but his or her liability for the cost of care shall be determined by:

a. Allowing to the child from his or her own income the basic maintenance standard as established in 907 KAR 20:035(1-655), Section 3(2)(4)(2); and

b. Considering the remainder available for the cost of care.

2. A welfare payment made to a child under subparagraph 1 of this paragraph shall be disregarded when determining liability for cost of care.

3. The eligibility of the individual, with regard to income and resources, shall be determined on the basis of living apart from the other family members if it becomes apparent that the separation will last for more than one (1) year.

Section 2(3). Treatment of Income and Resources of a Stepparent or Parent of a Minor Parent. Refer to “Grandparent”.

2. (a) An incapacitated stepparent’s income or a grandparent’s income shall be considered in the same manner as for a parent if the stepparent or grandparent is included in the family case.

2. If a stepparent or grandparent living in the home is not being included in the family case:

(a) The stepparent’s gross income shall be considered available to the spouse; or

(b) The grandparent’s gross income shall be considered available to the minor parent in accordance with 907 KAR 1:640, Section 4.

3. If a stepparent or grandparent has income remaining after disregards and exclusions are applied, the remaining income shall:

(a) Not be deemed to a stepchild or grandchild; and

(b) Be deemed to:

1. The stepparent’s spouse; or

2. To a minor parent who is a child of the grandparent.

(4) Eligibility of a stepparent or grandchild shall be determined in the following manner:

(a) The only income to be considered shall be the income of:

1. The grandchild and minor parent; or

2. The stepchild and spouse of the stepparent;

(b) The budget size shall include the child and parent;

(c) If there is no excess income, the child shall be eligible; and

(d) If there is excess income, the excess amount may be spent down in accordance with 907 KAR 1:640, Section 9.

3(3) For a family with a child with a parent eligible for SSI, neither the income, resources, nor needs of the SSI eligible individual shall be included in the determination of need of the child even if the parent applies for assistance for himself on the basis of age, blindness, or disability (except as shown in subsection (3) of this section).

(2) For a spouse, income and resources of both spouses shall be combined and compared against the medically-need income and resources limits for a family size of two (2) even though a separate determination of eligibility may be made for each individual.

(2)(3) For a family with a child with a parent eligible for SSI, neither the income, resources, nor needs of the SSI eligible individual shall be included in the determination of eligibility of the child.

4. (a)1. A parent in an AFDC-related Medicaid case may request that one (1) or more children be technically excluded from the determination of eligibility due to income while a regular application for Medicaid eligibility is processed for other children in the family group.

2. In this circumstance, the income and resources of each technically-excluded child and each technically-excluded child’s needs shall be excluded in the budgeting process when determining eligibility of the family group.

3. A separate spend-down case may be established for each technically excluded child.

4. The income, resources and needs of the responsible relative or parent shall be included in the budget process.

(b)1. Income disregards, and needs of siblings in the other case may also be included in budgeting for the spend-down case if that works to the advantage of the technically excluded child for whom eligibility is being determined in the spend-down case.

Section 3. Applicability. (1) The provisions and requirements of this administrative regulation shall not apply to an individual:

1. Whose Medicaid eligibility is determined using the modified
VOLUME 40, NUMBER 5 – NOVEMBER 1, 2013

adjusted gross income standard; or
2. Between the ages of nineteen (19) and twenty-six (26) years who:
   a. Formerly was in foster care; and
   b. Aged out of foster care while receiving Medicaid coverage.

(2) An individual whose Medicaid eligibility is determined using the modified adjusted gross income as an income standard shall be an individual who is:
   a. A child under the age of nineteen (19) years, excluding children in foster care;
   b. A caretaker relative with income up to 133 percent of the federal poverty level;
   c. A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;
   d. An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:
      1. Does not have a dependent child under the age of nineteen (19) years; and
      2. Is not otherwise eligible for Medicaid benefits; or
   e. A targeted low income child with income up to 150 percent of the federal poverty level.

Section 4(2) Excess income in the spend-down case may be
spend down using uncovered incurred medical care costs of a financially responsible relative or any member of the family.

The needs of a sibling living in the household under the age of twenty-one (21) not requesting assistance, may be included in an AEFC-related Medicaid case if it works to the advantage of the family group.

Section 5 Appeals. (1) An appeal of a negative action taken by the Department for Medicaid Services regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:563.

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

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY : September 23, 2013

FILED WITH LRC: September 30, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2013 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business December 2, 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, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Marchetta Carmicle or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid program resource and income eligibility standards and requirements regarding relatives.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program resource and income eligibility standards and requirements regarding relatives.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes that the standards and requirements do not apply to individuals for whom a modified adjusted gross income (MAGI) is the eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. The MAGI population includes children under nineteen (19) – except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women (including through day sixty (60) of the postpartum period); adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level. Additionally, the amendment deletes the definitions and includes language and formatting revisions to comply with KRS Chapter 13A requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with the Affordable Care Act regarding populations to which the eligibility requirements established in this administrative regulation do not apply. Deleting definitions is necessary as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation to establish definitions for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with an Affordable Care Act provision that excludes the eligibility requirements from applying to individuals for whom a modified adjusted gross income is the Medicaid income eligibility standard or to former foster care individuals.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by complying with an Affordable Care Act provision that excludes the eligibility requirements from applying to individuals for whom a modified adjusted gross income is the Medicaid income eligibility standard or to former foster care individuals.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.

(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 requires no action to be taken by affected individuals.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment imposes no cost on the affected individuals.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals exempt from requirements in this administrative regulation will benefit due to the clarification that the requirements do not apply to them.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: DMS anticipates no cost as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard or former foster care individuals from the requirements established in this administrative regulation.
(b) On a continuing basis: The response in paragraph (a) also applies here.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.
(7) Provide an assessment of whether an increase in fees or funds from general fund appropriations.
(8) State whether or not this administrative regulation applies here.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment imposes no cost on the affected individuals.
(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the requirements established in this administrative regulation nor from exempting former foster care individuals from the requirements.
(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the requirements established in this administrative regulation nor from exempting former foster care individuals from the requirements.
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 Policy and Operations
(Amendment)

907 KAR 20:045. Special income requirements for hospice and home and community based services.[HCBS].


3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

Section 1. Definitions. (1) "Basic maintenance" means the amount of income that may be retained by the applicant for living and personal expenses.
(2) "Categorically needy" means an individual with income below 300 percent of the supplemental security income (SSI) standard who has been receiving hospice or HCBS for thirty (30) consecutive days.
(3) "HCBS" means home and community based services.
Section 2.1 Special Provisions for Recipients Participating in a 1915(c) Home and Community Based Services [HCBS] Waiver Program. (1) Medicaid eligibility for a recipient receiving 1915(c) home and community based services [participant under HCBS] shall be determined if necessary to establish eligibility for Medicaid benefits for a case with income in excess of the basic maintenance standard taking into consideration the special provisions established in:

(a) This section; and
(b) 907 KAR 20:035 [in 907 KAR 1:655].

(2) Income protected for the basic maintenance of a 1915(c) home and community based services waiver [an HCBS] program participant who is eligible as medically needy or under the special income level established in this section shall be the standard used for an individual in the Federal SSI Program in addition to the SSI general exclusion from income.

(3) A 1915(c) home and community based services waiver [an HCBS] program participant who participates in a 1915(c) home and community based services waiver [the HCBS] program for thirty (30) consecutive days, including the actual days of institutionalization within that period, and who has income which does not exceed the special income level shall be determined to be eligible as categorically needy under the special income level.

(4) If a Supports for Community Living (SCL) Program participant has income in excess of the special income level, eligibility of the participant shall be determined on a monthly spenddown basis with the cost of SCL services projected.

(5) Institutional deeming rules shall apply in accordance with 907 KAR 20:035 [in 907 KAR 1:655].

(a) In the posteligibility determination of available income, the basic maintenance needs allowance shall include a mandatory withholding from income.

(b) Mandatory withholdings shall:
1. Include state and federal taxes; and
2. Not include child support, alimony, or a similar payment resulting from an action by the recipient.

(7) A veteran or the spouse of a veteran who is receiving services in a home and community based waiver program and who is receiving a Veterans Affairs [Veteran’s Administration (VA)] benefit shall have ninety (90) dollars excluded from the eligibility and posteligibility determination process.

(8) Veterans Affairs [Administration] payments for unmet medical expenses (UME) and aid and attendance (A&A) shall be excluded in a Medicaid eligibility and posteligibility determination for a veteran or the spouse of a veteran receiving services from a home and community based waiver program.

(9) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030 [in 907 KAR 1:655], Section 2(5) [in 907 KAR 1:640], shall not be excluded in the posteligibility determination.

Section 2.2 Special Provisions for Hospice Recipients. Medicaid eligibility for a participant in the Medicaid Hospice Program shall be determined in accordance with the provisions by taking into consideration the special provisions contained in this section:

(a) The SSI standard and the SSI general exclusion from income for the hospice participant in the posteligibility determination for a noninstitutionalized individual eligible on the basis of the special income level;
(b) The usual medically needy standard established in 907 KAR 20:020 [in 907 KAR 1:640], Section 1(2), plus the SSI general exclusion for a noninstitutionalized medically needy participant, who shall spenddown on a quarterly basis;
(c) The medically needy standard for the appropriate family size plus the SSI general exclusion for the institutionalized medically needy;
(d) Forty (40) dollars per month for the hospice participant institutionalized in a long-term care facility;
(e) For a veteran or the spouse of a veteran who is receiving services from a hospice and who is receiving a Veterans Affairs [Veteran’s Administration (VA)] benefit, ninety (90) dollars, which shall be excluded from the eligibility and posteligibility determination process; or
(f) The amount of Veterans Affairs [Administration] payments for unmet medical expenses (UME) and aid and attendance (A&A), which shall be excluded in a Medicaid eligibility and posteligibility determination for a veteran or the spouse of a veteran receiving services from a hospice.

(2) If eligibility is determined for an institutionalized spenddown case, the attributed cost of care against which available income of the hospice participant shall be applied shall be the hospice routine home care per diem for the hospice providing care as established by 42 U.S.C. 1395(i) plus the private pay rate for the nursing facility.

(3) Eligibility shall continue on the same monthly basis as for an institutionalized individual if the recipient is eligible based on the special income level.

(4) A hospice participant shall be eligible for a benefit based on this section if he has elected coverage under the Medicaid Hospice Program rather than the regular Medicaid Program.

(5) Institutional deeming rules shall apply in accordance with 907 KAR 20:030 [in 907 KAR 1:655] with regard to the categorically needy including a participant eligible on the basis of the special income level.

(6) Community deeming procedures shall be used in accordance with 907 KAR 20:040 [in 907 KAR 1:660] for a noninstitutionalized hospice recipient who is:
   (a) A medically needy individual, who shall spenddown on a quarterly basis; and
   (b) Not eligible under the special income level.

(7)(a) In the posteligibility determination of available income, the basic maintenance needs allowance shall include a mandatory withholding from income.

(b) Mandatory withholdings shall:
1. Include state and federal taxes; and
2. Not include child support, alimony, or a similar payment resulting from an action by the recipient.

(8) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030 [in 907 KAR 1:654], Section 2(5) [in 907 KAR 1:645], shall not be excluded in the posteligibility determination.

Section 3. Applicability. (1) The provisions and requirements of this administrative regulation shall not apply to an individual:
1. Whose Medicaid eligibility is determined using the modified adjusted gross income standard; or
2. Between the ages of nineteen (19) and twenty-six (26) years who:
   a. Formerly was in foster care; and
   b. Aged out of foster care while receiving Medicaid coverage.
3. An individual whose Medicaid eligibility is determined using the modified adjusted gross income as an income standard shall be an individual who is:
   a. A child under the age of nineteen (19) years, excluding children in foster care;
   b. A caretaker relative with income up to 133 percent of the federal poverty level;
   c. A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;
   d. An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:
      1. Does not have a dependent child under the age of nineteen (19) years; and
      2. Is not otherwise categorically needy under this section.
2. is not otherwise eligible for Medicaid benefits; or
(e) A targeted low income child with income up to 150 percent of the federal poverty level.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2013 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 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 close of business December 2, 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, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Persons: Marchetta Carmicle or Stuart Owen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes Medicaid special income requirements for 1915(c) home and community based waiver services and hospice services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid special income requirements for 1915(c) home and community based waiver services and hospice services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid special income requirements for 1915(c) home and community based waiver services and hospice services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing Medicaid special income requirements for 1915(c) home and community based waiver services and hospice services.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment establishes that the requirements do not apply to individuals for whom a modified adjusted gross income (MAGI) is the Medicaid income eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. The MAGI individuals include children under nineteen (19) – except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level. The amendment also deletes the definitions and contains language and formatting revisions to comply with KRS Chapter 13A requirements.
(b) The necessity of the amendment to this administrative regulation: The MAGI-related amendment and former foster care individuals’ amendment is necessary to comply with Affordable Care Act mandates. Deleting the definitions is necessary as DMS is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house all Medicaid eligibility administrative regulations. Language and formatting amendments are necessary to comply with KRS Chapter 13A standards.
(c) How the amendment conforms to the content of the authorizing statutes: The MAGI-related amendment and former foster care individuals’ amendment conforms to the content of the authorizing statutes by complying with Affordable Care Act mandates. The language and formatting amendments conform to KRS Chapter 13A standards.
(d) How the amendment will assist in the effective administration of the statutes: The MAGI-related amendment and former foster care individuals’ amendment will assist in the effective administration of the authorizing statutes by complying with Affordable Care Act mandates. The language and formatting amendments will assist in the effective administration of the authorizing statutes by complying with KRS Chapter 13A standards.
(e) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.
(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 requires no action to be taken by affected individuals.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment imposes no cost on the affected individuals.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals exempt from the special income requirements in the administrative regulation will benefit due to the clarification that the requirements do not apply to them.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: DMS anticipates no cost as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard or former foster care individuals from the requirements established in this administrative regulation.
(b) On a continuing basis: The response in paragraph (a) also applies here.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement the amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:
The amendment neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in the sense that the requirements do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income or to former foster care individuals as the Affordable Care Act prohibits applying the requirements to these individuals.

**FEDERAL MANDATE ANALYSIS COMPARISON**


2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all 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 and necessary to the programs and fulfill the responsibilities vested in the cabinet. The secretary shall 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."

Also, minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state's Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations exempted from the new requirements (and to whom the old requirements continue to apply) include aged individuals [individuals over sixty-five (65) years of age or who receive Social Security Disability Insurance; individuals eligible for Medicaid as a result of being a child in foster care; individuals who are blind or disabled; individuals who are eligible for Medicaid via another program; individuals enrolled in a Medicare savings program; and medically needy individuals. Also, states are prohibited from continuing to use income disregards, asset tests, or resource tests for individuals who are eligible via the modified adjusted gross income standard. States are also required to create and adopt an income threshold (under the modified adjusted gross income) that ensures that individuals who were eligible for Medicaid benefits prior to January 1, 2014 (the date that the modified adjusted gross income standard is adopted) do not lose Medicaid coverage due to the modified adjusted gross income standard taking effect. 42 U.S.C. 1396a(a)(10)(A)(i)(IX) creates a new mandated eligibility group comprised of former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage and bars the application of an income standard or resource standard to the individuals.

4. Will this administrative regulation impose stricter requirements on individuals, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not applied.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be impacted by the amendment.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the requirements established in this administrative regulation nor from exempting former foster care individuals from the requirements.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the requirements established in this administrative regulation nor from exempting former foster care individuals from the requirements.

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 Policy and Operations (Amendment)

907 KAR 20:050. Presumptive eligibility (for pregnant woman).

RELATES TO: KRS 205.520, 205.592, 42 U.S.C. 1396a(a)(47), r-1
STATUTORY AUTHORITY: KRS 194A.030(3)(i)(2), 194A.050(1), 205.520(3)
NECESSITY, FUNCTION, AND CONFORMITY [EO 2004-726]

effective July 8, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.592 establishes Medicaid eligibility requirements for pregnant women and children up to age one (1). This administrative regulation establishes requirements for the determination of presumptive eligibility and the provision of services to individuals [pregnant women] deemed presumptively eligible for Medicaid-covered services.

Section 1 [Definitions. (1) "Ambulatory prenatal care" means health-related care furnished to a presumed eligible pregnant woman provided in an outpatient setting.
(2) "Cabinet" means the Cabinet for Health and Family Services.
(3) "DCBS" means the Department for Community Based Services.
(4) "Department" means the Department for Medicaid Services.
or its designated agent.

(5) "Presumptive eligibility" means eligibility granted for Medicaid covered services as specified in Section 6 of this administrative regulation to a qualified pregnant woman based on an income screening performed by a qualified provider.

(6) "Qualified provider" means a provider who:

(a) Is currently enrolled with the department;
(b) Has been trained and certified by the department to grant presumptive eligibility to pregnant women; and
(c) Provides services of the type described in 42 USC 1396d(a)(2)(A) or (B) or (9).

Section 2. Provider Eligible to Grant Presumptive Eligibility.

(1) A determination of presumptive eligibility regarding:

(a) A pregnant woman shall be made by a qualified provider who is:

1. (a)(1) A family or general practitioner;
2. (a)(2) A pediatrician;
3. (a)(3) An internist;
4. (a)(4) An obstetrician or gynecologist;
5. (a)(5) A physician assistant;
6. (a)(6) A certified nurse midwife;
7. (b)(7) An advanced practice registered nurse (practitioner);
8. (b)(8) A federally-qualified health care center;
9. (b)(9) A primary care center;
10. (b)(10) A rural health clinic; or
11. (b)(11) A local health department;

(b) An individual whose income standard for Medicaid eligibility purposes is a modified adjusted gross income shall be by an inpatient hospital participating in the Medicaid program; and

(2) An individual whose Medicaid eligibility is determined using the modified adjusted gross income as an income standard shall be:

(a) An individual:

1. Who is:

   (a) A child under the age of nineteen (19) years, excluding children in foster care;
   (b) A caretaker relative with income up to 133 percent of the federal poverty level;
   (c) A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;
   (d) An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:

      (i) Does not have a dependent child under the age of nineteen (19) years; and
      (ii) Is not otherwise eligible for Medicaid benefits;
   
   (e) A targeted low-income child with income up to 150 percent of the federal poverty level; and
   
   (b) In accordance with 907 KAR 20:100.

Section 2(2). Provider Responsibilities. (1) A qualified provider who determines that an individual[a pregnant woman] is presumptively eligible for Medicaid based on criteria established in Section 3(4) of this administrative regulation shall:

(a) Notify the department and obtain an authorization number;
(b) Inform the individual[woman] at the time the determination is made that the individual[woman] is required to make an application for Medicaid benefits through the individual[her] local DCBS office;

(c) Issue presumptive eligibility identification to the presumed eligible individual[woman]; and

(d) Maintain a record of the presumptive eligibility screening for each applicant.

(2) If an individual[a pregnant woman] is determined not to be presumptively eligible, the qualified provider shall inform the individual[woman] of the following in writing:

(a) The reason for the determination;

(b) That the individual[she] may file an application for Medicaid if the individual[she] wishes to have a formal determination made; and

(c) The location of the individual[her] local DCBS office.

Section 3(4). Eligibility Criteria. Presumptive eligibility may be granted to:

(1) A woman if she:

(a)(1) is pregnant;
(b)(2) is a Kentucky resident;
(c) Does not have income exceeding 185 percent of the federal poverty level;

(2) Meets income guidelines established in 907 KAR 1.640, Section 2(2)(a);

(3) Has not been previously granted presumptive eligibility for the current pregnancy; and

(b)(4) is not an inmate of a public institution, except as established in 907 KAR 20:005, Section 7(2); or

(2) An individual whose Medicaid income eligibility standard is a modified adjusted gross income if the individual:

(a) Is a Kentucky resident;
(b) Does not have income exceeding:
   1. 133 percent of the federal poverty level; or
   2. 150 percent of the federal poverty level if the individual is a targeted low-income child;

(c) Does not currently have a pending Medicaid application on file with the DCBS;

(d) is not currently enrolled in Medicaid; and

(e) is not an inmate of a public institution except as established in 907 KAR 20:005, Section 7(2).

Section 4(5). Presumptive Eligibility Period. (1) Presumptive eligibility for an individual shall begin on the date on which a qualified provider:

(a) Determines that the individual[a pregnant woman] is presumptively eligible based on the criteria specified in Section 3(4) of this administrative regulation if the qualified provider obtains an approval number from the department on:

   1. That day; or
   2. If the department is closed, the next business day the department is open; or
   
   (b) Obtains an approval number from the department if it is not the day specified in paragraph (a) of this subsection.

(2) The presumptive eligibility period shall end on:

(a) The day preceding the date the presumptively-eligible individual[a pregnant woman] is granted full eligibility in the Medicaid Program by the DCBS; or

(b) The last day of the second month following the month in which a qualified provider made the presumptive eligibility determination if the[a presumed] individual[a pregnant woman]:

   1. Does not apply for the full Medicaid benefit package; or
   
   2. Applies for and is found ineligible for the full Medicaid benefit package.

(3) To illustrate the presumptive eligibility period, if an individual became presumptively eligible on July 7, 2014, the individual would remain presumptively eligible through September 30, 2014.

(4) For a woman who gains presumptive eligibility by being pregnant, only one (1) presumptive eligibility period shall be granted for each episode of pregnancy.

Section 5(6). Covered Services. (1)(a) Payment for a covered service provided to a presumptively-eligible individual[a pregnant woman] shall be in accordance with the current Medicaid reimbursement policy for the service unless the service is provided to an individual who is enrolled with a managed care organization[reimbursement].

(b) A managed care organization:

   1. Shall not be required to reimburse in the same manner or amount as the department reimburses for a Medicaid-covered service provided to a presumptively eligible individual; or
   
   2. May elect to reimburse in the same manner or amount as the department reimburses for a Medicaid-covered service provided to a presumptively eligible individual.

(2) Covered services for a presumptively-eligible:

(a) Pregnant woman shall be limited to ambulatory prenatal care services delivered in an outpatient setting and shall include:

1. (a) Services furnished by a primary care provider, including:
a) A family or general practitioner;

b) A pediatrician;
c) An internist;
d) An obstetrician or gynecologist;
e) A physician assistant;
f) A certified nurse midwife; or
g) An advanced practice registered nurse.

2. Laboratory services provided in accordance with 907 KAR 10:014.

3. X-ray services provided in accordance with 907 KAR 10:014.

4. Dental services provided in accordance with 907 KAR 10:026, Section 2(1) and (2).

5. Emergency room services provided in accordance with 907 KAR 10:014, Section 1(1)(c).

6. Emergency and nonemergency transportation provided in accordance with 907 KAR 1:060.

7. Pharmacy services provided in accordance with 907 KAR 1:019.

8. Services delivered by rural health clinics provided in accordance with 907 KAR 1:082.

9. Services delivered by primary care centers and federally-qualified health care centers provided in accordance with 907 KAR 1:054.

10. Primary care services delivered by local health departments provided in accordance with 907 KAR 1:360; or

(b) Individual who is not a pregnant woman shall include:

a. A family or general practitioner;
b. A pediatrician;
c. An internist;
d. An obstetrician or gynecologist;
e. A physician assistant;
f. A certified nurse midwife; or
g. An advanced practice registered nurse.

2. Laboratory services provided in accordance with 907 KAR 10:014.

3. X-ray services provided in accordance with 907 KAR 10:014 and 907 KAR 1:028.

4. Dental services provided in accordance with 907 KAR 1:026, Section 2(1) and (2).

5. Emergency room services provided in accordance with 907 KAR 10:014, Section 1(1)(c).

6. Emergency and nonemergency transportation provided in accordance with 907 KAR 1:060.

7. Pharmacy services provided in accordance with 907 KAR 1:019.

8. Services delivered by rural health clinics provided in accordance with 907 KAR 1:082.

9. Services delivered by primary care centers and federally-qualified health care centers provided in accordance with 907 KAR 1:054.

10. Primary care services delivered by local health departments provided in accordance with 907 KAR 1:360; or

11. Inpatient or outpatient hospital services provided by a hospital.

Section 6. Appeal Rights. (1) The appeal rights of the Medicaid Program shall not apply if an individual is:

(a) Determined to be presumptively eligible;

(b) Determined to be presumptively eligible and fails to file an application for Medicaid with the DCBS before the individual's presumptive eligibility ends and therefore is determined to be ineligible for Medicaid benefits.

(2) The appeal rights of the Medicaid Program shall apply if an individual is:

(a) Determined to be presumptively eligible; and

(b) Files an application with the DCBS but is determined ineligible for Medicaid benefits.

(3) Except as specified in subsection (1) of this section, an appeal of a negative action taken by the department regarding a Medicaid recipient shall be in accordance with:

(a) 907 KAR 1:563 if the individual is:

1. Not enrolled with a managed care organization; or

2. Enrolled with a managed care organization and the individual has exhausted the MCO internal appeal process in accordance with 907 KAR 17:010 and requests an appeal of an adverse decision by the MCO;

(b) 907 KAR 17:010 if the individual is enrolled with a managed care organization.

(4) Except as specified in subsection (1) of this section, an appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(5) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 7. Quality Assurance and Utilization Review. The cabinet shall evaluate, on a continuing basis, access, continuity of care, health outcomes, and services arranged or provided by a Medicaid provider to a presumptively eligible individual in accordance with accepted standards of practice for medical service.

LAWRENCE KISSNER, Commissioner AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD:
A public hearing on this administrative regulation shall, if requested, be held on November 21, 2013 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business December 2, 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, email tricia.orne@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Persons: Marchetta Carmicle or Stuart Owen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes Medicaid eligibility provisions regarding presumptive eligibility. Presumptive eligibility is a program designed to improve pregnant women's access to outpatient prenatal care. Providers are authorized to make presumptive eligibility determinations and complete an application to determine whether a given pregnant woman qualifies for Medicaid under this program. If the provider determines that the woman is eligible, the provider will be reimbursed for prenatal services provided to the woman.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid eligibility provisions regarding presumptive eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid eligibility provisions regarding presumptive eligibility.

(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 Medicaid eligibility provisions regarding...
presumptive eligibility.

(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 authorizes inpatient hospitals to make presumptive eligibility determinations for all individuals for whom a modified adjusted gross income is the Medicaid income eligibility standard and deletes the definitions. Hospitals are not required to make presumptive eligibility determinations, but will be authorized to do so. The provider types who were previously authorized to make presumptive eligibility determinations regarding pregnant women will continue to be authorized to do so, but not for all individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.

(b) The necessity of the amendment to this administrative regulation: Authorizing inpatient hospitals to make presumptive eligibility determinations for all individuals for whom a modified adjusted gross income is in the Medicaid income eligibility standard is necessary to comply with an Affordable Care Act mandate. Deleting the definitions is necessary as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house all Medicaid eligibility administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the Affordable Care Act by establishing that inpatient hospitals will be authorized to make presumptive eligibility determinations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the Affordable Care Act by establishing that inpatient hospitals will be authorized to make presumptive eligibility determinations.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All inpatient hospitals participating in Kentucky’s Medicaid program will be authorized to make presumptive eligibility decisions for individuals whose Medicaid eligibility standard is a modified adjusted gross income (MAGI) but are not required to do so. Medicaid recipients who may gain presumptive eligibility coverage as a result of an inpatient hospital’s determination will be affected. Currently, there are over 100 inpatient hospitals participating in Kentucky’s Medicaid program. The Department for Medicaid Services (DMS) estimates that over 500,000 individuals could be eligible for Medicaid under the modified adjusted gross income (MAGI) rules in state fiscal year 2014.

(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. Inpatient hospitals who wish to make presumptive eligibility determinations will have to complete the required application for each applicant to determine if the individual qualifies via the presumptive eligibility option.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Inpatient hospitals will benefit by making determinations and being reimbursed for services provided to individuals for whom the hospital determined is eligible via the presumptive eligibility option. Individuals determined to be presumptive eligible by an inpatient hospital will benefit by receiving Medicaid-covered services during presumptive eligibility period. Additionally, individuals will hopefully be prompted, as a result of receiving presumptive eligibility for Medicaid benefits, to apply for “standard” Medicaid coverage (before their presumptive eligibility period ends) and remain eligible for Medicaid benefits.

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

(a) Initially: The Department for Medicaid Services (DMS) is unable to estimate how many individuals could be determined to be presumptively eligible by inpatient hospitals or to predict how many hospitals will choose to make presumptive eligibility determinations. DMS projects that over 500,000 individuals will be in the eligibility group (the MAGI group) which could be made presumptively eligible by inpatient hospitals; however, the same individuals can gain eligibility without being admitted to an inpatient hospital. As it’s difficult to predict how hospitals will make presumptive eligibility determinations and how many individuals will gain Medicaid eligibility as a result of a presumptive eligibility determination, it is difficult to estimate costs associated with inpatient hospital presumptive eligibility determinations.

(b) On a continuing basis: The answer in paragraph (a) also applies here.

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

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

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

(9) Tiering: Is tiering applied? Tiering is applied in the sense that inpatient hospitals can only make presumptive eligibility determinations for those whose Medicaid eligibility standard is a modified adjusted gross income (MAGI). The Affordable Care Act authorizes hospitals to make such determinations for only the MAGI population.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The presumptive eligibility option is not mandatory. The requirements regarding the program, for states who choose to offer it, are established in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396b(u)(1)(D)(v).

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

3. Minimum or uniform standards contained in the federal mandate. The presumptive eligibility option is not federally mandated; however, if a state chooses to offer it the following requirements apply:

42 U.S.C. 1396a(a)(47) establishes that any hospital participating in the Medicaid program may “elect to be a qualified entity for purposes of determining, on the basis of preliminary information, whether any individual is eligible for medical assistance under the State plan or under a waiver of the plan for purposes of providing the individual with medical assistance during a presumptive eligibility period...

42 U.S.C. 1396b(u)(1)(D)(v) establishes that the federal government (Centers for Medicare and Medicaid Services) will not consider federal Medicaid funds spent on services to an individual who was erroneously determined to be presumptively eligible by a hospital (that chose to make presumptive eligibility determinations) to be an “erroneous excess payment for medical assistance” (i.e. an erroneous excess Medicaid expenditure.) The result of the policy is that CMS will not seek to recover such expenditure from the given state.


(v) In determining the amount of erroneous excess payments, there shall not be included any erroneous payments made for ambulatory prenatal care provided during a presumptive eligibility period (as defined in section 1920(b)(1)), for items and services
described in subsection (a) of section 1920A provided to a child
during a presumptive eligibility period under such section, for
medical assistance provided for the state or local government (including cities,
counties, fire departments, or school districts) for the first year?
The Department for Medicaid Services (DMS) is unable to estimate
how many individuals could be determined to be presumptively
eligible by inpatient hospitals or to predict how many hospitals will
choose to make presumptive eligibility determinations. DMS
projects that over 500,000 individuals will be in the eligibility
group (the MAGI group) which could be made presumptively eligible
by inpatient hospitals; however, the same individuals can gain
eligibility without being admitted to an inpatient hospital. As it’s
difficult to predict how hospitals will make presumptive eligibility
determinations and how many individuals will gain Medicaid
eligibility as a result of a presumptive eligibility determination, it is
difficult to estimate revenues associated with inpatient hospital
presumptive eligibility determinations.

(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 answer in paragraph (a) also applies here.

(c) How much will it cost to administer this program for the first
year? The Department for Medicaid Services (DMS) is unable to estimate
how many individuals could be determined to be presumptively
eligible by inpatient hospitals or to predict how many hospitals will
choose to make presumptive eligibility determinations. DMS
projects that over 500,000 individuals will be in the eligibility
group (the MAGI group) which could be made presumptively eligible
by inpatient hospitals; however, the same individuals can gain
eligibility without being admitted to an inpatient hospital. As it’s
difficult to predict how hospitals will make presumptive eligibility
determinations and how many individuals will gain Medicaid
eligibility as a result of a presumptive eligibility determination, it is
difficult to estimate costs associated with inpatient hospital presumptive eligibility determinations.

(d) How much will it cost to administer this program for
subsequent years? The answer in paragraph (c) also applies here.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government
(including cities, counties, fire departments, or school districts) will
be impacted by this administrative regulation? The Department for
Medicaid Services will be affected by the amendment to this
administrative regulation.

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

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

VOLUME 40, NUMBER 5 – NOVEMBER 1, 2013

907 KAR 20:060. Medicaid adverse action and conditions for recipients.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1),
205.520(3), 42 C.F.R. 431.210, 431.211, 431.213, 431.214, 42
U.S.C. 1396a, b, d[EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-
726, effective July 9, 2004, reorganized the Cabinet for Health
Services and placed Medicaid Services under the Cabinet for Health and Family
Services.] The Cabinet for Health and Family Services has
responsibility to administer the Medicaid Program. KRS 205.520(3)
empowers the cabinet, by administrative regulation, to comply with
any requirement that may be imposed or opportunity presented by
federal law to qualify for federal Medicaid funds for the provision of medical
assistance to Kentucky’s indigent citizens. This administrative regulation establishes[sets forth] the conditions
under which an application is denied or medical assistance is
decreased or discontinued and advance notice requirements.

Section 1. [Definitions. (1) "Applicant" means an individual
applying for Medicaid.
(2) "Application" means the process set forth in 907 KAR 1:004.
(4) "Recipient" means an individual who receives Medicaid coverage.

Section 2. Reasons for Adverse Action. (1) For an individual:
(a) Whose eligibility standard is not a modified adjusted gross income, an application for Medicaid eligibility shall be denied if:
1. Income exceeds the standards as established in 907 KAR 20:020 (set forth in 907 KAR 1:004);
2. Resources exceed the standard established in 907 KAR 20:025;
3. (ab) The applicant does not meet technical eligibility criteria or fails to comply with a technical requirement as established in 907 KAR 20:020 (set forth in 907 KAR 1:004);
4. (ac) Despite receipt of written notice detailing the additional information needed for a determination, the applicant fails to provide sufficient information or clarify conflicting information necessary for a determination of eligibility;
5. (ad) The applicant fails to keep the appointment for an interview without good cause;
6. (ae) The applicant requests, in writing, voluntary withdrawal of the application without good cause;
7. (af) Staff are unable to locate the applicant;
8. (ag) The applicant is no longer domiciled in Kentucky;
(b) Whose eligibility standard is a modified adjusted gross income pursuant to 907 KAR 20:100, the application for Medicaid eligibility shall be denied if:
1. Income exceeds the standards as established in 907 KAR 20:100;
2. The applicant does not meet the citizenship, residency, and other technical requirements established in 907 KAR 20:100;
3. Despite receipt of written notice detailing the additional information needed for a determination, the applicant fails to provide sufficient information or clarify conflicting information necessary for a determination of eligibility;
4. The applicant fails to keep the appointment for an interview without good cause;
5. The applicant requests, in writing, voluntary withdrawal of the application without good cause;
6. Staff are unable to locate the applicant;
7. The applicant is no longer domiciled in Kentucky; or
(c) Who is a former foster care individual between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage if:
1. Income exceeds the standards established in 907 KAR 20:100;
2. The applicant does not meet the citizenship, residency, and other technical requirements established in 907 KAR 20:075;
3. Despite receipt of written notice detailing the additional information needed for a redetermination, the recipient fails to provide sufficient information or clarify conflicting information necessary for a redetermination of eligibility;
4. The recipient fails to keep the appointment for an interview;
5. Staff are unable to locate the recipient;
6. The recipient is no longer domiciled in Kentucky; or
7. A change in program policy that adversely affects the recipient has occurred;
(c) For a former foster care individual between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage if:
1. Income exceeds the standards established in 907 KAR 20:100;
2. The applicant does not meet the citizenship, residency, and other technical requirements established in 907 KAR 20:075;
3. Despite receipt of written notice detailing the additional information needed for a redetermination, the recipient fails to provide sufficient information or clarify conflicting information necessary for a redetermination of eligibility;
4. The recipient fails to keep the appointment for an interview;
5. Staff are unable to locate the recipient;
6. The recipient is no longer domiciled in Kentucky; or
7. A change in program policy that adversely affects the recipient has occurred;
(3) Income of the recipient exceeds the standards as set forth in 907 KAR 20:020 (4:004); or
(4) Medicaid eligibility may be redetermined in another category resulting in a reduction of Medicaid coverage for an individual whose income eligibility standard is:
(a) Not a modified adjusted gross income, if:
1. Income exceeds[or resources exceed] the standards established as set forth in 907 KAR 20:020 (4:004); or
2. The individual does not meet technical eligibility requirements established in 907 KAR 20:005; or
(b) A modified adjusted gross income, if:
1. Income exceeds the standards established in 907 KAR 20:100; or
2. The individual does not meet the citizenship, residency, and other technical eligibility requirements established in 907 KAR 20:100 as set forth in 907 KAR 1:013.

Section 3. Medicaid coverage may be reduced due to a change in Medicaid coverage policy.

Section 2. Notification of Denial of Applications. If a Medicaid application is denied, the applicant shall be given written notification of the denial which shall include:
(1) The reason for the denial;
(2) The cites of the applicable state administrative regulations; and
(3) The right to an administrative hearing as established in 907 KAR 20:005 (set forth in 907 KAR 1:004).

Section 3. Advance Notice of a Discontinuance, Increase in Patient Liability, or a Reduction of Medicaid Coverage. (1) Advance notice of the proposed action if a change in circumstances indicates:
(a) A discontinuance of Medicaid coverage;
(b) An increase in patient liability; or
(c) A reduction of Medicaid coverage.

(2) An administrative hearing shall be given five (5) days advance notice of the proposed action if a change in circumstance indicates:
(a) Facts that action should be taken because of probable fraud by the recipient; and
(b) The facts have been verified through secondary sources.

(3) The ten (10) days advance notice and the five (5) days advance notice of proposed action shall:
(a) Be in writing;
(b) Explain the reason for the proposed action;
(c) Cite the applicable state administrative regulation;
(d) Explain the individual's right to request an administrative hearing;
(e) Provide an explanation of the circumstances under which Medicaid is continued if an administrative hearing is requested; and
(f) Include that the applicant or recipient may be represented by an attorney or other party if the applicant or recipient so desires.

(4) An administrative hearing request received during the advance notice period may result in a delay of the discontinuance of Medicaid coverage, a delay in an increase in patient liability, or delay in the effective date of a reduction of Medicaid coverage pending the hearing officer's decision, as established in 907 KAR 20:065[set forth in 907 KAR 1:560].

Section 4[5] Exceptions to the Advance Notice Requirement. An advance notice of proposed action shall not be required, but written notice of action taken shall be given, if discontinuance of Medicaid coverage or an increase in patient liability resulted from:
(1) Information reported by the recipient if the recipient signs a waiver of the notice requirement indicating understanding of the consequences;
(2) A clear written statement, signed by the recipient, that the recipient no longer wishes to receive Medicaid;
(3) Factual information is received that the recipient has died; or
(4) Whereabouts of the recipient are unknown and mail addressed to the recipient is returned indicating no known forwarding address;
(5) Establishment by the agency that Medicaid has been accepted in another state;
(6) The recipient enters:
(a) A penal institution; or
(b) If between twenty-one (21) and sixty-five (65) years of age, a mental hospital or an institution for mental disease (IMD); or
(7) A change in the level of medical care is prescribed by the recipient's physician.

Section 5. Expiration of Hospital or Psychiatric Residential Treatment Facility Stay: Sections[6] Expiration of an approved time-limited hospital or psychiatric residential treatment facility stay shall not constitute a termination, suspension, or reduction of benefits.

Section 6. Individuals Whose Income Eligibility Standard is a Modified Adjusted Gross Income. An individual whose Medicaid eligibility is determined using a modified adjusted gross income as the eligibility standard shall be an individual who is:
(1) A child under the age of nineteen (19) years, excluding children in foster care and for former foster care individuals between the ages of nineteen and twenty-six (26) who aged out of foster care while receiving Medicaid coverage, and for former foster care individuals between the ages of nineteen and twenty-six (26) who aged out of foster care while receiving Medicaid coverage, the income eligibility standard is a modified adjusted gross income (or MAGI) and for former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage, these are two (2) new eligibility categories created by the Affordable Care Act and having eligibility requirements differing from the old/existing Medicaid eligibility requirements differing from the old/existing Medicaid eligibility standards;
(2) A caretaker relative with income up to 133 percent of the federal poverty level;
(3) A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;
(4) An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level who:
(a) Does not have a dependent child under the age of nineteen (19) years; and
(b) Is not otherwise eligible for Medicaid benefits; or
(5) A targeted low income child with income up to 150 percent of the federal poverty level[7]. Material Incorporated by Reference.

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rules. The MAGI group includes individuals previously eligible under the old rules but there is no resource standard for these individuals and income is determined in a more simplified way under the new rules. The MAGI group also includes what is known as the expansion group which is a new eligibility group comprised of childless adults who do not otherwise qualify for Medicaid and have income up to 133 percent of the federal poverty level. The MAGI group in entirety is comprised of children under nineteen (19) – except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level. Another new group – a group which is mandated by the Affordable Care Act – is comprised of former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. There is no income standard or resource standard for this group. The amendment also removes definitions from the administrative regulation as those are now being established in a definitions administrative regulation for all other administrative regulations within the new chapter – Caring 20, which will house Medicaid eligibility administrative regulations; deletes incorporated material not used by the Department for Medicaid Services; and also includes language and formatting revisions to comply with KRS Chapter 13A requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with an Affordable Care Act mandate which requires eligibility standards for the MAGI group and for former foster care individuals which differ from the eligibility standards for those who remain under the old/existing Medicaid eligibility rules. Deleting the incorporated material is necessary as the Department for Medicaid Services (DMS) does not use the material. Deleting the definitions is necessary as DMS is creating a definitions administrative regulation for Chapter 20. Additionally, language and formatting amendments are necessary to ensure conformity with the requirements established in KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with Affordable Care Act mandates.

(d) How the amendment will assist in the effective administration of the statutes: The amendment conforms to the content of the authorizing statutes by complying with Affordable Care Act mandates.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.

(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 imposes no action to be taken by the affected individuals.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment imposes no cost on the affected individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals will be able to appeal adverse actions as prescribed in this administrative regulation.

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

(a) Initially: DMS anticipates no cost as a result of the amendment.

(b) On a continuing basis: The answer provided in paragraph (a) also applies here.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals will be able to appeal adverse actions as prescribed in this administrative regulation.

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

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

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

(9) Tiering: Is tiering applied? Tiering is only applied in that different requirements apply to the MAGI group and to the former foster care individuals as mandated by the Affordable Care Act.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate 42 U.S.C. 1396a(e)(14) and 42 U.S.C. 1396a(a)(10)(i)(IX).

2. State compliance standards. KRS 205.520(3) states, "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. Effective January 1, 2014, each state's Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations exempted from the new requirements (and to whom the old requirements continue to apply) include aged individuals [individuals over sixty-five (65) years of age or who receive Social Security Disability Insurance; individuals eligible for Medicaid as a result of being a child in foster care; individuals who are blind or disabled; individuals who are eligible for Medicaid via another program; individuals enrolled in a Medicare savings program; and medically needy individuals. Additionally, states are prohibited from continuing to use income disregards, asset tests, or resource tests for individuals who are eligible via the modified adjusted gross income standard. Federal law also prohibits the application of an income standard or resource standard, for eligibility purposes, to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment neither imposes stricter nor additional nor 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 amendment does not impose stricter than federal requirements.
be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be impacted by the amendment.

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

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates no revenue being generated for the first year for state or local government due to the amendments.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue being generated for subsequent years for state or local government due to the amendments.
   (c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year for state or local government due to the amendments.
   (d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years for state or local government due to the amendments.

   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 1. Registration Renewal. (1) The board shall send an appraisal management company recovery fund. companies and the amount to be charged to registrants for the fund. This administrative regulation establishes the application to registrants for the appraisal management company recovery regulation the renewal process for appraisal management
324A.152(6) requires the board to establish by administrative regulation the amount to be charged to registrants for the appraisal management company recovery fund. This administrative regulation establishes the application process for renewal of registration of appraisal management companies and the amount to be charged to registrants for the appraisal management company recovery fund.

Section 1. Registration Renewal. (1) The board shall send a renewal notice to the controlling person identified by the registrant by September 1 of each year.

(2)(a) The registrant shall apply for renewal in accordance with KRS 324A.152 by October 1 to ensure that all renewal requirements are satisfied before the expiration date of the registration.

(b) Failure to receive a renewal notice established in subsection (1) of this section from the board shall not relieve the registrant of the responsibility to timely apply for renewal.

(3) A Renewal Application for Appraisal Management Company Registration shall not be complete, and a renewal shall not be issued, until all requirements in this administrative regulation are satisfied.

(4) All registrations shall expire on October 31 of each year unless renewed before that time.

(5) A holder of an appraisal management company registration desiring the renewal of registration shall:

(a) Apply in writing on the Renewal Application for Appraisal Management Company Registration provided by the board;

(b) Submit the renewal fee required by 201 KAR 30:310, Section 1(2); and

(c) Submit the payment for the appraisal management recovery fund required by KRS 324A.155 in the amount of $300.

(6) None of the fees or payments for renewal or reinstatement shall be refundable.

Section 2. Reinstatement of an Expired Registration. (1) To reapply an expired registration within six (6) months after expiration, a registrant shall:

(a) Apply in writing on the Renewal Application for Appraisal Management Company Registration provided by the board;

(b) Submit the reinstatement fee in the amount of $2,000 required by 201 KAR 30:310, Section 1(3);

(c) Submit payment of $300 to be deposited in the appraisal management recovery fund in accordance with KRS 324A.155; and

(d) Submit payment of the late filing fee of fifty (50) dollars for each month or part thereof since the registration expired as required by KRS 324A.152(7)(b).

(2) Failure to reapply within six (6) months of expiration shall require the expired registrant to submit a new application for registration under 201 KAR 30:330 and meet all current requirements for registration.

(3) Reinstatement shall not apply retroactively to the activities of the registrant while the registration was expired.

(4) Failure to renew a registration prior to the expiration date shall result in a loss of authority to operate, in accordance with KRS 324A.155(7).

Section 3. Incorporation by Reference. (1) The "Renewal Application for Appraisal Management Company Registration", September 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD BRANTLEY, Chair
APPROVED BY AGENCY: September 27, 2013
FILED WITH LRC: October 10, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2013 at 1:00 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 2, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry Disney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for registration renewal by an appraisal management company.

(b) The necessity of this administrative regulation: This administrative is necessary to set the process for renewal of a registration as an appraisal management company by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.152(6) requires the board to establish by administrative regulation the renewal process for appraisal management companies. KRS 324A.155 and KRS 324A.163 requires the board to establish by administrative regulation the amount to be charged to registrants for the appraisal management company recovery fund. This administrative regulation establishes the application process for renewal of registration of appraisal management companies and the amount to be charged to registrants for the appraisal management company recovery fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the registrants of the requirements for renewal from the board.

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

(a) How the amendment will change this existing administrative regulation: This 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
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regulation. (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board has 120 registered appraisal management companies.

(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 administrative regulation requires applicants to file the completed application setting forth how the individual meets the qualifications for renewal.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees for applying will be established in a separate regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for renewal of the registration will have their applications reviewed by the board.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation or amendment: Initially: Exact figures are difficult to estimate until the number of applicants is ascertained. However, the board anticipates that additional costs could be substantial in the implementation of the administrative regulations. Initial estimates exceed $200,000 per year.

(b) On a continuing basis: The board estimates that the costs identified in (5)(a) will continue as the board enforces and administers the requirements of KRS 324A.150 et seq.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by fees paid by the registrants and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation amendment does not directly establish or increase fees. It does establish the amount of the charge for funding the appraisal management company recovery fund under 324A.155 and 324A.163.

(9) TIERING: Is tiering applied? No, this administrative regulation does not utilize tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.152; KRS 324A.163.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? None

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

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

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

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(New Administrative Regulation)


RELATES TO: KRS 15A.065, 15A.067, Chapters 600-645
STATUTORY AUTHORITY: KRS 15A.065, 15A.067, 15A.160, 15A.210, 200.115, 605.100, 605.150, 635.095, 640.120, 645.250
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.100, 605.150, 635.095, 640.120, and 645.250 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 "Department of Juvenile Justice Policies and Procedures: Prison Rape Elimination Act of 2003 (PREA)", October 14, 2013, is incorporated by reference and includes the following:

900 Definitions (October 14, 2013);
901 Zero Tolerance of Any Type of Sexual Misconduct (October 14, 2013);
902 Personnel Procedures (October 14, 2013);
903 Prohibited Conduct of Staff, Interns, Volunteers, and Contractors (October 14, 2013);
904 Contracted Residential Entities (October 14, 2013);
905 Juvenile Vulnerability Assessment Procedure (October 14, 2013);
906 Reporting and Investigating PREA Violations (October 14, 2013);
907 Resident PREA Education (October 14, 2013);
908 DJJ Response to a Report of a PREA Violation (October 14, 2013);
909 Data Collection and Review (October 14, 2013);
910 Facility Security Management (October 14, 2013);
911 DJJ Staff PREA Education and Training (October 14, 2013); and
912 Sexual Orientation and Gender Identity (October 14, 2013).

(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: October 9, 2013
FILED WITH LRC: October 14, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2013 at 10:00 a.m., at the Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 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 this date, the hearing may be cancelled. A transcript of this 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, December 2, 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: LaDonna Koebel, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: LaDonna Koebel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Department of Juvenile Justice, including the rights and responsibilities of employees and the juvenile population.

(b) The necessity of this administrative regulation: To comply with the requirements of 28 C.F.R. §115, Subpart D.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Juvenile Justice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation and material incorporated by reference establishes policies and procedures that govern the operations of the Kentucky Department of Juvenile Justice and its facilities. It provides direction and information to departmental employees and juveniles concerning the operations of the department.

(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 new administrative regulation will bring the Kentucky Department of Juvenile Justice into compliance with the federal requirements of the Prison Rape Elimination Act of 2003 (PREA) and updates current practices for the department, employees, and juveniles in the care and custody of the department.

(b) The necessity of the amendment to this administrative regulation: To comply with the requirements of 28 C.F.R. §115, Subpart D.

(c) How the amendment conforms to the content of the authorizing statutes: The new administrative regulation and material incorporated by reference establishes policies and procedures that govern the operations of the Kentucky Department of Juvenile Justice.

(d) How the amendment will assist in the effective administration of the statutes: This new administrative regulation and material incorporated by reference establishes policies and procedures that govern the operations of the Kentucky Department of Juvenile Justice.

(3) List type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the Kentucky Department of Juvenile Justice, 1,400 employees, all juveniles committed to the care and custody of the department, visitors, volunteers, interns, and contractors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Staff, volunteers, interns, and contractors will be required to follow the incorporated policies and procedures. Juveniles in the care and custody of the Kentucky Department of Juvenile Justice will have the rights established by the policy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this new administrative regulation will increase current costs significantly.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The impact of the policies and procedures will protect rights of juveniles in the care and custody of the department and further ensure safety and protection of youth.

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

(a) Initially: The department anticipates that any initial cost will be related to training staff, volunteers, interns, and contractors on the new policies and the requirements of PREA.

(b) On a continuing basis: The cost associated with complying with the stipulations and federal requirements will primarily come from mandatory audits of department programs. The U.S. Department of Justice has not yet identified cost associated with audits, but such audits are anticipated to be in line with ACA audits, approximately $25,000 per year.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Juvenile Justice budgeted funds for the biennium.

(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 is anticipated, however it is anticipated that an increase in funding may be necessary to cover the costs of the federally required audits. The cost of the audits is currently unknown and is anticipated to be approximately $25,000 per year.

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

(9) Tiering: Is tiering applied? No. Tiering is not appropriate in this new administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts operation of the Kentucky Department of Juvenile Justice and its facilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 15A.065, 15A.067, 15A.160, 200.115, 605.11, 605.150, 640.120, 645.450, 28 C.F.R. §115, Subpart D.

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

(a) As a result of compliance, what benefits will accrue to the Kentucky Department of Juvenile Justice budgeted funds for the biennium.

(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? Not applicable.

(c) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Not applicable.

(d) How much will it cost to administer this program for the first year? The department anticipates that any initial cost will be related to training staff, volunteers, interns, and contractors on the new policies and the requirements of PREA.

(e) How much will it cost to administer this program for subsequent years? The cost associated with complying with the stipulations and federal requirements will primarily come from mandatory audits of department programs. The U.S. Department of Justice has not yet identified cost associated with audits, but such audits are anticipated to be in line with ACA audits, approximately $25,000 per year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-): No revenue will be generated from this regulation.
Expenditures (+/-): Expenditures relate to training staff and auditing programs to ensure compliance.
Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Releaser)


RELATES TO: 42 U.S.C. 1761, 1766(e), 1772
STATUTORY AUTHORITY: KRS 156.070(5), 156.160, 7 C.F.R. 210.18(q), 215.11, 220.13(f)(2), 225.13, 226.6(k)
NECESSITY, FUNCTION, AND CONFORMITY: The U.S. Department of Agriculture requires the Department of Education’s Division of School and Community Nutrition to have policies and procedures for appeals under nutrition programs, compliant with the federal regulatory requirements. Kentucky had incorporated the federal appeals process, set forth in federal law, in state administrative regulation 702 KAR 6:100. Kentucky appeal procedures for the child and adult nutrition programs, as incorporated into 702 KAR 6:100, do not include all of the federal regulatory requirements. In order to conform to 7 C.F.R. 210.18(q); 215.11; 220.13(f)(2); 225.13; 226.6(k), the repeal of 702 KAR 6:100 is necessary. This administrative regulation repeals 702 KAR 6:100.

Section 1. 702 KAR 6:100, Appeal procedures for nutrition and health services programs, is hereby repealed.

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(6).

TERRY HOLLIDAY, Ph.D., Commissioner
ROGER MARCUM, Chairperson
APPROVED BY AGENCY: October 15, 2013
FILED WITH LRC: October 15, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 25, 2013, at 2:00 p.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through close of business December 2, 2013. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 702 KAR 6:100 which established state level appeal procedures for nutrition and health services programs. The federal regulations already provide the appeal procedures for nutrition programs in all states. In place of a state administrative regulation, the agency’s Division of School and Community Nutrition will provide guidance consistent with 7 C.F.R. 210.18(q); 215.11; 220.13(f)(2); 225.13; 226.6(k) for appeals under child and adult nutrition programs.
(b) The necessity of this administrative regulation: 702 KAR 6:100 conflicts with the federal regulations that govern child and adult nutrition programs and their appeal procedures. The repeal of 702 KAR 6:100 will address and remedy this federal law compliance issue.
(c) How this administrative regulation conforms to the content of the authorizing statute: No state statute requires a state administrative regulation for federal child and adult nutrition program appeals procedures.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Not applicable.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Not applicable.
(b) The necessity of the amendment to this administrative regulation: Not applicable.
(c) How the amendment conforms to the content of the authorizing statute: Not applicable.
(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will apply to: School districts, participants, and sponsors in the federal child and adult nutrition programs.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: This repeal will end the current state and federal law conflict and ensure future conflicts do not arise.
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional costs.
(b) On a continuing basis: No additional costs.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the regulation is being repealed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, participants, and sponsors in the federal child and adult nutrition programs.
(2) Identify each state or federal statute or federal regulation
that requires or authorizes the action taken by the administrative regulation. 7 C.F.R. 210.18(q); 215.11; 220.13(f)(2); 225.13; 226.6(k).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? The proposed regulation will require no additional cost.

(d) How much will it cost to administer this program for subsequent years? The proposed regulation will require no additional cost.

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

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

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

Repealer

704 KAR 7:151. Repeal of 704 KAR 7:150.

RELATES TO: KRS 151B.125, 158.145, 158.146, 158.6455
STATUTORY AUTHORITY: KRS 156.060, 156.070
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.146 required the Kentucky Department of Education to establish and implement a comprehensive statewide strategy to provide assistance to local districts and schools to address the student dropout problem in Kentucky public schools. The Secondary GED program was part of that statewide strategy. Pursuant to SB 1 (2009 GA) the Kentucky Board of Education has set a goal to increase the high school graduation rate and the statewide strategies being used to reach that goal are the use of the Persistence to Graduation Tool, multi-tiered interventions based on student need, college and career advising, and innovative pathways to student success. If this administrative regulation remained in place, it would be contradictory to the focus on increasing the graduation rate, since earning a secondary GED is not permitted to count as a "graduate" under federal guidelines. If students drop out of school and still choose to earn a GED, they may continue to do so through Kentucky Adult Education. This administrative regulation repeals 704 KAR 7:150, Secondary GED Program, because the Secondary GED program no longer supports the Kentucky Board of Education’s goals of college and career readiness for all Kentucky students.

Section 1. 704 KAR 7:150, Secondary GED Program, is hereby repealed.

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(5).

TERRY HOLLIDAY, Ph.D., Commissioner
ROGER MARCUM, Chairperson
APPROVED BY AGENCY: October 15, 2013
FILED WITH LRC: October 15, 2013 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 25, 2013, at 2:00 p.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through close of business December 2, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeals administrative regulation 704 KAR 7:150, which allowed for the operation of the Secondary General Equivalency Diploma Option Program in KY. Under the new administrative regulation, 704 KAR 7:151, that program will no longer be available.

(b) The necessity of this administrative regulation: This regulation will repeal the authorization for Secondary General Equivalency Diploma Program in Kentucky, a program which is inconsistent the Kentucky Board of Education’s college and career readiness initiatives for Kentucky students.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.060 and KRS 156.070.

(d) How this administrative regulation will assist or will assist in the effective administration of the statutes: This regulation would repeal the Secondary General Equivalency Diploma Option 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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this repeal are: local school districts that offer the Secondary General Equivalency Diploma Program (30 districts currently have approved programs, but only 8 districts have active programs) and Kentucky Adult Education (because they facilitate the Program in their Adult Education testing sites by administering the Official Practice Exam and the General Equivalency Diploma and maintain the transcript for students).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Districts will no longer have the Secondary General Equivalency Diploma Program to provide as an
alternative for students age sixteen (16) or older who want to drop out of school. SB 97 has eliminated this option. Students who are eighteen (18) can take the General Equivalency Diploma without the Option program in place. The Option program allowed for students who are sixteen (16) or seventeen (17) to take the exam within the guidelines of the program. Kentucky Adult Education helps facilitate the program in their General Equivalency Diploma test centers. Kentucky Adult Education will no longer offer assistance to General Equivalency Diploma test takers under the age of eighteen (18).

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Districts will not need the Secondary General Equivalency Diploma Option Program for students who are sixteen (16) or seventeen (17). They will have developed other programmatic options for students that lead to a high school diploma rather than a General Equivalency Diploma.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No cost
(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(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: N/A

(8) State whether or not this administrative regulation applies equally to all schools and districts: N/A

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will repeal the Secondary General Equivalency Diploma Option Program in Kentucky, a program that served a very small population of students as a drop-out prevention alternative that prepared students to take and pass the General Equivalency Diploma, rather than persist to a high school diploma. The program contradicts the KBE’s college and career readiness for all goals.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.060 and KRS 156.070.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue.

(c) How much will it cost to administer this program for the first year? The program is being repealed- there will be no cost associated with the repeal.

(d) How much will it cost to administer this program for subsequent years? The program is being repealed- there will be no cost associated with the repeal.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
(16) “Baseline date” means the date the institutionalized individual was institutionalized and applied for Medicaid.

(17) “Basic maintenance” means the amount of income that may be retained by the applicant for living and personal expenses.

(18) “Blind” is defined by 42 U.S.C. 1382c(a)(2).

(19) “Blind work expense” or “BWE” means an SSI program option in which expenses a blind individual incurs in order to earn income are deducted for SSI eligibility purpose.

(20) “Cabinet” is defined by KRS 194A.005(1).

(21) “Caretaker relative” means:
   (a) An individual:
      1. Who is the caregiver of a child under the age of nineteen (19) years; or
      2. On whose tax return the child under the age of nineteen (19) years is listed as a dependent; and
   (b) One (1) of the following:
      1. A grandfather;
      2. A grandmother;
      3. A stepfather;
      4. A stepmother;
      5. A brother;
      6. A sister;
      7. A nephew;
      8. A niece;
      9. A first cousin;
      10. A relative of the half-blood;
      11. A preceding generation denoted by a prefix of:
         a. Grand;
         b. Great; or
         c. Great-great; or
      12. A stepfather, stepmother, stepbrother, or stepsister.

(22) “Categorically needy” means an individual with income below 300 percent of the supplemental security income (SSI) standard who has been receiving hospice or 1915(c) home and community based services for at least thirty (30) consecutive days.

(23) “CDC” means the federal Centers for Disease Control and Prevention.

(24) “Child” means a person who:
   a. Is under the age of eighteen (18) years;
   b. Is a full-time student in a secondary school or the equivalent level of vocational or technical training; and
   c. Is expected to complete the program before the age of nineteen (19) years;
   3. Is not self supporting;
   4. Is not a participant in any of the United States Armed Forces; and
   5. If previously emancipated by marriage, has returned to the home of his or her parents or to the home of another relative;
   (b) Has not attained the age of nineteen (19) years in accordance with 42 U.S.C. 1396a(a)(11)(D); or
   (c) Is under the age of nineteen (19) years if the person is a KCHIP recipient.

(25) “Community spouse” means the spouse of an institutionalized spouse who:
   (a) Remains at home in the community; and
   (b) Is not:
      1. Living in a medical institution;
      2. Living in a nursing facility; or
      3. Participating in a 1915(c) home and community based services waiver program.

(26) "Community spouse maintenance standard" means the income standard to which a community spouse's otherwise available income is compared for purposes of determining the amount of the allowance used in the post-eligibility calculation.

(27) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home or both and may include thirty (30) consecutive days of receipt of a 1915(c) home and community based service or a combination of both.

(28) "Countable resources" means resources not subject to exclusion in the Medicaid Program.

(29) "Creditable coverage" is defined in KRS 304.17A-005(7).

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

(31) “Department” means the Department for Medicaid Services or its designee.

(32) “Dependent child” means a couple's child, including a child gained through adoption, who:
   (a) Lives with the community spouse; and
   (b) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(33) “Dependent parent” means a parent:
   (a) Of either member of a couple;
   (b) Who lives with the community spouse; and
   (c) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(34) “Dependent sibling” means a brother or sister of either member of a couple, including a half-brother, half-sister, or sibling gained through adoption, who:
   (a) Resides with the community spouse; and
   (b) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(35) “Designated hearing agency” means the Department for Community Based Services.

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

(37) “Dual eligible” means an individual eligible for Medicare and Medicaid benefits.

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


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

(41) “Evidence of identity” means:
   (a) A current state driver's license or state identity document bearing the individual's picture;
   (b) A Certificate of Degree of Indian Blood or other United States American Indian or Alaska Native tribal document; or
   (c) For a child who is age sixteen (16) or younger:
      1. A school identification card with a photograph;
      2. A military dependent's identification card, if it contains a photograph;
      3. A school record that shows the:
         a. Date and place of birth; and
         b. Parent or parents' name;
      4. A clinic, doctor, or hospital record showing date of birth;
      5. A daycare or nursery school record showing date of birth; or
      6. An affidavit signed under penalty of perjury by a parent or guardian attesting to the child's identity.

(42) “Excess shelter allowance” means an amount equal to the difference between the community spouse's verified shelter expenses and the minimum shelter allowance.

(43) “Fair market value” means an estimate of the value of an asset if sold at the prevailing price at the time it was actually transferred based on:
   (a) The gross tax assessed value of the property as stated by the local property valuation administrator; or
   (b) An independent, licensed appraiser.

(44) "Family alternatives diversion payment" means a lump sum payment made to a Kentucky Transitional Assistance Program applicant:
   (a) To meet short-term emergency needs; and
   (b) Pursuant to 921 KAR 2:500.

(45) "Family-related case” or "family case” means a Medicaid-eligible, medically-needy group based on deprivation and within the medically-needy income level.

(46) "Federal financial participation" is defined in 42 C.F.R. 400.203.

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

(48) “First month of SSI payment” means the first month for which an SSI-related Medicaid recipient is determined to be eligible for SSI payments.
(49) "Foster care" is defined by KRS 620.020(5).

(50) "Gross income" means non-excluded income which would be used to determine eligibility prior to income disregards.

(51) "Homeless individual" means an individual who:
(a) Lacks a fixed, regular, or nighttime residence;
(b) Is at risk of becoming homeless in a rural or urban area because the residence is not safe, decent, sanitary, or secure;
(c) Has a primary nighttime residence at a:
   1. Publicly or privately operated shelter designed to provide temporary living accommodations; or
   2. Public or private place not designed as regular sleeping accommodations; or
(d) Lacks access to normal accommodations due to violence or the threat of violence from a cohabitant.

(52) "Homestead" means property:
(a) In which an individual has an ownership interest; and
(b) Which an individual uses as the individual's principal place of residence.

(53) "ICF IID" means intermediate care facility for individuals with an intellectual disability.

(54) "Impairment related work expenses" or "IRWE" means an SSI program option in which the United States Social Security Administration deducts the cost of items or services an individual needs due to an impairment, in order to work.

(55) "Incacity" means a condition of mind or body making a parent physically or mentally unable to provide the necessities of life for a child.

(56) "Income" means money received from:
(a) Statutory benefits (for example, Social Security, Veterans Administration pension, black lung benefits, or railroad retirement benefits);
(b) A pension plan;
(c) Rental property;
(d) An investment; or
(e) Wages for labor or services.

(57) "Individual development account" means an account containing funds for the purpose of continuing education, purchasing a first home, business capitalization, or other purposes allowed by federal regulations or clarifications which meets the criteria established in 921 KAR 2:016.

(58) "Institutionalized" means:
(a) Residing in a nursing facility;
(b) Receiving hospice services; or
(c) Receiving 1915(c) home and community based services.

(59) "Institutionalized individual" means an individual with respect to whom payment is based on a level of care provided in a nursing facility and who is:
(a) An inpatient in:  
   1. A nursing facility;  
   2. An intermediate care facility for individuals with an intellectual disability; or
   3. A medical institution; or
(b) Receiving 1915(c) home and community based services.

(60) "Institutionalized spouse" means an institutionalized individual who:
(a) Is in a medical institution or nursing facility; or
(b) Participates in a 1915(c) home and community based services waiver program;
(c) Has a spouse who is not an institutionalized individual: and
(d) Is likely to remain institutionalized for at least thirty (30) consecutive days while the community spouse remains out of a medical institution, nursing facility, or 1915(c) home and community based services waiver program.

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

(62) "Kentucky Transitional Assistance Program" or "K-TAP" means:
(a) Kentucky's version of TANF; and
(b) A money payment program for children who are deprived of parental support or care in accordance with 921 KAR 2:006.

(63) "Kentucky Women's Cancer Screening Program" means the program administered by the Department for Public Health:
(a) Which provides breast and cervical cancer screening and diagnostic services to low-income, uninsured, or underinsured women;
(b) Which uses:
   1. State funds; and
   2. Monies from the Centers for Disease Control and Prevention's National Breast and Cervical Cancer Early Detection Program, including Title XV funds.

(64) "Keogh plan" means a full-fledged pension plan for self-employed individuals in the United States of America.

(65) "Long-term care partnership insurance" is defined by KRS 304.14-640(4).

(66) "Long-term care partnership insurance policy" means a policy meeting the requirements established in KRS 304.14-642(2).

(67) "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.

(68) "Mandatory categorically needy eligibility groups" means:
(a) Transitional medical assistance;
(b) Extended Medicaid due to child or spousal support collections;
(c) Children with Title IV-E adoption assistance, foster care, or guardianship care;
(d) Qualified pregnant women and children;
(e) Mandatory poverty level related pregnant women;
(f) Mandatory poverty level related infants;
(g) Mandatory poverty level related children aged one (1) to five (5) years;
(h) Mandatory poverty level related children aged six (6) to eighteen (18) years;
(i) Deemed new borns;
(j) Individuals receiving supplemental security income benefits;
(k) Aged, blind, and disabled individuals in Social Security Act 209(b) states;
(l) Individuals receiving mandatory state supplement payments;
(m) Individuals who are essential spouses;
(n) Institutionalized individuals continuously eligible since 1973;
(o) Blind or disabled individuals eligible in 1973;
(p) Individuals who lost eligibility for supplemental security income benefits or state supplemental payments due to an increase in old age, survivors, and disability insurance benefits in 1972;
(q) Individuals who would be eligible for supplemental security income benefits or state supplement payments but for old age, survivors, and disability insurance benefits cost-of-living adjustment increases since April 1977;
(r) Disabled widows and widowers ineligible for supplemental security income benefits due to an increase in old age, survivors, and disability insurance benefits;
(s) Disabled widows and widowers ineligible for supplemental security income benefits due to early receipt of social security benefits;
(t) Working disabled under Social Security Act 1619(b);
(u) Disabled adult children;
(v) Qualified Medicare beneficiaries;
(w) Qualified disabled and working individuals;
(x) Specified low income Medicare beneficiaries; or
(y) Qualifying individuals.

(69) "Mandatory state supplement" is defined by 42 C.F.R. 435.4.

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

(71) "Medicaid works individual" means an individual who:
(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(a)(2)(B), would be considered to be receiving supplemental security income;
(b) Is at least sixteen (16), but less than sixty-five (65), years of age;
(c) Is engaged in active employment verifiable with:
   1. Paycheck stubs;
   2. Tax returns;
   3. 1099 forms; or
   4. Proof of quarterly estimated tax;
(d) Meets the income standards established in 907 KAR 20:020; and
(e) Meets the resource standards established in 907 KAR 20:025.
(72) "Medical institution or nursing facility" means a hospital, nursing facility, or intermediate care facility for individuals with an intellectual disability.
(73) "Medical record" means a single, complete record that documents all of the treatment plans developed for, and medical services received by, an individual.
(74) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.
(75) "Medically-needey income level" or "MNIL" means the basic maintenance standard used in the determination of Medicaid eligibility for the medically needy.
(76) "Medicare Part A" means federal health insurance that covers:
(a) Inpatient hospital or skilled nursing facility services, including blood;
(b) Hospice services; and
(c) Home health services.
(77) "Medicare qualified individual group 1 (QI-1)" means an eligibility category, in which pursuant to 42 U.S.C. 1396d(p)(2), an individual who would be a qualified Medicaid beneficiary but for the fact that the individual's income:
(a) Exceeds the income level established in accordance with 42 U.S.C. 1396d(p)(2); and
(b) Is at least 120 percent, but less than 135 percent, of the federal poverty level for a family of the size involved and who are not otherwise eligible for Medicaid under the state plan.
(78) "Minimum shelter allowance" means an amount that is thirty (30) percent of the standard maintenance amount.
(79) "Minor" means the couple's minor child who:
(a) Is under the age of twenty-one (21) years;
(b) Lives with a community spouse; and
(c) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.
(80) "Minor parent" means a parent under the age of twenty-one (21).
(81) "Minor teenage parent" means an individual who:
(a) Has not attained eighteen (18) years of age;
(b) Is not married; and
(c) Has a minor child in his or her care.
(82) "Modified adjusted gross income" or "MAGI" is defined by 42 U.S.C. 1396a(e)(14)(G).
(83) "Month of separation" means the month in which an individual ceases living in the same household of a Medicaid eligible family.
(84) "Monthly income allowance" means an amount:
(a) Deducted in the posteligibility calculation for maintenance needs of a community spouse or other family member; and
(b) Equal to the difference between a spouse's and other family member's income and the appropriate maintenance needs standards.
(85) "NF" means nursing facility.
(86) "Non-filer" means an individual who:
(a) Does not intend to file taxes for the benefit year;
(b) Is a child living with both parents who do not expect to jointly file a tax return;
(c) Expects to be claimed as a tax dependent by someone other than a spouse, parent, or stepparent; or
(d) Is a child under nineteen (19) years of age who is claimed as a tax dependent by a non-custodial parent.
(87) "Nonqualified alien" means a resident of the United States of America who does not meet the qualified alien requirements established in 907 KAR 20:005, Section 2.
(88) "Non-recurring lump sum income" means money received at one (1) time which is normally considered as income, including:
(a) Accumulated back payments from Social Security, unemployment insurance, or workers' compensation;
(b) Back pay from employment;
(c) Money received from an insurance settlement, gift, inheritance, or lottery winning;
(d) Proceeds from a bankruptcy proceeding; or
(e) Money withdrawn from an IRA by an individual prior to the individual reaching the age where no penalty is imposed for withdrawing the IRA, KEOGH plan, deferred compensation, tax deferred retirement plan, or other tax deferred asset.
(89) "Nursing facility" means:
(a) A facility:
1. To which the state survey agency has granted a nursing facility license;
2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and
3. To which the department has granted certification for Medicaid participation; or
(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396i, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396b(b), (c), and (d) and 42 C.F.R. 447.280 and 482.66.
(90) "Official poverty income guidelines" means the poverty income guidelines which are:
(a) Updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 U.S.C. 9902(2); and
(b) The latest poverty guidelines available as of March 1 of the particular state fiscal year.
(91) "Old Age, Survivors, and Disability Insurance" or "OASDI" means the social insurance program:
(a) More commonly known as "Social Security"; and
(b) Into which participants make payroll contributions based on earnings.
(92) "Optional state supplement" is defined by 42 C.F.R. 435.4.
(93) "Other family member" means a relative of either member of a couple who is a:
(a) Minor or dependent child;
(b) Dependent parent; or
(c) Dependent sibling.
(94) Other family member's maintenance standard means an amount equal to one-third (1/3) of the difference between the income of the other family member and the standard maintenance amount.
(95) "Other unearned income" means:
(a) Miner's benefits;
(b) A pension;
(c) An oil lease;
(d) Mineral rights;
(e) Trust income actually available other than from a Medicaid qualifying trust;
(f) Job Training Partnership Act income, including Eastern Kentucky Concentrated Employment Program income, paid to a specified relative or second parent;
(g) Income from income indemnity policies;
(h) Income from an IRA that is:
1. Not received as non-recurring lump sum income; and
2. Prorated over the period of time the income covers (for example monthly, quarterly, or annually); and
(i) Any portion of military combat pay made available to a family Medicaid household if used to establish the household's eligibility for Medicaid benefits; or
(j) Other income determined by the department to be other unearned income.
(96) "Otherwise available income" means income to which the community spouse has access and control, including gross income that would be used to determine eligibility under Medicaid without benefit of disregards for federal, state, and local taxes; child support payments; or other court ordered obligation.
(97) "Patient status criteria" means the patient status criteria established in 907 KAR 1:025.
(98) "Physician" is defined by KRS 311.550(12).
(99) "Plan to Achieve Self Support" or "PASS" means an SSI eligibility category, in which pursuant to 42 U.S.C. 1396a(a)(10)(E)(iv), an individual who would be a qualified Medicaid beneficiary but for the fact that the individual's income:
(b) Is not married; and
(c) Has not attained eighteen (18) years of age;
(80) "Medically-needy income level" or "MNIL" means the basic maintenance standard used in the determination of Medicaid eligibility for the medically needy.
(76) "Medicare Part A" means federal health insurance that covers:
(a) Inpatient hospital or skilled nursing facility services, including blood;
(b) Hospice services; and
(c) Home health services.
(77) "Medicare qualified individual group 1 (QI-1)" means an eligibility category, in which pursuant to 42 U.S.C. 1396d(p)(2), an individual who would be a qualified Medicaid beneficiary but for the fact that the individual's income:
(a) Exceeds the income level established in accordance with 42 U.S.C. 1396d(p)(2); and
(b) Is at least 120 percent, but less than 135 percent, of the federal poverty level for a family of the size involved and who are not otherwise eligible for Medicaid under the state plan.
(78) "Minimum shelter allowance" means an amount that is thirty (30) percent of the standard maintenance amount.
(79) "Minor" means the couple's minor child who:
(a) Is under the age of twenty-one (21) years;
(b) Lives with a community spouse; and
(c) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.
(80) "Minor parent" means a parent under the age of twenty-one (21).
(81) "Minor teenage parent" means an individual who:
(a) Has not attained eighteen (18) years of age;
(b) Is not married; and
(c) Has a minor child in his or her care.
(82) "Modified adjusted gross income" or "MAGI" is defined by 42 U.S.C. 1396a(e)(14)(G).
(83) "Month of separation" means the month in which an individual ceases living in the same household of a Medicaid eligible family.
(84) "Monthly income allowance" means an amount:
(a) Deducted in the posteligibility calculation for maintenance needs of a community spouse or other family member; and
(b) Equal to the difference between a spouse's and other family member's income and the appropriate maintenance needs standards.
(85) "NF" means nursing facility.
(86) "Non-filer" means an individual who:
(a) Does not intend to file taxes for the benefit year;
(b) Is a child living with both parents who do not expect to jointly file a tax return;
(c) Expects to be claimed as a tax dependent by someone other than a spouse, parent, or stepparent; or
(d) Is a child under nineteen (19) years of age who is claimed as a tax dependent by a non-custodial parent.
(87) "Nonqualified alien" means a resident of the United States of America who does not meet the qualified alien requirements established in 907 KAR 20:005, Section 2.
(88) "Non-recurring lump sum income" means money received at one (1) time which is normally considered as income, including:
(a) Accumulated back payments from Social Security, unemployment insurance, or workers' compensation;
(b) Back pay from employment;
(c) Money received from an insurance settlement, gift, inheritance, or lottery winning;
work goal; and
(c) Set aside money for installment payments or a down payment for items needed to reach the work goal.
(100) "Poverty level guidelines" means the poverty income guidelines updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).
(101) "Presumptive eligibility" means Medicaid eligibility determined:
(a) By a provider authorized by 907 KAR 20:050 to make a presumptive eligibility determination; and
(b) For a pregnant woman who qualifies for presumptive eligibility pursuant to 907 KAR 20:050.
(102) "Primary care center" means an entity that meets the primary care center requirements established in 902 KAR 20:058.
(103) "Provider" means any person or entity under contract with an MCO or its contractual agent that provides covered services to enrollees.
(104) "Qualified alien" means an alien who, at the time the alien applies for or receives Medicaid, meets the requirements established in 907 KAR 20:005, Section 5(12)(a)1b or c.
(105) "Qualified disabled and working individual" is defined by 42 U.S.C. 1396e(g).
(106) "Qualified Medicare beneficiary" or "QMB" is defined by 42 U.S.C. 1396d(p)(1).
(107) "Qualified provider" means a provider who:
(a) Is currently enrolled with the department;
(b) Has been trained and certified by the department to grant presumptive eligibility to pregnant women; and
(c) Provides services of the type described in 42 U.S.C. 1396d(a)(2)(A) or (B) or 42 U.S.C. 1396d(a)(9).
(108) "Qualifying income trust" or "QIT" means an irrevocable trust established for the benefit of an identified individual in accordance with 42 U.S.C. 1396p(d)(4)(B).
(109) "Real property" means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.
(110) "Recipient" is defined in KRS 205.8451(9).
(111) "Resource assessment" means the assessment, at the beginning of the first continuous period of institutionalization of the institutionalized spouse upon request by either spouse, of the joint resources of a couple if a member of the couple enters a medical institution or nursing facility or becomes a participant in a 1915(c) home and community based services waiver program.
(112) "Resources" mean cash money and other personal property or real property that:
(a) An individual:
1. Owns; and
2. Has the right, authority, or power to convert to cash; and
(b) Is not legally restricted for support and maintenance.
(113) "Retirement, Survivors, and Disability Insurance" or "RSDI" means an insurance benefit program:
(a) Managed by the United States Social Security Administration;
(b) Also known as Social Security Disability Insurance or Social Security Disability Insurance; and
(c) Which aims to provide monthly financial support to individuals who have lost income due to retirement, disability, or death of a family member.
(114) "Rural health clinic" is defined by 42 C.F.R. 405.2401(b).
(115) "Satisfactory documentary evidence of citizenship or nationality" is defined by 42 U.S.C. 1396b(x)(3)(A).
(116) "Significant financial duress" means a member of a couple has established to the satisfaction of a hearing officer that the couple’s combined resources are below the federal poverty income guidelines applied for Medicaid provided during and after the second calendar quarter that begins after the date of publication of the revisions, multiplied by 150 percent.
(117) "Social Security" means a social insurance program administered by the United States Social Security Administration.
(118) "Social Security number" means a number issued by the United States Social Security Administration to United States citizens, permanent residents, or temporary (working) residents pursuant to 42 U.S.C. 405(c)(2).
(119) "Special income level" means the amount which is 300 percent of the SSI standard.
(120) "Specified low-income Medicare beneficiary" means an individual who meets the requirements established in 42 U.S.C. 1396a(a)(10)(E)(iii).
(121) "Spend-down liability" means the amount of money in excess of the Medicaid income eligibility threshold to which incurred medical expenses are applied to result in an individual’s income being below the income eligibility threshold.
(122) "Spousal protected resource amount" means resources deducted from a couple’s combined resources for the community spouse in an eligibility determination for the institutionalized spouse.
(123) "Spousal share" means one-half (1/2) of the amount of a couple’s combined countable resources, up to a maximum of $60,000 to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g).
(124) "Spouse" means a person legally married to another under state law.
(125) "SSI benefit" is defined by 20 C.F.R. 416.2101.
(126) "SSI essential person, spouse, or nonspouse" means an individual necessary to an SSI recipient to enable the SSI recipient to be self-supporting.
(127) "SSI general exclusion" means the twenty (20) dollars disregard from income allowed by the Social Security Administration in an SSI determination.
(128) "SSI program" means the United States supplemental security income program.
(129) "SSI standard" means the amount designated by the Social Security Administration as the federal benefit rate.
(130) "Standard maintenance amount" means one-twelfth (1/12) of the federal poverty income guideline for a family unit of two (2) members, with revisions of the official income poverty guidelines applied for Medicaid provided during and after the second calendar quarter that begins after the date of publication of the revisions, multiplied by 150 percent.
(131) "State fair hearing" means an administrative hearing provided by the Cabinet for Health and Family Services pursuant to KRS Chapter 13B and 907 KAR 1:563.
(132) "State-funded adoption assistance" is defined by KRS 199.555(2).
(133) "State plan" is defined by 42 C.F.R. 400.203.
(134) "State spousal resource standard" means the amount of a couple’s combined countable resources determined necessary by the department for a community spouse to maintain himself or herself in the community.
(135) "Support right" means the right of an institutionalized spouse to receive support from a community spouse under state law.
(136) "Targeted low-income child" is defined by 42 C.F.R. 457.310(a).
(137) "Tax filer" means an individual who:
(a) Expects to file income tax for the benefit year either:
1. Individually; or
2. As a married individual filing jointly; or
(b) Expects to be claimed as a dependent on another individual’s income tax return.
(138) "Temporary Assistance for Needy Families" or "TANF" means a block grant program which:
(a) Succeeded AFDC; and
(b) Is designed to:
1. Assist needy families so that children can be cared for in their own homes;
2. Reduce the dependency of needy parents by promoting job preparation, work, and marriage;
3. Prevent out-of-wedlock pregnancies; and
4. Encourage the formation and maintenance of two-parent families.
(139) "Third party liability resource" means a resource available to an enrollee for the payment of expenses:
(a) Associated with the provision of covered services; and
(b) That does not include amounts exempt under Title XIX of the Social Security Act, 42 U.S.C. 1396 to 1396v.

(140) "Title IV-E benefits" means benefits received via Social Security Act Title IV, Part 3.

(141) "Tobacco Master Settlement Agreement" means an agreement entered into in November 1998 between certain tobacco companies and states' attorneys general of forty-six (46) states:
(a) Which settled states' lawsuits against the tobacco industry for recovery of tobacco-related health care costs;
(b) Which exempted the tobacco companies from private tort liability regarding harm caused by tobacco; and
(c) In which the tobacco companies agreed to make various annual payments to the states to compensate for some of the medical costs incurred in caring for individuals with smoking-related illnesses.

(142) "Transferred resource factor" means an amount that is:
(a) Equal to the average:
1. Monthly cost of nursing facility services in the state at the time of application; and
2. Of private pay rates for semi private rooms of all Medicaid participating facilities; and
(b) Adjusted annually.

(143) "Trust" means a legal instrument or agreement valid under Kentucky state law in which:
(a) A grantor transfers property to a trustee or trustees with the intention that it be held, managed, or administered by the trustee or trustees for the benefit of the grantor or certain designated individuals or beneficiaries; and
(b) A trustee holds a fiduciary responsibility to manage the trust's corpus and income for the benefit of the beneficiaries.

(144) "Troubled source" means a source recognized by the federal government or department as a reliable source for verifying an individual's information.

(145) "Uncompensated value" means the difference between the:
(a) Fair market value at the time of transfer, less any outstanding loans, mortgages, or other encumbrances on the asset; and
(b) Amount received for the asset.

(146) "Undue hardship" means that:
(a) Medicaid eligibility of an institutionalized spouse cannot be established on the basis of assigned support rights; and
(b) The spouse is subject to discharge from the medical institution, nursing facility, or 1915(c) home and community based services waiver program due to inability to pay.

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

(148) "Veteran" is defined in 38 U.S.C. 101(2).

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

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

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2013 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2013 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business December 2, 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, email tricia.orne@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in Chapter 20 of Title 907 of the Kentucky Administrative Regulations. Chapter 20 contains Medicaid eligibility and eligibility-related administrative regulations.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for administrative regulations located in Chapter 20 of Title 907 of the Kentucky Administrative Regulations. Chapter 20 contains Medicaid eligibility and eligibility-related administrative regulations.
(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 definitions for administrative regulations located in Chapter 20 of Title 907 of the Kentucky Administrative Regulations. Chapter 20 contains Medicaid eligibility and eligibility-related administrative regulations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the definitions for administrative regulations located in Chapter 20 of Title 907 of the Kentucky Administrative Regulations. Chapter 20 contains Medicaid eligibility and eligibility-related administrative regulations.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients and individuals applying for Medicaid are affected by the administrative regulation. Currently, over 800,000 individuals in Kentucky received Medicaid.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? No cost is imposed.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The administrative regulation establishes definitions for managed care regulation. Individuals will benefit due to the clarity of Medicaid eligibility terms being defined in this administrative regulation.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost is necessary to initially implement this administrative regulation.
(b) On a continuing basis: No continuing cost is necessary 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 sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is neither applied nor necessary as the administrative regulation establishes definitions for Medicaid eligibility administrative regulations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to define Medicaid terms in an administrative regulation.

2. State compliance standards. KRS 194A.030(2) states, “The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act.”

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate to define Medicaid terms in an administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 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 and Department for Community Based Services will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or will be affected by this administrative regulation. The Department for Medicaid Services and Department for Community Based Services will be affected 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 administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? No cost is necessary in subsequent years to implement this administrative regulation.

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

Revenues (+/-):

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

RELATES TO: KRS 205.520

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 Medicaid eligibility provisions and requirements for an individual between the ages of nineteen (19) and twenty-six (26) years, who formerly was in foster care and was receiving Medicaid benefits at the time that the individual aged out of foster care.

Section 1. Former Foster Care Eligibility Criteria. An individual between the ages of nineteen (19) and twenty-six (26) years, who formerly was in foster care, and was receiving Medicaid benefits at the time the individual's age exceeded the foster care age limit shall be eligible for Medicaid benefits if the individual meets the requirements of this administrative regulation.

Section 2. Income Standard. There shall be no income standard for individuals between the ages of nineteen (19) and twenty-six (26) years and who formerly were in foster care but aged out of foster care.

Section 3. Resource Standard. There shall be no resource standard for individuals between the ages of nineteen (19) and twenty-six (26) years and who formerly were in foster care but aged out of foster care.

Section 4. Attestation of Having Aged Out of Foster Care. (1) An individual between the ages of nineteen (19) and twenty-six (26) years, who formerly was in foster care, and was receiving Medicaid benefits at the time the individual's age exceeded the foster care age limit shall attest, during the application process, that the individual was receiving Medicaid benefits at the time that the individual reached the age which exceeds the foster care age limit.

(2) An individual who does not attest as established in subsection (1) of this section shall not be eligible for Medicaid benefits.


(2) Except as established in subsection (3) or (4) of this section, to satisfy the Medicaid:

(a) Citizenship requirements, an applicant or recipient shall be:

1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility;

2. Except as provided in subsection (3) of this section, a qualified alien who entered the United States before August 22, 1996, and is:

   a. Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

   b. Granted asylum pursuant to 8 U.S.C. 1158;

   c. A refugee admitted to the United States pursuant to 8 U.S.C.
1157; d. Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year; e. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h) as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3); f. Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980; g. An alien who is granted status as a Cuban and Haitian in effect prior to April 1, 1980; h. A battered alien pursuant to 8 U.S.C. 1641(c); i. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage; j. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5033A(d); k. The spouse or unmarried dependent child of an individual described in clause i. or j. of this subparagraph or the unremarried surviving spouse of an individual described in clause i. or j. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304; or l. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v). 3. A qualified alien who entered the United States on or after August 22, 1996 and is: a. Granted asylum pursuant to 8 U.S.C. 1158; b. A refugee admitted to the United States pursuant to 8 U.S.C. 1157; c. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h) as in effect prior to April 1, 1997 or 8 U.S.C. 1231(b)(5); d. An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522; e. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage; f. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5033A(d); g. The spouse or unmarried dependent child of an individual described in clause e. or f. of this subparagraph or the unremarried surviving spouse of an individual described in clause e. or f. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304; h. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or i. An individually lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and (b) Residency requirements, the applicant or recipient shall be resident of Kentucky who meets the conditions for determining state residency pursuant to 42 C.F.R. 435.403. (3) A qualified or nonqualified alien shall be eligible for medical assistance as provided in this subsection. (a) The individual shall meet the income, resource, and categorical requirements of the Medicaid Program. (b) The individual shall have, or have had within at least one (1) of the three (3) months prior to the month of application, an emergency medical condition: 1. Not related to an organ transplant procedure; 2. Which shall be a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part; (c) Approval of eligibility shall be for a time limited period which includes, except as established in subparagraph 2 of this paragraph, the month in which the medical emergency began and the next following month. 2. The eligibility period shall be extended for an appropriate period of time upon presentation to the department of written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period. (d) The Medicaid benefits to which the individual is entitled shall be limited to the medical care and services, including limited follow-up, necessary for the treatment of the emergency medical condition of the individual. (4)(a) The satisfactory documentary evidence of citizenship or nationality requirement in subsection (2)(a)1 of this section shall not apply to an individual who: 1. Is receiving SSI benefits; 2. Previously received SSI benefits but is no longer receiving them; 3. Is entitled to or enrolled in any part of Medicare; 4. Previously received Medicare benefits but is no longer receiving them; 5. Is receiving: a. Disability insurance benefits under 42 U.S.C. 423; b. Monthly benefits under 42 U.S.C. 402 based on the individual's disability pursuant to 42 U.S.C. 223(d); 6. Is in foster care and who is assisted under Title IV-B of the Social Security Act; or 7. Receives foster care maintenance or adoption assistance payments under Title IV-E of the Social Security Act. (b) The department's documentation requirements shall be in accordance with the requirements established in 42 U.S.C. 1396b(x). (5) The department shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant's or recipient's behalf. (6)(a) Except as established in paragraph (b) of this subsection, an individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met. (b) The retroactive eligibility period shall begin no earlier than January 1, 2014 for an individual who gains Medicaid eligibility solely by qualifying: 1. As a former foster care individual pursuant to this administrative regulation; or 2. As an adult with income up to 133 percent of the federal poverty level who: a. Does not have a dependent child under the age of nineteen (19) years; and b. Is not otherwise eligible for Medicaid benefits. Section 6. Provision of Social Security Numbers. (1)(a) Except as provided in subsections (2) and (3) of this section, an applicant for or recipient of Medicaid shall provide a Social Security number as a condition of eligibility. (b) If a parent or caretaker relative and the child, unless the child is a deemed eligible newborn, refuses to cooperate with obtaining a Social Security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failing to meet technical eligibility requirements. (2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a Social Security number from the United States Social Security Administration if appropriate application for the number has been made. (3) An individual who refuses to obtain a Social Security number due to a well-established religious objection shall not be required to provide a Social Security number as a condition of eligibility. Section 7. Institutional Status. (1) An individual shall not be eligible for Medicaid if the individual is: (a) Resident or inmate of a nonmedical public institution except as established in subsection (2) of this section; (b) Patient in a state tuberculosis hospital unless he has reached age sixty-five (65); (c) Patient in a mental hospital or psychiatric facility unless the individual is: 1. Under age twenty-one (21) years of age;
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2. Under age twenty-two (22) if the individual was receiving
inpatient services on his or her 21st birthday; or
3. Sixty-five (65) years of age or over; or
(d) Patient in a nursing facility classified by the Medicaid
program as an institution for mental diseases, unless the individual
has reached age sixty-five (65).

(2) An inmate who meets the eligibility criteria in this
administrative regulation may be eligible for Medicaid after having
been admitted to a medical institution and been an inmate at the
institution for at least twenty-four (24) consecutive hours.

Section 8. Incarceration Status. An inmate who meets the
eligibility requirements of this administrative regulation shall be
eligible for Medicaid after having been admitted to a medical
institution and been an inmate at the institution for at least
twenty-four (24) consecutive hours.

Section 9. Application for Other Benefits. (1)(a) As a condition
of eligibility for Medicaid, an applicant or recipient shall apply for
each annuity, pension, retirement, and disability benefit to which
the individual is entitled, unless the individual can demonstrate
good cause for not doing so.
(b) Good cause shall be considered to exist if other benefits
have previously been denied with no change of circumstances or
the individual does not meet all eligibility conditions.
(c) An individual who would be eligible for SSI
benefits but has not applied for the benefits shall not be eligible for Medicaid.

Section 10. Assignment of Rights to Medical Support. By
accepting assistance for or on behalf of a child, a recipient shall be
deemed to have assigned to the Cabinet for Health and Family
Services any medical support owed for the child not to exceed the
amount of Medicaid payments made on behalf of the recipient.

Section 11. Third-party Liability as a Condition of Eligibility.
(1)(a) Except as provided in subsection (3) of this section, an
individual applying for or receiving Medicaid shall be required as a
condition of eligibility to cooperate with the Cabinet for Health and
Family Services in identifying, and providing information to assist
the cabinet in pursuing, any third party who may be liable to pay for
care or services available under the Medicaid program unless the
individual has good cause for refusing to cooperate.
(b) Good cause for failing to cooperate shall exist if cooperation:
1. Could result in physical or emotional harm of a serious
nature to a child or custodial parent;
2. Is not in a child’s best interest because the child was
conceived as a result of rape or incest; or
3. May interfere with adoption considerations or proceedings.
(2) A failure of an individual to cooperate without good cause
shall result in ineligibility of the individual.
(3) A pregnant woman eligible under poverty level standards
shall not be required to cooperate in establishing paternity or
securing support for her unborn child.

Section 12. Application Process, Initial and Continuing
Eligibility Determination. (1) An individual may apply for Medicaid
benefits by:
(a) Using the Web site located at www.kynect.ky.gov;
(b) Applying over the telephone by calling:
1. 1-855-459-6328; or
2. 1-855-326-4654 (Deaf or hearing impaired);
(c) Faxing an application to 1-502-573-2007;
(d) Mailing a paper application to Office of Health Benefits
Exchange, 12 Mill Creek, Frankfort, Kentucky, 40601; or
(e) Going to the applicant’s local Department for Community
Based Services Office and applying in person.

(2) An individual shall attest in accordance with Section 4 of
this administrative regulation when applying for Medicaid benefits.
(3)(a) An application shall be processed (approved, denied, or
a request for additional information sent) within forty-five (45) days
of application submittal.
(b) If a trusted source indicates that an applicant is
incarcerated, a request for additional information shall be
generated requesting verification of the applicant’s incarceration
date.
(c) If an applicant fails to provide information in response to a
request for additional information within forty-five (45) days of the
beginning of the application process, the application shall be
denied.
(4)(a) An annual renewal of eligibility shall occur without an
individual having to take action to renew eligibility, unless:
1. The individual’s eligibility circumstances change resulting in the
individual no longer being eligible for Medicaid;
2. A request for additional information is generated due to a
change in income or incarceration status.
(b)1. If an individual receives a request for additional
information as part of the renewal process, the individual shall
provide the information requested within forty-five (45) days
of receiving the request.
2. If an individual fails to provide the information requested
within forty-five (45) days of receiving the request, the individual’s
eligibility shall be terminated on the forty-fifth day from the request
for additional information.
(5) An individual shall be required to report to the department
any changes in circumstances or information related to Medicaid
eligibility.

Section 13. Adverse Action, Notice, and Appeals. The adverse
action, notice, and appeals provisions established in 907 KAR
20:060 shall apply to former foster care individuals between the
ages of nineteen (19) and twenty-six (26) who aged out of foster
care while receiving Medicaid coverage.

Section 14. Implementation Date of Former Foster Care
Eligibility Provisions and Requirements. (1) The eligibility
provisions and requirements established in this administrative
regulation shall be effective beginning on January 1, 2014.
(2) An individual shall not be eligible to receive Medicaid
benefits pursuant to the eligibility provisions and requirements
established in this administrative regulation any earlier than
January 1, 2014.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall, if requested,
be held on November 21, 2013 at 9:00 a.m. in the Health Services
Auditorium, Health Services Building, First Floor, 275 East Main
Street, Frankfort, Kentucky 40621. Individuals interested in
attending this hearing shall notify this agency in writing by
November 14, 2013, five (5) workdays prior to the hearing, of their
intent to attend. If no notification of intent to attend the hearing is
received by that date, the hearing may be canceled. The hearing is
open to the public. Any person who attends will be given an
opportunity to comment on the proposed administrative
regulation. A transcript of the public hearing will not be made unless a written
request for a transcript is made. If you do not wish to attend the
public hearing, you may submit written comments on the proposed
administrative regulation. You may submit written comments
regarding this proposed administrative regulation until close of
business December 2, 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, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Marchetta Carmicle or Stuart Owen

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the provisions and requirements regarding Medicaid eligibility for a new eligibility group mandated by the Affordable Care Act. The new group is comprised of individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care and aged out of foster care while receiving Medicaid coverage at the time of aging out of foster care. To qualify for Medicaid coverage the individuals have to attest to having received Medicaid benefits at the time they aged out of foster care but there is no income standard or resource standard/test for this population as the Affordable Care Act prohibits such standards from being applied to this population. Additionally, the individuals have to meet residency and citizenship requirements that other Medicaid applicants/recipients have to meet.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with an Affordable Care Act mandate to establish Medicaid eligibility for a new eligibility group comprised of individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care and aged out of foster care while receiving Medicaid benefits at the time of aging out of foster care.
(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 eligibility requirements for a new Medicaid eligibility group mandated by the Affordable Care Act.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the eligibility requirements for a new Medicaid eligibility group mandated by the Affordable Care Act.
(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: Individuals in the newly mandated eligibility category [individuals aged nineteen (19) to twenty-six (26) who formerly were in foster care but aged out of foster care] are affected. Currently, there are 700 foster care individuals for whom the Department for Community Based Services (DCBS) purchases health insurance, but the Department for Medicaid Services (DMS) estimates that over 3,300 individuals will become eligible for Medicaid coverage as a result of this new eligibility group.
(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. Individuals would need to apply for Medicaid coverage in order to gain Medicaid coverage.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment imposes no cost on the regulated individuals.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals in the new mandated Medicaid eligibility group – individuals aged nineteen (19) to twenty-six (26) who previously were in foster care but aged out of foster care – will benefit by becoming eligible for Medicaid benefits.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Adding the new mandated Medicaid eligibility group - individuals aged nineteen (19) to twenty-six (26) who previously were in foster care but aged out of foster care – will enable the Department for Medicaid Services (DMS) to receive federal funding [at a seventy (70) percent match rate] for health insurance coverage for these individuals. Previously, the Department for Community Based Services (DCBS) purchased health insurance coverage for approximately 700 of these individuals with 100 percent state general funds. The annual cost was approximately $1 million. Thus, covering this group via the Medicaid program is expected to reduce Cabinet for Health and Family Services’ expenditures by $700,000 annually. However, DMS estimates that over 700 eligible individuals will benefit from this eligibility category with a total cost of approximately $42.1 million. The federal matching percent for this new eligibility group is seventy (70) percent; thus, the federal share of $42.1 million would be $29.47 million and the commonwealth’s share would be $12.63 million.
(b) On a continuing basis: DMS projects the cost of covering former foster care individuals estimated for the first year will remain near that level in future years.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional funding for DMS will be needed to cover the cost of care of individuals between the ages of nineteen (19) and twenty-six (26) who were formerly in foster care but aged out of foster care.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation neither establishes nor increases any fees.
(9) Tiering: Is tiering applied? Tiering is not applied as the requirements apply equally to all individuals in the new eligibility group.

FEDERAL MANDATE ANALYSIS COMPARISON

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizen. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all 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 and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall 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.*

3. Minimum or uniform standards contained in the federal mandates. Federal law created the new mandated eligibility category of individuals between nineteen (19) and twenty-six (26) who formerly were in foster care but aged out of foster care and were receiving Medicaid benefits at the time of aging out of foster care and bars the application of an income standard or resource/asset test or standard to this population.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS), the Department for Community Based Services (DCBS), and Department of Corrections 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. 435.603 and this administrative regulation authorize the action taken by this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? Adding the new mandated Medicaid eligibility group – children aged nineteen (19) to twenty-six (26) who previously were in foster care but aged out of foster care – will enable the Department for Medicaid Services (DMS) to receive federal funding at a seventy (70) percent match rate for health insurance coverage for these individuals. Previously, the Department for Community Based Services (DCBS) purchased health insurance coverage for approximately 700 of these individuals with 100 percent state general funds. The annual cost was approximately $1 million. Thus, covering this group via the Medicaid program is expected to reduce Cabinet for Health and Family Services’ expenditures by $700,000 annually. However, DMS estimates that over 3,300 individuals could become eligible in the next year via this eligibility category with a total cost of approximately $42.1 million. The federal matching percent for this new eligibility group is seventy (70) percent, plus the federal share of $42.1 million would be $29.47 million and the commonwealth’s share would be $12.63 million.

(d) How much will it cost to administer this program for subsequent years? DMS projects the cost of covering former foster care individuals estimated for the first year will remain near that level in future 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:

(2) Except as established in subsection (3) or (4) of this section, to satisfy the Medicaid:

(a) Citizenship requirements, an applicant or recipient shall be:
1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility;
2. Except as provided in subsection (3) of this section, a qualified alien who entered the United States before August 22, 1996, and is:
   a. Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;
   b. Granted asylum pursuant to 8 U.S.C. 1158;
   c. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;
   d. Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;
   e. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);
   f. Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;
   g. An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;
   h. A battered alien pursuant to 8 U.S.C. 1641(c);
      i. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;
   j. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);
   k. The spouse or unmarried dependent child of an individual described in clause i. or j. of this subparagraph if the unremarried surviving spouse of an individual described in clause i. or j. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;
   l. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or
   m. A qualified alien who entered the United States on or after August 22, 1996, and is:
      a. Granted asylum pursuant to 8 U.S.C. 1158;
      b. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;
      c. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h) as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);
      d. An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;
      e. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;
      f. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);
      g. The spouse or unmarried dependent child of an individual described in clause e. or f. of this subparagraph or the unremarried surviving spouse of an individual described in clause e. or f. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;
      h. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or
   n. An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and

(b) Residency requirements, the applicant or recipient shall be a resident of Kentucky who meets the conditions for determining state residency pursuant to 42 C.F.R. 435.403.

(3) A qualified or nonqualified alien shall be eligible for medical assistance as provided in this subsection.

(a) The individual shall meet the income, resource, and categorical requirements of the Medicaid Program.

(b) The individual shall have, or have had within at least one (1) of the three (3) months prior to the month of application, an emergency medical condition:
1. Not related to an organ transplant procedure;
2. Which shall be a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.
(c) Approval of eligibility shall be for a time limited period which includes, except as established in subparagraph 2 of this paragraph, the month in which the medical emergency began and the next following month.

2. The eligibility period shall be extended for an appropriate period of time upon presentation to the department of written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period.

(d) The Medicaid benefits to which the individual is entitled shall be limited to the medical care and services, including limited follow-up, necessary for the treatment of the emergency medical condition of the individual.

(4)(a) The satisfactory documentary evidence of citizenship or nationality requirement in subsection (2)(a)1 of this section shall not apply to an individual who:
1. Is receiving SSI benefits;
2. Previously received SSI benefits but is no longer receiving them;
3. Is entitled to or enrolled in any part of Medicare;
4. Has previously received Medicare benefits but is no longer receiving them;
5. Is receiving:
   a. Disability insurance benefits under 42 U.S.C. 423; or
   b. Monthly benefits under 42 U.S.C. 402 based on the individual's disability pursuant to 42 U.S.C. 223(d); or
   c. Is in foster care and who is assisted under Title IV-B of the Social Security Act; or
7. Receives foster care maintenance or adoption assistance payments under Title IV-E of the Social Security Act.

(b) The department's documentation requirements shall be in accordance with the requirements established in 42 U.S.C. 1396b(x).

(5) The department shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant's or recipient's behalf.

(6)(a) Except as established in paragraph (b) of this subsection, an individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met.

(b) The retroactive eligibility period shall begin no earlier than January 1, 2014 for an individual who gains Medicaid eligibility solely by qualifying:
1. As a former foster care individual pursuant to this administrative regulation; or
2. As an adult with income up to 133 percent of the federal poverty level who:
   a. Does not have a dependent child under the age of nineteen (19) years; and
   b. Is not otherwise eligible for Medicaid benefits.

Section 5. Provision of Social Security Numbers. (1)(a) Except as provided in subsections (2) and (3) of this section, an applicant for or recipient of Medicaid shall provide a Social Security number as a condition of eligibility.

(b) If a parent or caretaker relative and the child, unless the child is a deemed eligible newborn, refuses to cooperate with obtaining a Social Security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failing to meet technical eligibility requirements.

(2) An individual shall not be denied eligibility or discontinued...
from eligibility due to a delay in receipt of a Social Security number from the United States Social Security Administration if appropriate application for the number has been made.

(3) An individual who refuses to obtain a Social Security number due to a well-established religious objection shall not be required to provide a Social Security number as a condition of eligibility.

Section 6. Spend-down. (1) An individual shall be eligible on the basis of utilizing income above 133 percent of the federal poverty level to pay for incurred medical expenses resulting in the individual’s income being below 133 percent of the federal poverty level after the expenses have been deducted.

(2) The eligibility date of an individual eligible pursuant to subsection (1) of this section shall be the date on which the spend-down liability amount is met.

Section 7. Institutional Status. (1) An individual shall not be eligible for Medicaid if the individual is a:

(a) Resident or inmate of a nonmedical public institution except as established in subsection (2) of this section;

(b) Patient in a state tuberculosis hospital unless he has reached age sixty-five (65);

(c) Patient in a mental hospital or psychiatric facility unless the individual is 1. Under age twenty-one (21) years of age; 2. Under age twenty-two (22) if the individual was receiving inpatient services on his or her 21st birthday; or 3. Sixty-five (65) years of age or over; or

(d) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases, unless the individual has reached age sixty-five (65).

(2) An inmate who meets the eligibility criteria in this administrative regulation may be eligible for Medicaid after having been admitted to a medical institution and been an inpatient at the institution for at least twenty-four (24) consecutive hours.

Section 8. Incarceration Status. An inmate who meets the eligibility requirements of this administrative regulation shall be eligible for Medicaid after having been:

(1) Admitted to a medical institution; and

(2) An inpatient at the institution for at least twenty-four (24) consecutive hours.

Section 9. Application for Other Benefits. (1)(a) As a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement, and disability benefit to which the individual is entitled, unless the individual can demonstrate good cause for not doing so.

(b) Good cause shall be considered to exist if other benefits have previously been denied with no change of circumstances or the individual does not meet all eligibility conditions.

(c) Annuities, pensions, retirement, and disability benefits shall include:

1. Veterans’ compensations and pensions;

2. Retirement, Survivors, and Disability Insurance;

3. Railroad retirement benefits;

4. Unemployment compensation; and

5. Individual retirement accounts.

(2) An applicant or recipient shall not be required to apply for federal benefits if: (a) The federal law governing that benefit specifies that the benefit is optional; and

(b) The applicant or recipient believes that applying for the benefit would be to the applicant’s or recipient’s disadvantage.

(3) An individual who would be eligible for SSI benefits but has not applied for the benefits shall not be eligible for Medicaid.

Section 10. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have assigned to the Cabinet for Health and Family Services any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 11. Third-party Liability as a Condition of Eligibility. (1) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the Cabinet for Health and Family Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid program unless the individual has good cause for refusing to cooperate.

(b) Good cause for failing to cooperate shall exist if cooperation:

1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;

2. Is not in a child’s best interest because the child was conceived as a result of rape or incest; or

3. May interfere with adoption considerations or proceedings.

(2) A failure of an individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 12. Application Process, Initial and Continuing Eligibility Determination. (1) An individual may apply for Medicaid by:

(a) Using the Web site located at www.kynect.ky.gov;

(b) Applying over the telephone by calling: 1-855-459-6328; or 1-855-326-4654 if deaf or hearing impaired;

(c) Faxing an application to 1-502-573-2007; (d) Mailing a paper application to Office of Health Benefits Exchange, 12 Mill Creek, Frankfort, Kentucky 40601; or (e) Going to the applicant’s local Department for Community Based Services Office and applying in person.

(2)(a) An application shall be processed (approved, denied, or a request for additional information sent) within forty-five (45) days of application submittal.

(b) Immediately after submittal if there is a variance of ten (10) percent or more regarding income information reported by the applicant versus information available from a trusted source or trusted sources, a request for additional information shall be generated for the applicant requesting documentation to prove the applicant’s income.

(c) If a trusted source indicates that an applicant is incarcerated, a request for additional information shall be generated requesting verification of the applicant’s incarceration dates.

(d) If an applicant fails to provide information in response to a request for additional information within thirty (30) days of the beginning of the application process, the application shall be denied.

(3)(a) An annual renewal of eligibility shall occur without an individual having to take action to renew eligibility, unless:

1. The individual’s eligibility circumstances change resulting in the individual no longer being eligible for Medicaid; or

2. A request for additional information is generated due to a change in income or incarceration status.

(b)1. If an individual receives a request for additional information as part of the renewal process, the individual shall provide the information requested within forty-five (45) days of receiving the request.

2. If an individual fails to provide the information requested within forty-five (45) days of receiving the request, the individual’s eligibility shall be terminated on the forty-fifth day from the request for additional information.

(4) An individual shall be required to report to the department any changes in circumstances or information related to Medicaid eligibility.

Section 13. Adverse Action, Notice, and Appeals. The adverse action, notice, and appeals provisions established in 907 KAR 20:060 shall apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.
Section 14. Miscellaneous Special Circumstances. (1) A woman during pregnancy, and as though pregnant through the end of the month containing the sixtieth day of a period beginning on the last day of pregnancy, or a child under six (6) years of age, as specified in 42 U.S.C. 1396a(l)(1), shall meet the income requirements for this eligibility group in accordance with this administrative regulation.

(2) If an eligible child is receiving covered inpatient services, except for services in a long term care facility or behavioral health services in an inpatient facility on a long-term basis, on a birthday which will make the child ineligible due to age, the child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the child remains otherwise eligible except for age.

(3) A child born to a woman eligible for and receiving Medicaid shall be eligible for Medicaid as of the date of the child’s birth if the child has not reached his or her first birthday.

(4)(a) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.

(b) If a parent is not included in the case, one (1) other caretaker relative may be included to the same extent the caretaker relative would have been eligible in the Aid to Families with Dependent Children program using the AFDC methodology in effect on July 16, 1996.

(5) For an individual eligible on the basis of desertion, a period of desertion shall have existed for thirty (30) days, and the effective date of eligibility shall not precede the first day of the month of application.

(6) For an individual eligible on the basis of utilizing his or her excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met.

(7) A caretaker relative (not including a child):

(a) Removed from a family related Medicaid only case due to failure to meet a technical eligibility requirement shall not be eligible for Medicaid as a medically needy individual unless the individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which the individual has been removed; or

(b) Who is ineligible for K-TAP benefits for failure to comply with K-TAP work requirements shall not be eligible for medical assistance unless the individual is eligible as a pregnant woman.

(8)(a) Children with a common parent residing in the same household as the common parent shall be included in the same Medicaid case as the common parent unless doing so results in ineligibility of an otherwise eligible household member.

(b) If a family member is pregnant, the unborn child shall be considered as a family member for income determination purposes.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 23, 2013
FILED WITH LRC: September 30, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2013 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify the agency in writing by November 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 close of business December 2, 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, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Marchetta Carmicle or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions and requirements regarding Medicaid eligibility for individuals whose eligibility standard is the modified adjusted gross income (or MAGI). Such individuals include children under nineteen (19) except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women including through day sixty (60) of the postpartum period with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level. Included in the MAGI category are individuals who previously were ineligible for Medicaid benefits due to not meeting certain "technical" criteria (such as having to be aged, blind, or disabled) and whose income exceeded the prior income eligibility standard. This newly eligible group is comprised of adults with no child under the age of nineteen (19), who do not qualify under the category of "caretaker relative", and who are not pregnant. This group is known as the "Medicaid expansion group." Included in the expansion group are incarcerated individuals who are eligible if admitted to an inpatient hospital for at least twenty-four (24) hours and are otherwise eligible for Medicaid. Previously, DMS covered such care (inpatient hospital care) for incarcerated pregnant women, but now childless adults (such as males) who are incarcerated will be eligible inpatient hospital admissions lasting at least twenty-four (24) hours. Additionally, under the old Medicaid income eligibility rules, a state examined a person’s gross income then subtracted miscellaneous "income disregards" to create a net income used for income eligibility determination purposes. Examples of income disregards (income that could be excluded from the eligibility determination) included some child support payments, certain child care expenses, and the first ninety (90) dollars of earned income. Furthermore, each state established its own, unique income disregards. The new standard – MAGI – eliminates income disregards and in lieu of disregards establishes the same income standard for all states. Also, the MAGI standard does not count/consider some income (for eligibility determination purposes) that previously was counted as income. One (1) example of such includes Social Security benefits. Previously these benefits were counted as income. The elimination of it will enable the opportunity for individuals under sixty-five (65) who have a disability but previously did not qualify for Medicaid benefits due to having income in excess of the income limit. Additionally, there is no resource test/standard for individuals for whom a modified adjusted gross income is the Medicaid eligibility standard. Lastly, as authorized by the Affordable Care Act, the department shall apply a five (5) percent increase in the income threshold for those whose income threshold is 133 percent of the federal poverty level, but the individual’s initial eligibility determination indicates that the individual’s income exceeds 133 percent of the federal poverty level.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions and requirements regarding Medicaid eligibility for individuals whose eligibility standard is the modified adjusted gross income. The Affordable Care Act mandates that the modified adjusted gross income be used (effective January 1, 2014) to determine Medicaid eligibility for certain populations rather than the prior Medicaid eligibility rules; thus, the administrative regulation is necessary to comply with the 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 federal mandate to establish the modified adjusted gross income.
as the Medicaid eligibility standard, rather than existing Medicaid eligibility rules, for certain populations of individuals.

(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: Individuals for whom a modified adjusted gross income standard will be used to establish Medicaid eligibility requirements, including individuals who are not pregnant, who have no child under nineteen (19), and who are not otherwise eligible for Medicaid. DMS projects the expansion group to grow to almost 190,000 by state fiscal year 2021 which is the year that the federal matching percent drops to its permanent level of ninety (90) percent. DMS anticipates that in state fiscal year (SFY) 2014 over 17,000 individuals who previously did not qualify for Medicaid will apply for Medicaid coverage through the old rules but did not apply will become eligible as a result of enhanced public awareness of Medicaid and awareness of the Kentucky Health Benefits Exchange or HBE. This is known as the woodwork effect. The Health Benefits Exchange, or HBE, is a program which enables individuals who make too much income to qualify for Medicaid benefits to receive assistance from the federal government in paying health insurance premiums for health insurance purchased through the HBE. The HBE is an open health insurance marketplace administered by the Cabinet for Health and Family Services. Individuals who apply for HBE coverage but are determined to qualify for Medicaid coverage (whether under the old rules or new MAGI rules) will be informed of Medicaid program eligibility. Those that qualify under the MAGI rules will be immediately eligible for Medicaid through the same mechanism (phone, website, in person) in which they were applying for health insurance via the HBE. DMS projects that the number of people who will gain Medicaid eligibility as a result of the woodwork effect will top out around 21,000 in SFY 2017.

(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, to this administrative regulation or amendment. Individuals who wish to receive Medicaid benefits will have to apply for benefits in accordance with the requirements established in this administrative regulation and satisfy the requirements.

(5) Provide an estimate of how much it will cost to implement the new administrative regulation:
   (a) Initially: DMS's costs associated with covering benefits for the "Medicaid expansion group" will be zero dollars for state fiscal year (SFY) 2014 as the cost (projected to be $583 million) will be entirely federally funded in 2014. However, DMS (and the Department for Community Based Services or DCBS) will experience administrative costs associated with additional staff, system programming, and resources needed to handle the increase in applications. DMS anticipates an increased cost of $2.3 million related to this in SFY 2014. DMS anticipates an administrative cost increase of $7.6 million in SFY 2014. DMS anticipates an increased cost of $13 million in SFY 2014 due to the aforementioned woodwork effect expected to generate over 17,000 eligible for Medicaid under the old eligibility rules but who were unaware of the program. Covering incarcerated individuals will reduce state general fund expenditures as the Department of Corrections currently pays for this care. The projected savings (expenditure reduction) for the Department of Corrections for SFY 2014 is $1.4 million.
   (b) On a continuing basis: DMS's costs associated with covering benefits for the "Medicaid expansion group" in SFY 2015 will be zero dollars and DMS projects the federal government's costs (of covering benefits) for the period to be $1.193 billion. However, DMS and DCBS anticipate an administrative cost due to staffing and resources. DMS projects its administrative costs to elevate to roughly $18.5 million in SFY 2016 and remain at that level thereafter. DCBS's administrative costs is projected to elevate to, and level off at, $3.5 million in SFY 2017. Due to the woodwork effect DMS anticipates an increased cost of $28 million for SFY 2015 with a federal increase of $66 million. For SFY 2016, DMS's costs for the expansion group will again be zero dollars and the federal cost is expected to be $1.312 billion. DMS projects the woodwork associated costs to be $31 million state funds and $72 million in federal funds for SFY 2016. DMS projects the following state and federal cost associated, including those for the expansion group: SFY 2017 (state funds $33 million,federal funds $1.26 billion); SFY 2018 (state funds $74 million/federal funds $1.271 billion); SFY 2019 (state funds $91 million/federal funds $1.307 billion); SFY 2020 (state funds $124 million/federal funds $1.330 billion); SFY 2021 (state funds $151 million/federal funds $1.361 billion); DMS projects the following reduction in state fund expenditures as a result of covering incarcerated individuals' inpatient hospital admissions which last at least twenty-four (24) hours [these are reductions in Department of Corrections expenditures]: $7 million for SFY 2015; $7.2 million for SFY 2016; $7.5 million for SFY 2017; $7.7 million for SFY 2018; $7.9 million for SFY 2019; $8.2 million for SFY 2020; and $8.4 million for SFY 2021. DMS projects the following costs associated with the
woodwork effect for SFY 2017 through SFY 2021; SFY 2017 (state funds $31 million/federal funds $71 million); SFY 2018 (state funds $32 million/federal funds $74 million); SFY 2019 (state funds $33 million/federal funds $77 million); SFY 2020 (state funds $34 million/federal funds $80 million); SFY 2021 (state funds $36 million/federal funds $83 million.)

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and under the Affordable Care Act and matching funds from general fund appropriations.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Beginning in SFY 2017, DMS will need additional funding to provide the state match for covering the expansion group. The federal match in SFY 2017 will be ninety-five (95) percent; thus, the state matching percent would be five (5) percent in SFY 2017. DMS projects the need to cover the five (5) percent match in SFY 2017 to be $33 million. DMS projects the following additional state funds needed from SFY 2018 through SFY 2021 as follows: SFY 2018 - $127.4 million; SFY 2019 - $80 million; and SFY 2021 - $151 million. The federal matching rate descends to a plateau of ninety (90) percent from SFY 2021 going forward.

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

9. Tiering: Is tiering applied? Tiering is not applied as the income standard applies equally to all affected individuals.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to “formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all 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 and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall 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.”

3. Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state’s Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations governed by the new requirements include children under nineteen (19) [excluding children in foster care]; pregnant women (including the postpartum period up to sixty (60) days; caretaker relatives with income up to 133 percent of the federal poverty level; adults with no child under nineteen (19) with income up to 133 percent of the federal poverty level who are not otherwise eligible for Medicaid benefits; and targeted low-income children with income up to 150 percent of the federal poverty level. Also, states are prohibited from continuing to use income disregards, asset tests, or resource tests for individuals who are eligible via the modified adjusted gross income standard. Additionally, states are prohibited from applying an asset or resource test for eligibility purposes for the aforementioned population. States are also required to create and adopt an income threshold (under the modified adjusted gross income) that ensures that individuals who were eligible for Medicaid benefits prior to January 1, 2014 (the date that the modified adjusted gross income standard is adopted) do not lose Medicaid coverage due to the modified adjusted gross income standard taking effect.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS), the Department for Community Based Services (DCBS), and Department of Corrections 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. 435.603 and this administrative regulation authorize the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is projected to generate $563 million in federal funds for the Medicaid program in state fiscal year (SFY) 2014 and reduce Department of Corrections’ expenditures by $1.4 million for the same period. Additionally, the University of Louisville’s Urban Studies Institute analyzed the projected impact on Kentucky’s economy of Kentucky taking advantage of the Medicaid expansion authorized by the Affordable Care Act. USI’s assessment projected that the expansion would create 7,600 jobs in SFY 2014 generating an economic impact of over $905 million including $293.7 million in wages and salaries with an average annual salary of $38,000. USI’s analysis projects the following tax revenue increases in SFY 2014 as a result of Medicaid expansion: income tax revenues to increase $12.1 million state, sales tax to increase $11.9 million, and local occupational and payroll tax revenues to increase $4.9 million.

(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 is projected to generate $1.193 billion in federal funds for SFY 2015; $1.312 billion in federal funds for SFY 2016; $1.26 billion in federal funds for SFY 2017; $1.271 billion in federal funds for SFY 2018; $1.307 billion in federal funds for SFY 2019; $1.330 billion in federal funds for SFY 2020; and $1.361 billion in federal funds for SFY 2021. The aforementioned analysis by the University of Louisville’s Urban Studies Institute projected job created by the Medicaid expansion to reach top 16,000 in SFY 2016 and increase to 16,700 in SFY 2021. USI projects the economic impact to top $2.293 billion in SFY 2021 including $724.3 million in wages and salaries with an average annual salary of $43,000. Additionally, USI projects the state income tax increase to reach $30 million in SFY 2021, the sales tax increase to reach $29.4 million for the same year, and local occupational and payroll taxes to increase by $12.0 million for the same year.

(c) How much will it cost to administer this program for the first year? DMS’s costs associated with covering benefits for the
"Medicaid expansion group" will be $0 for state fiscal year (SFY) 2014 as the cost (projected to be $563 million) will be entirely federally funded in 2014. However, DMS (and the Department for Community Based Services or DCBS) will experience administrative costs associated with additional staff, system programming, and resources needed to handle the increase in applications. DCBS anticipates a cost of $2.3 million related to this in SFY 2014. DMS anticipates an administrative cost increase of $7.6 million in SFY 2014. DMS anticipates an increased cost of $13 million in SFY 2014 due to the aforementioned woodwork effect expected to generate over 17,000 eligible for Medicaid under the old eligibility rules but who were unaware of the program. Covering inpatient hospital care for qualifying incarcerated individuals will reduce state general fund expenditures as the Department of Corrections currently pays for this care. The projected savings (expenditure reduction) for the Department of Corrections for SFY 2014 is $1.4 million. 

(d) How much will it cost to administer this program for subsequent years? DMS’s costs associated with covering benefits for the "Medicaid expansion group" in SFY 2015 will be $0 and DMS projects the federal government’s costs (of covering benefits) for the period to be $1.193 billion. However, DMS and DCBS anticipate an administrative cost due to staffing and resources. DMS projects its administrative costs to elevate to roughly $18.5 million in SFY 2016 and remain at the level thereafter. DCBS’s administrative costs is projected to elevate to, and level off at, $3.5 million in SFY 2017. Due to the woodwork effect DMS anticipates an increased cost of $28 million for SFY 2015 with a federal increase of $66 million. For SFY 2016, DMS’s costs for the expansion group will again be $0 and the federal cost is expected to be $1.312 billion. DMS projects the woodwork associated costs to be $311 million state funds and $72 million in federal funds for SFY 2016. DMS projects the following state and federal cost amounts for SFY 2017 through SFY 2021 for the expansion group: SFY 2017 (state funds $33 million/federal funds $1.26 billion); SFY 2018 (state funds $74 million/federal funds $1.271 billion); SFY 2019 (state funds $91 million/federal funds $1.307 billion); SFY 2020 (state funds $124 million/federal funds $1.330 billion); SFY 2021 (state funds $151 million/federal funds $1.361 billion.) DMS projects the following reduction in state fund expenditures as a result of covering incarcerated individuals’ inpatient hospital admissions which last at least twenty-four (24) hours [these are reductions in Department of Corrections expenditure]: $7 million for SFY 2015; $7.2 million for SFY 2016; $7.5 million for SFY 2017; $7.7 million for SFY 2018; $7.9 million for SFY 2019; $8.2 million for SFY 2020; and $8.4 million for SFY 2021. DMS projects the following costs associated with the woodwork effect for SFY 2017 through SFY 2021: SFY 2017 (state funds $31 million/federal funds $71 million); SFY 2018 (state funds $32 million/federal funds $74 million); SFY 2019 (state funds $33 million/federal funds $77 million); SFY 2020 (state funds $34 million/federal funds $80 million); SFY 2021 (state funds $36 million/federal funds $83 million.)

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:
Call to Order and Roll Call

The October 2013 meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 8, 2013 at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Ernie Harris, Co-chair, called the meeting to order, the roll call was taken. The minutes of the September 2013 meeting were approved.

Present were:

Members: Senators Joe Bowen, Perry Clark, Sara Beth Gregory, and Ernie Harris; and Representatives Johnny Bell, Robert Damron, and Jimmie Lee.

LRC Staff: Donna Little, Emily Caudill, Sarah Amburgey, Carrie Klaber, Emily Harkenrider, Karen Howard, Laura Napier, and Betsy Cupp.

Guests: Travis Powell, Council on Postsecondary Education; Alicia Sneed, Education Professional Standards Board; Greg Wells, Michael West, Board of Licensure for Long Term Care Administration; Charles Lykins, Kentucky Board of Hairdressers and Cosmetologists; Larry Disney, Jim Grawe, Kentucky Real Estate Appraisers Board; Ron Brooks, Margaret Eversole, Karen Waldrop, Kentucky Department of Fish and Wildlife Resources; Steve Hofmann, Keith Smith, Department for Natural Resources; Amy Barker, Dana Todd, Justice and Public Safety Cabinet; Godwin Onodu, Todd Shipp, Transportation Cabinet; Marc Guilfoil, Susan Speckert, Kentucky Horse Racing Commission; Carrie Godwin Onodu, Todd Shipp, Transportation Cabinet; Marc Guilfoil, Susan Speckert, Kentucky Horse Racing Commission; Carrie Banahan, Stephanie Brammer-Barnes, Al Ervin, Eric Friedlander, William Nold, Cabinet for Health and Family Services; Gary Fletcher, Travis Fletcher, Sunny Ridge Racing; Gabe Prewitt, Kentucky Harness Horseman’s Association; James Aneszko, Home Instead Senior Care; and Harold Barlow, Self.

The Administrative Regulation Review Subcommittee met on Tuesday, October 8, 2013, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

COUNCIL ON POSTSECONDARY EDUCATION: Nonpublic Colleges
13 KAR 1:020. Private college licensing. Travis Powell, general counsel, represented the council.
A motion was made and seconded to approve the following amendments: to amend Sections 5 and 7 to comply with the drafting requirements of KRS 13A.220; and (3) to amend Section 1 for clarity. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION PROFESSIONAL STANDARDS BOARD: Administrative Certificates
16 KAR 3:080. Career and technical education school principals. Alicia A. Sneed, director of legal services, represented the board.
A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a statutory citation; (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 Section 1 for clarity.

Alternative Routes to Certification
16 KAR 9:080. University-based alternative certification program.
In response to questions by Co-Chair Harris, Ms. Sneed stated that this administrative regulation clarified mentoring requirements for the university-based alternative certification process. For alternative certification, a minimum of six (6) hours per year during the three (3) year program was required.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (3) to revise material incorporated by reference to match the requirements in this administrative regulation; (5) 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 (6) to amend Sections 1, 2, 4, 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.

GENERAL GOVERNMENT CABINET: Board of Licensure for Long-Term Care Administrators: Board
201 KAR 6:020. Other requirements for licensure. Greg Wells, chair, and Michael West, assistant attorney general, represented the board.
In response to questions by Co-Chair Bell, Mr. Wells and Mr. West stated that these administrative regulations established requirements for individual licensed administrators, but it was not required that individuals seek licensure. The changes allowed a temporary permit to be transferred to another facility within six (6) months and applied to licensed administrators rather than facilities.
Senator Bowen welcomed his constituent, Mr. Wells.
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 to correct statutory citations; (3) to amend Section 1 for clarity; (3) to amend Section 2; (4) to revise material incorporated by reference to match the requirements in this administrative regulation; (5) 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 (6) to amend Sections 1, 2, 4, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 6:030. Temporary permits.
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 and 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 6:040. Renewal, reinstatement, and reactivation of license.
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; Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 6:050. Licensure by endorsement.
A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (3) to revise material incorporated by reference to match the requirements in this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 6:060. Fees.
A motion was made and seconded to approve the following amendments: to amend Section 7 for clarity. Without objection, and with agreement of the agency, the amendments were approved.
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, 3, 4, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Sections 1, 3, 4, 5, 6, 7, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 5, 7, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to incorporate by reference an updated application form. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, 5, 6, 8, 11, 12, 14, 15, 17, and 18 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, 5, 6, 9, 9, 11, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, 5, 6, 7, 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.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4, 6, 9 through 14, 16, 17, and 19 through 24 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 5, 7, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.
A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Sections 1 through 5, 8, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) create a new Section 10 to incorporate by reference the complaint form. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 12:260. License fees, examination fees, renewal fees, restoration fees and miscellaneous fees.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Section 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 12:270. Threading practice.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Real Estate Appraisers Board: Board

201 KAR 30:040. Standards of practice. Larry Disney, executive director; and Jim Grawe, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 1:132. Sale of live bait. Ron Brooks, director of fisheries; Margaret Eversion, assistant attorney general; and Karen Waldrop, director of wildlife, represented the department.

In response to a question by Senator Bowen, Mr. Brooks stated that this administrative regulation and 301 KAR 1:152 prohibited commercial fishermen from moving Asian carp to other areas of water.

In response to questions by Co-Chair Harris, Mr. Brooks stated that the department was making headway in the control of Asian carp encroachment, but there was still a lot of work to be done. Asian carp was popular in China, and the department hoped that the domestic market would grow.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:152. Asian Carp and Scaled Rough Fish Harvest Program.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 4 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Game

301 KAR 2:049. Small game and fur bearer hunting and trapping on public areas.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:225 & E. Dove, wood duck, teal, and other migratory game bird hunting.

A motion was made and seconded to approve the following amendments: 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.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Mine Reports: Permits

405 KAR 8:010. General provisions for permits. Steve Hohmann, commissioner, and Keith Smith, executive director, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.222; and (3) to amend Sections 2 through 6 and 8 through 26 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Bond and Insurance Requirements

405 KAR 10:001 & E. Definitions for 405 KAR Chapter 10.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.


A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, 4, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 10:070 & E. Kentucky reclamation guaranty fund.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 10:080 & E. Full-cost bonding.

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.222; (2) to amend Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A; and (3) to revise the material incorporated by reference to conform to the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 10:090 & E. Production fees.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE for consistency 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.222; and (3) to amend Sections 2 through 5 and 8 through 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.


JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:110. Roederer Correctional Complex. Amy Barker, assistant general counsel, represented the department.

In response to questions by Co-Chair Harris, Ms. Barker stated that this administrative regulation contained nonsecured department policies for the Roederer Correctional Complex. This year’s changes, among other changes, included: (1) amendments...
Co-Chair Harris urged the commission to work with Mr. Fletcher on this issue. Mr. Fletcher responded that dual requirements would not be enforced until 2017; however, these changes would create a burden for small breeders who would not be able to compete with the larger horse farms.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Section 1 to add a definition for “confidential inspection” for clarity; and (3) to amend Sections 2 through 7 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Harness Racing

811 KAR 1:215. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders’ Incentive Fund. Marc Guilfoil, commissioner, and Susan Speckert, general counsel, represented the commission. Gabe Prewitt, executive secretary, Kentucky Harness Horsemen’s Association, appeared in support of these administrative regulations. Gary Fletcher, owner, Sunny Ridge Racing, appeared in opposition to these administrative regulations.

Mr. Fletcher stated that breeding rule changes allowed any breeder to qualify for the incentive fund by breeding a mare if the mare was in Kentucky for at least six (6) months. These provisions would create a burden for small breeders who would not be able to compete with the larger horse farms.

Co-Chair Bell stated that the rule change seemed to help small breeders by bringing more mares into Kentucky. More mares in Kentucky would add funds to the Breeders’ Incentive Fund. In response, Mr. Fletcher stated that because his horses were on site, he could not board mares. His contention was that most of the Breeders’ Incentive Fund money would go to large horse farms.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 1, 3, 6, 9, 10, 18, 24, 26, and 28 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 1:220. Harness racing at county fairs. A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 6, 9, 24, and 26 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Kentucky Health Benefit Exchange: Health Benefit Exchange

In response to questions from Senator Harris, Mr. Nold stated that privacy concerns regarding electronically submitted data were based on Web site information that was erroneously posted. Only authorized persons, such as agents, would have access to the information. Ms. Banahan stated that this program complied with federal privacy and security guidelines.

Senator Bowen stated that he was concerned that there did not seem to be statutory authority for these administrative regulations. He was also concerned regarding the governor’s attempt to make sweeping policy via an executive order.

A motion was made by Senator Gregory, seconded by Senator Bowen, to find these administrative regulations deficient based on lack of statutory authority. A roll call vote was conducted. With Senators Harris, Bowen, and Gregory voting to find these administrative regulations deficient, the motion did not carry. Five (5) votes to find these administrative regulations deficient were required.

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 Sections 1 through 4, 6 to 8, 13 through 16, and 23 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend the form incorporated by reference to change a filing deadline to match the deadline stated in the body of the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 10:020 & E. Kentucky Health Benefit Exchange Small Business Health Options Program. A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to create a new Section 11 to incorporate by reference two required application forms. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 10:050 & E. Individual Agent or Business Entity Participation with the Kentucky Health Benefit Exchange. A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without agreement of the agency, the amendments were approved.
Office of the Inspector General: Office
906 KAR 1:190. Kentucky Applicant Registry and Employment Screening Program. Stephanie Brammer-Barnes, policy analyst; Al Ervin, program manager; and Eric Friedlander, deputy secretary, represented the cabinet. Harold Barlow, parent of a program client, appeared in support of this administrative regulation. James Aneszko, vice president and business owner, Home Instead Senior Care, appeared in opposition to this administrative regulation.

In response to questions by Representative Lee, Mr. Friedlander stated that this administrative regulation implemented the corresponding federal program. This administrative regulation provided for a background check for crimes in other states, in addition to the Kentucky background check. Due process was provided in that crimes in other states had already been subject to due process and there was an appeal process for a misidentified person or for a person who had been rehabilitated. After seven (7) years, a person who had been rehabilitated may request a rehabilitation review panel, which would consider mitigating factors in order to determine if the employment prohibition should be waived. Statutory authority provided for this additional background check as an opinion only. Statutory authority was required to make this program mandatory. Ms. Brammer-Barnes stated that this administrative regulation did not create a new registry, but allowed access to other existing registries.

Mr. Barlow stated that he had a severely disabled son who was assaulted as a client in the Supports for Community Living (SCL) program. His son was autistic and nonverbal. Because he was nonverbal, law enforcement did not address his assault. The cabinet did not address the assault. His son had been left alone several times, despite the fact that his son had a documented seizure disorder. A person who could assault someone like his son should not again be able to work with vulnerable citizens. Mr. Barlow supported this administrative regulation.

Mr. Aneszko stated that this administrative regulation would have negative effects on the elderly because there would be cost increases, especially if this administrative regulation became mandatory rather than optional. If funding ran out and the background check was mandatory, rather than optional, costs would be doubled and would create obstacles to an already insufficient long-term care workforce. Additionally, the added background check would delay screening, which may cause a delay in hiring to meet unexpected care needs.

In response to a question by Representative Lee, Mr. Aneszko stated that the current cost for a background check was twenty (20) to thirty (30) dollars. Cost including the new background check was approximately sixty-three (63) dollars.

Representative Lee stated that the sixty-three (63) dollar sum seemed small compared to the protection of vulnerable individuals. The long-term care industry had promised the General Assembly that improvements in care would be made; however, improvements did not seem to have been made. Clients in long-term care facilities were virtually captives, in that they could not leave if they were dissatisfied with the level of care provided. In response, Mr. Aneszko stated that the long-term care industry wanted effective background checks and full protection for clients.

In response to a question by Representative Lee, Mr. Aneszko stated that he could not agree to mandatory background checks if the industry was granted a rate increase because he did not represent a facility. Instead, services were provided in the clients’ homes. Funding came from clients, and ninety-five (95) percent of clients were private payors; therefore, a rate increase request was not really at issue.

Mr. Friedlander stated the cabinet’s apology to Mr. Barlow for what happened to his disabled son. The cabinet agreed to ask the General Assembly to make the additional background check mandatory, rather than optional, during the 2014 Regular Session of the General Assembly.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to clarify that the screening requirements apply to cabinet staff and prospective employees hired on or after the regulation’s effective date; (2) to delete Sections 12 and 13(3) and (4) because the provisions exceed the scope of this administrative regulation; and (3) to amend Sections 1, 2, 6, 13, and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the November 12, 2013, meeting of the Subcommittee:

TOURISM, ARTS AND HERITAGE CABINET: State Fair Board: Fairgrounds and Exhibition Center
303 KAR 1:042. Repeal of 303 KAR 1:041.

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
501 KAR 6:050. Luther Luckett Correctional Complex.

TRANSPORTATION CABINET: Motor Vehicle Commission: Commission
605 KAR 1:050. Dealer and salesman.
605 KAR 1:060. Temporary off-site sale or display event.
605 KAR 1:070. Change of ownership.
605 KAR 1:090. Business names.
605 KAR 1:130. Procedures.
605 KAR 1:190. Motor vehicle advertising.
605 KAR 1:210. Nonprofit motor vehicle dealer requirements and licensing.

EDUCATION AND WORKFORCE DEVELOPMENT: Kentucky Board of Education: Department of Education: Office of Instruction
704 KAR 3:390. Extended school services.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Kentucky Fire Commission: Commission on Fire Protection Personnel Standards and Education
739 KAR 2:080. Candidate physical ability test.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities
807 KAR 5:069. Filing requirements and procedures for federally funded construction project of a water association, a water district, or a combined water, gas, or sewer district.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Inspector General: Division of Health Care: Health Services and Facilities

Department for Medicaid Services: Division of Administration and Financial Management: Medicaid Services
907 KAR 1:563. Medicaid covered services appeals and hearings unrelated to managed care.

Department for Behavioral Health, Developmental and Intellectual Disabilities: Division of Administration and Financial Management: Institutional Care
908 KAR 3:050. Per diem rates.

Other Business: Co-Chair Harris introduced the Subcommittee’s newest legislative analyst, Carrie Klaber. Carrie worked for the past five (5) years with the Interim Joint Committee on Licensing and Occupations. She did her undergraduate work at the University of Kentucky and earned her Juris Doctorate from Chase Law School. The Subcommittee welcomed Ms. Klaber.

The Subcommittee adjourned at 2:50 p.m. until November 12, 2013 at 1 p.m.
OTHER COMMITTEE REPORTS

COMPILER’S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT
Meeting of September 25, 2013

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Local Government for its meeting of September 25, 2013, having been referred to the Committee on September 4, 2013, pursuant to KRS 13A.290(6):

815 KAR 7:125

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 25, 2013 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of October 1, 2013

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Transportation for its meeting of 10/1/13, having been referred to the Committee on October 2, 2013, pursuant to KRS 13A.290(6):

601 KAR 1:147

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the 10/1/13 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT
Meeting of October 3, 2013

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of October 3, 2013, having been referred to the Committee on October 2, 2013, pursuant to KRS 13A.290(6):

301 KAR 1:150
301 KAR 1:201
301 KAR 2:132
301 KAR 2:300
418 KAR 2:132
418 KAR 1:040
418 KAR 1:050

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 3, 2013 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON AGRICULTURE
Meeting of October 9, 2013

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture for its meeting of October 9, 2013, having been referred to the Committee on October 8, 2013, pursuant to KRS 13A.290(6):

418 KAR 1:040
418 KAR 1:050

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 9, 2013 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.
consideration and placed on the agenda of the Interim Joint Committee on Agriculture for its meeting of October 9, 2013, having been referred to the Committee on October 2, 2013, pursuant to KRS 13A.290(6):

12 KAR 1:116
12 KAR 1:135
12 KAR 1:140
12 KAR 1:145
12 KAR 1:150
12 KAR 1:155
12 KAR 1:165

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 9, 2013 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of October 16, 2013

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of October 16, 2013, having been referred to the Committee on October 2, 2013, pursuant to KRS 13A.290(6):

201 KAR 9:016
201 KAR 17:012
201 KAR 17:030
201 KAR 17:034
201 KAR 17:036
902 KAR 18:011
902 KAR 18:021
902 KAR 18:03
902 KAR 18:040
902 KAR 18:050
902 KAR 18:061
902 KAR 18:071
902 KAR 18:081
902 KAR 18:090
902 KAR 30:001
902 KAR 30:110
902 KAR 30:120
902 KAR 30:130
902 KAR 30:150
902 KAR 30:160
902 KAR 30:180
902 KAR 30:200
921 KAR 2:040

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 16, 2013 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT
Meeting of October 23, 2013

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Local Government for its meeting of October 23, 2013, having been referred to the Committee on October 2, 2013, pursuant to KRS 13A.290(6):

815 KAR 4:030 & E
815 KAR 4:040 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 23, 2013 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.
The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 18, 2013 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

The Locator Index lists all administrative regulations published in VOLUME 40 of the Administrative Register of Kentucky from July 2013 through June 2014. 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 39 are those administrative regulations that were originally published in VOLUME 39 (last year's) issues of the Administrative Register of Kentucky but had not yet gone into effect when the 2013 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 40 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 2013 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 40 of the Administrative Register of Kentucky, and is mainly broken down by agency.
## LOCATOR INDEX - EFFECTIVE DATES

The administrative regulations listed under VOLUME 39 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 2013 Kentucky Administrative Regulations Service was published.

### SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, not in effect within 1 year of publication
- *** Withdrawn before being printed in Register
- **** Emergency expired after 180 days
- (r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

### EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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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

### VOLUME 40

#### EMERGENCY ADMINISTRATIVE REGULATIONS:
(Nota: 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, 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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