ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

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SATURDAY, NOVEMBER 1, 2014

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, October 15, 2014.

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MEETING NOTICE: EAARS

The **Education Assessment and Accountability Review Subcommittee** is **tentatively** scheduled to meet November 21, 2014, at 10:00 a.m. in room 171 Capitol Annex.

MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet November 14, 2014, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **979-981** of this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, NOVEMBER 14, 2014, at 1:00 p.m., Room 149 Capitol Annex

HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services

Kentucky Loan Program
11 KAR 3:100. Administrative wage garnishment.
KHEAA Grant Programs
11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5.
11 KAR 5:033. KTG student eligibility requirements.
11 KAR 5:034. CAP grant student eligibility.
11 KAR 5:170. Refund and repayment policy.
Teacher Scholarship Loan Program
11 KAR 8:030. Teacher scholarships.
Commonwealth Merit Scholarship Program
11 KAR 15:060. Kentucky Educational Excellence Scholarship overpayment and refund and repayment procedure.
Early Childhood Development Scholarship Program
11 KAR 16:001. Definitions for 11 KAR Chapter 16.
11 KAR 16:010. Early Childhood Development Scholarship Program applicant selection process.

EDUCATION PROFESSIONAL STANDARDS BOARD

Teaching Certificates
16 KAR 2:120. Emergency certification and out-of-field teaching. (Deferred from October)

PERSONNEL CABINET
Office of the Secretary

Personnel Cabinet, Classified
101 KAR 2:210 & E. 2015 Plan Year Handbook for the Public Employee Health Insurance Program. ("E" expires 3/14/2015)

FINANCE AND ADMINISTRATION CABINET
Commonwealth Office of Technology

General Administration
200 KAR 1:015. Data Breach Notification Forms. (Deferred from October)

GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors

Board
201 KAR 36:060. Qualifying experience under supervision. (Deferred from September)
201 KAR 36:070. Education and examination requirements. (Amended After Comments)
201 KAR 36:080. Inactive and retired licensure status. (Deferred from September)

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Heritage Council

Council
300 KAR 6:010. Historic rehabilitation tax credit certifications.

Department of Fish and Wildlife Resources

Fish
301 KAR 1:152. Asian Carp and Scaled Rough Fish Harvest Program.
301 KAR 1:220. Reciprocal agreements regarding fishing.
Game
301 KAR 2:225 & E. Dove, wood duck, teal, and other migratory game bird hunting. ("E" expires 2/18/2015)

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits

Permits
405 KAR 8:030 & E. Surface coal mining permits. ("E" expires 2/2/2015) (Amended After Comments)
405 KAR 8:040 & E. Underground coal mining permits. ("E" expires 2/2/2015) (Amended After Comments)

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections

Office of the Secretary
501 KAR 6:050. Luther Luckett Correctional Complex.

Law Enforcement Council

Council
503 KAR 1:090. Approval of course curriculums. (Deferred from October)

TRANSPORTATION CABINET
Kentucky Bicycle and Bikeways Commission

Motorcycle and Bicycle Safety
601 KAR 14:020. Bicycle Safety standards. (Not Amended After Comments) (Deferred from June)

Department of Highways
Division of Maintenance

Billboards
603 KAR 10:001. Definitions. (Amended After Comments) (Deferred from May)
603 KAR 10:010. Static advertising devices. (Amended After Comments) (Deferred from May)
603 KAR 10:020. Electronic advertising devices. (Amended After Comments) (Deferred from May)
603 KAR 10:030. Removal of vegetation related to advertising devices. (Amended After Comments) (Deferred from May)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Board of Education
Department of Education

General Administration
702 KAR 1:160. School health services. (Amended After Comments)
School Terms, Attendance and Operation
702 KAR 7:140. School calendar.(Deferred from October)

FINANCE AND ADMINISTRATION CABINET
School Facilities Construction Commission

Procedures
750 KAR 1:030. Emergency and Targeted Investment Fund.(Deferred from October)

PUBLIC PROTECTION CABINET
Department of Insurance
Health and life Division

Assets and Liabilities
806 KAR 6:070. Valuation of life insurance and annuity reserves.

Horse Racing Commission

Thoroughbred Racing
810 KAR 1:017. Objections and complaints. (Not Amended After Comments)
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811 KAR 2:090. Objections and complaints. (Deferred from October)

Office of Occupations and Professions
Board of Home Inspectors

Board
815 KAR 6:001. Definitions for 815 KAR Chapter 6. (Deferred from October)
815 KAR 6:080. Continuing education provider. (Deferred from October)

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Health Care

Health Services and Facilities
902 KAR 20:008. License procedures and fee schedule. (Amended After Comments) (Deferred from October)

Office of Inspector General
Division of Health Care

Health Services and Facilities
902 KAR 20:430 & E. Facilities specifications, operation and services; behavioral health services organizations. (“E” expires 2/10/2015) (Amended After Comments)
902 KAR 20:440 & E. Facilities specifications, operation and services; residential crisis stabilization units. (“E” expires 2/10/2015) (Amended After Comments)

Division of Public Health Protection and Safety

Radiology
902 KAR 100:010. Definitions for 902 KAR Chapter 100.
902 KAR 100:012. Fee schedule.
902 KAR 100:019. Standards for protection against radiation.
902 KAR 100:042. Decommissioning and financial surety.
902 KAR 100:058. Specific licenses to manufacture, assemble, repair, or distribute products.
902 KAR 100:070. Transportation of radioactive material.
902 KAR 100:072. Use of radionuclides in the health arts.
902 KAR 100:100. Industrial radiography.
902 KAR 100:142. Wire line service operations.

Department for Medicaid Services
Division of Policy and Operations

Payments and Services
907 KAR 3:005 & E. Coverage of physicians' services. ("E" expires 2/16/2015)
Hospital Service Coverage and Reimbursement
907 KAR 10:825. Diagnosis-related group (DRG) inpatient hospital reimbursement. (Amended After Comments) (Deferred from April)
Behavioral Health
907 KAR 15:070 & E. Coverage provisions and requirements regarding services provided by residential crisis stabilization units. ("E" expires 2/16/2015)
907 KAR 15:075 & E. Reimbursement provisions and requirements for behavioral health services provided by residential crisis stabilization units. ("E" expires 2/16/2015)

Department for Behavioral Health, Developmental and Intellectual Disabilities
Division of Administration and Financial Management

Institutional Care

908 KAR 3:050. Per diem rates. (Amended After Comments)
908 KAR 3:060. "Means test" for determining patient liability. (Deferred from October)

REMOVED FROM NOVEMBER AGENDA

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control

Local Administrators

~~804 KAR 10:030. Local government regulatory license fees. (Withdrawn, SOC not filed by deadline)~~

Office of Occupations and Professions
Board of Home Inspectors

Board

815 KAR 6:010. Home inspector licensing requirements and maintenance of records. (Comments Received, SOC ext.)
815 KAR 6:030. Home inspector standards of conduct. (Comments Received, SOC ext.)
815 KAR 6:040. Home inspector prelicensing providers. (Comments Received, SOC ext.)
815 KAR 6:090. Procedures for complaints and administrative hearings. (Comments Received, SOC ext.)
815 KAR 6:100. Compensation. (Comments Received, SOC ext.)

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy

Certificate of Need

900 KAR 6:060. Timetable for submission of certificate of need applications. (Comments Received, SOC ext)
900 KAR 6:065. Certificate of need application process. (Comments Received, SOC ext)

Department for Medicaid Services
Commissioner's Office

Behavioral Health

907 KAR 15:005 & E. Definitions for 907 KAR Chapter 15. ("E" expires 2/17/2015) (Comments Received, SOC ext)

Division of Policy and Operations

907 KAR 15:020 & E. Coverage provisions and requirements regarding services provided by behavioral health service organizations. ("E" expires 2/17/2015) (Comments Received, SOC ext)

907 KAR 15:025 & E. Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health service organizations. ("E" expires 2/17/2015) (Comments Received, SOC ext)

Department for Community Based Services
Division of Protection and Permanency

Child Welfare

922 KAR 1:360 & E. Private child care placement, levels of care, and payment. ("E" expires 2/27/2015) (Comments Received, SOC ext)

~~**Division of Child Care**~~

~~**Day Care**~~

~~922 KAR 2:160 & E. Child Care Assistance Program. ("E" expires 1/28/2015) (Comments Received)~~ (Withdrawn by agency, 10/15/2014)

Division of Protection and Permanency

Adult Services

922 KAR 5:070 & E. Adult protective services. ("E" expires 2/18/2015) (Comments Received, SOC ext)
922 KAR 5:120 & E. Caregiver misconduct registry and appeals. ("E" expires 2/18/2015) (Comments Received, SOC ext)

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

PUBLIC SERVICE COMMISSION

Compiler's Note: In Section 13(10)(d)2, the word "able" was incorrectly printed as "unable" in the October 2014 Register.

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS 61.870-884, 61.931-934, 65.810, Chapter 74, 278.010, 278.020(3), 278.100, 278.180, 278.300, 278.410, 322.340, 365.015, 369.102, 424.300, 45 C.F.R. 160.103, 47 C.F.R. 36, 20 U.S.C. 1232g

STATUTORY AUTHORITY: KRS 278.040(3), 278.260(2), 278.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.310 requires that all hearings and investigations before the commission shall be governed by rules promulgated by the commission. This administrative regulation establishes requirements with respect to formal and informal proceedings before the commission.

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. Alone or through one (1) or more intermediary companies;

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, or 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 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) "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) "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 of this administrative regulation;

(d) Is granted leave to intervene pursuant to Section 4(11) of this administrative regulation; or

(e) Is joined to a commission proceeding.

(11) "Person" is defined by KRS 278.010(2).

(12) "Signature" means a manual, facsimile, conformed, or electronic signatures.

(13) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(14) "Utility" is defined by KRS 278.010(3).

(15) "Water district" means a special district formed pursuant to KRS 65.810 and Chapter 74.

(16) "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. (1) Upon request, the executive director shall:

(a) Advise as to the form of a paper desired to be filed;

(b) Provide general information regarding the commission's procedures and practices; and

(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. (1) Address of the commission. All communications shall be addressed to: Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

(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 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 commissioner, 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 a 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 807 KAR Chapter 5 or 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, 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 by the commission shall be made by sending a copy by electronic mail 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 mail shall comply with Section 8(4) of this administrative regulation and shall include the sending of an electronic mail message that contains an electronic version of the commission order or a hyperlink that enables the recipient to access, view, and download an electronic copy of the commission order from the commission's Web site.

(c) If good cause exists, and upon the filing of a motion by a party to excuse a party from receiving service by electronic mail from the commission, the commission shall order service of papers on the party to be made in accordance with paragraph (d)1. or 2. of this subsection.

(d) Service upon an attorney or upon a party by the parties in a case shall be made by:

1. Delivering a copy to the attorney or party;

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 mail 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 mail shall comply with Section 8(4) of this administrative regulation.

(e) 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 shall not be deemed filed with the commission until the paper:

1. Is physically received by the executive director at the commission's offices during the commission's official business hours; and

2. 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 person files a paper containing personal information, the person shall encrypt or redact the paper so that personal information cannot be read. Personal information shall include a business name; an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

1. The digits of a Social Security number or taxpayer identification number;

2. The month and date of an individual's birth;

3. The digits of an account number, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;

4. A driver's license number, state identification card number, or other individual identification number issued by any agency;

5. A passport number or other identification number issued by the United States government;

6. "Individually identifiable health information" as defined by 45 C.F.R. 160.103, except for education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; or

7. The address, phone number, or email address of an individual who is not a party and has not requested to be a party.

(b) To redact the paper, the filing party shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark that so obscures the identifiers that the identifiers cannot be read.

(c) The responsibility to review for compliance with this section and redact a paper shall rest with the party that files the paper.

(11) Intervention and parties.

(a) A person who wishes to become a party to a case before the commission may, by timely motion, request leave to intervene.

1. The motion shall include the movant's full name, mailing address, and electronic mail address and shall state his or her interest in the case 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.

2. The motion may include a request by movant for delivery of commission orders by United States mail and shall state how good cause exists for that means of delivery to movant.

(b) The commission shall 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 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 that the party submits in the case after the order granting intervention, but the party is not required to provide any papers 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.

1. These comments shall be filed in the case record.

2. 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 the party obtains information that 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 shall provide a written explanation of the specific grounds for the failure to completely and precisely respond.

6. The responding party shall file with the commission the party's 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 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 if rights of the parties or the public interest will not be prejudiced.

(b) Upon ordering 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 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.

(2) Proof shall be made by certificate of the filer's attorney, by affidavit of the person who served the papers, or by a comparable proof.

(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.

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 is filed with the commission, an original unbound and ten (10) additional copies in paper medium shall be filed.

(2) Each paper 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. 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.

(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 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 the applicant 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 shall be filed with the commission by uploading an electronic version 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 with the commission as required by subsection (12)(a)2. of this section.

(4)(a) 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 scanned material, scanned at a resolution of 300 dots per inch.

(c) If, pursuant to Section 4(12) of this administrative regulation, a party is requested to provide information in the form of an electronic spreadsheet, the file containing the spreadsheet shall be submitted in an Excel spreadsheet format.

(5)(a) 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; and

3. A statement that the materials in the electronic submission

are a true representation of the materials in paper medium.

(b) The "Read1st" file and any other material 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.

(6)(a) An uploading session shall not exceed twenty (20) files or 100 megabytes.

(b) An individual file shall not exceed thirty (30) megabytes.

(c) If a submission exceeds the limitations established in paragraph (a) of this subsection, the filer shall make electronic submission in two (2) or more consecutive uploading sessions.

(7) If filing a paper with the commission, the filing party shall certify that:

(a) The electronic version of the paper is a true and accurate copy of each paper filed in paper medium;

(b) The electronic version of the paper has been submitted to the commission; and

(c) A copy of the paper in paper medium has been mailed to all parties that the commission has excused from electronic filing procedures.

(8)(a) Upon completion of an uploading session, the commission shall notify all parties of record by electronic mail that an electronic submission has been made.

(b) Upon a party's 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.

(9) Unless a party objects to the use of electronic filing procedures in the party's motion for intervention, the party 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 the party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(10) In cases in which 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:

(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 directing the use of electronic filing procedures a written statement that 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 from the use of electronic filing procedures, service of papers on and by it shall be made by mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address.

(12)(a) A paper 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 order of the commission; and

2. The paper, in paper medium, is filed at the commission's offices no later than the second business day following the successful electronic transmission.

(b) Each party shall attach to the top of the paper medium submission a copy in paper medium of the electronic notification from the commission confirming receipt of its electronic submission.

(13) Except as established in this section, a party making a filing in accordance 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 if:

(a) An order to satisfy or answer a complaint has been made and the person complained of has not satisfied the complaint; or

(b) A request for hearing has been made.

(2) Publication of notice.

(a) Upon the filing of an application, the commission may order an applicant to give notice on all persons who may be affected by serving a copy of the application upon those persons or by publishing notice of the filing.

1. The applicant shall bear the expense of providing the notice.

2. If the notice is provided by publication, the commission may designate the contents of the notice, the number of times and the time period in which the notice shall be published, and the newspaper in which the notice shall be published.

(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 is published by the applicant in a newspaper, it shall be published at least one (1) time and 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. 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.

(a) 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 278 or 807 KAR Chapter 5.

(b) The commission may, through its own experts, 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 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 and shall not 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 qualified reporter.

2. The commission shall grant the motion.

3. The requesting party shall bear the cost of the stenographic transcript and shall file a copy of the transcript with the commission within a reasonable time after completion of the hearing.

(b) The executive director 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 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 relevant portions, or may require evidence to be entered as a part of the record.

(2)(a) If relevant and material matter offered in evidence by any party is part of a book, paper, or document containing other matter not material or relevant, the party shall plainly designate the matter so offered.

(b) 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.

(3)(a) The sheets of each exhibit shall be numbered.

(b) If practical, the lines of each sheet shall also be numbered.

(c) 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.

(d) Rate comparisons and other evidence shall be condensed into tables.

(4) Unless so ordered by the commission, 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, or upon the commission's own motion, 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."

(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) For a utility that had $5,000,000 or more in gross annual revenue in the immediate past calendar year, cover operations for a twelve (12) month period, the period ending not more than ninety (90) days prior to the date the application is filed; or

(b) For a utility that had less than $5,000,000 in gross annual revenue in the immediate past calendar year, comply with paragraph (a) of this subsection or cover operations for the twelve (12) month period contained in the utility's most recent annual report on file with the commission, and contain a statement that:

1. Material changes have not occurred since the end of that twelve (12) month period; or

2. Identifies all material changes that have occurred since the end of that twelve (12) month period.

(2) The exhibit shall disclose the following information in the order indicated:

(a) The amount and kinds of stock authorized;

(b) The amount and kinds of stock issued and outstanding;

(c) Terms of preference of preferred stock, cumulative or participating, or on dividends or assets or otherwise;

(d) 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 sinking fund provisions, if applicable;

(e) The amount of bonds authorized and amount issued, giving the name of the public utility that issued the same, describing each class separately and giving the date of issue, face value, rate of interest, date of maturity, and how secured, together with amount of interest paid during the last fiscal year;

(f) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid during the last fiscal year;

(g) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of a portion of the indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid during the last fiscal year;

(h) The rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year; and

(i) A detailed income statement and balance sheet.

Section 13. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential.

(2) Procedure for determining confidentiality of material submitted in a case.

(a) A request for confidential treatment of material shall be made by motion that:

1. Establishes specific grounds pursuant to KRS 61.878 for classification of that material as confidential;

2. States the time period for the material to be treated as confidential and the reasons for this time period; and

3. Includes ten (10) copies 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 that unless redacted would disclose confidential material.

a. Text pages or portions thereof that do not contain confidential material shall not be included in this identification.

b. 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 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.

(c) The burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878 and to demonstrate the time period for the material to be considered as confidential shall be upon the moving party.

(d) Unless the commission orders otherwise, a party may respond to a motion for confidential treatment within seven (7) days after the motion is filed with the commission.

(e) 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 unredacted 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 pursuant to KRS 61.878 for classification of that material as confidential;

2. States the time period for the material to 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 that unless redacted would disclose confidential material.

a. Text pages or portions thereof that do not contain confidential material shall not be included in this identification.

b. 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 burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878 and to demonstrate the time period for the material to be considered as confidential shall be upon the person requesting confidential treatment.

(c) The executive director, as official custodian of the commission's records, shall determine if the material is within an exclusion established in KRS 61.878 and the time period for the material to be considered as confidential and shall advise the requestor of the determination by letter.

(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 the commission for confidential treatment of the material in accordance with the procedures established in subsection (2) of this section.

1. 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.

2. 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 not be placed in the public record for twenty (20) days following the decision.

(4) 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.

(5) If the motion 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.

(6) Procedure for a party to request access to confidential material filed in a case.

(a) A party to a case before the commission shall not fail to respond to a request for information by the commission, commission staff, or another party 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.

2. A party's response to 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 shall be fully explained.

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.

(7) Requests for access to records pursuant to KRS 61.870 to 61.884.

(a) 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.

(b) 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.

(8) 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.

(9) Use of confidential material. (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

1. If the confidential status of the material has been determined previously, a written notice identifying the person who originally 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. 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.

(b) Material deemed confidential by the commission may be addressed 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 excluded from the hearing room during testimony directly related to confidential material.

3. Any portion of the record directly related to the confidential material shall be sealed.

(10) Material granted confidentiality that later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) Except as provided for in paragraphs (c) and (d) of this subsection, confidential treatment shall be afforded to material for the period specified in the commission's order or executive director's written decision.

1. At the end of this period, the material shall be placed in the public record without notice to the person who originally requested confidential treatment.

2. The person who sought confidential treatment for the material may request that the material continue to be treated as confidential but shall demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

(b) The person who sought confidential protection shall inform the commission in writing if material granted confidentiality becomes publicly available.

(c) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the person who sought confidential protection, giving ten (10) days to respond. If that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, the information shall not be deemed to be publicly available and shall not be placed in the public record.

(d) If a request to inspect material granted confidential treatment is made during the period specified in the commission's order or executive director's written decision, the commission shall notify in writing the person who originally sought confidential treatment for the material and direct that party to demonstrate

within twenty (20) days of receipt of the notice that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

1. If the party is unable to make the demonstration, the commission shall make the requested materials available for public inspection; or

2. If the party is able to make the demonstration, the commission shall deny the request for inspection.

(e) The material shall not be placed in the public record for twenty (20) days following an order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek a remedy afforded by law.

Section 14. Applications. (1) Each application shall state the full name, mailing address, and electronic mail address of the applicant, and shall contain fully the facts on which the application is based, with a request for the order, authorization, permission, or certificate desired and a reference to the particular law requiring or providing for the information.

(2) If a corporation, the applicant shall identify in the application the state in which it is incorporated and the date of its incorporation, attest that it is currently in good standing in the state in which it is incorporated, and, if it is not a Kentucky corporation, state if it is authorized to transact business in Kentucky.

(3) If a limited liability company, the applicant shall identify in the application the state in which it is organized and the date on which it was organized, attest that it is in good standing in the state in which it is organized, and, if it is not a Kentucky limited liability company, state if it is authorized to transact business in Kentucky.

(4) If the applicant is a limited partnership, a certified copy of its limited partnership agreement and all amendments, if any, shall be annexed to the application, or a written statement attesting that its partnership agreement 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 an applicant is successful in acquiring the franchise, license, or permit, the applicant shall file a copy with the commission using the commission's electronic tariff filing system.

(2) New construction or extension. Upon application 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 of the construction 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 detail 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.

(3) Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area 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. 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. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that a certificate is not necessary;

3. 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;

4. New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:

a. The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

b. A copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

5. A statement that notice has been given in compliance with Section 17 of this administrative regulation with a copy of the notice.

(2) Notice of intent. A utility with gross annual revenues greater than $5,000,000 shall notify the commission in writing of its intent 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 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.

(3) Notice given pursuant to Section 17 of this administrative regulation shall satisfy the requirements of 807 KAR 5:051, Section 2.

(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 or 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;

(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 FERC Financial Report FERC Form No.1, FERC Financial Report FERC Form No. 2, 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:

1. Each software, program, or model;

2. What the software, program, or model was used for;

3. The supplier of each software, program, or model;

4. A brief description of the software, program, or model; and

5. 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) The 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 utility 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) 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, 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.

(6) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the requirements established in this subsection.

(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.

(b) Forecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period.

(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.

(d) 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.

(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as the basis for the utility's forecast.

(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.

(7) Each application requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) The written testimony of each witness the utility proposes to use to support its application, which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;

(b) The utility's most recent capital construction budget containing at a minimum a three (3) year forecast of construction expenditures;

(c) A complete description, which may be filed in written testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported;

(d) The utility's annual and monthly budget for the twelve (12) months preceding the filing date, the base period, and forecasted period;

(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations, which shall provide:

1. That the forecast is reasonable, reliable, made in good faith, and that all basic assumptions used in the forecast have been identified and justified;

2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for differences that exist, if applicable; and

3. That productivity and efficiency gains are included in the forecast;

(f) 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 and inclusive of allowance for funds used during construction ("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;

(g) 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;

(h) 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 in 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 prospectuses of the most recent stock or bond offerings;

(k) The most recent FERC Financial Report FERC Form No.1, FERC Financial Report FERC Form No.2, or Public Service Commission Form T (telephone);

(l) The annual report to shareholders or members and the statistical supplements covering the most recent two (2) years from the application filing date;

(m) The current chart of accounts if more detailed than the Uniform System of Accounts chart;

(n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;

(o) 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 telecommunications 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 development of the schedules and work papers associated with the filing of the utility's application. This list shall include:

1. Each software, program, or model;

2. What the software, program, or model was used for;

3. The supplier of each software, program, or model;

4. A brief description of the software, program, or model; and

5. 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, or water utility 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 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) Each application seeking a general adjustment in rates supported by a forecasted test period shall include:

(a) A jurisdictional financial summary for both the base period and the forecasted period that details how the utility derived the amount of the requested revenue increase;

(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules, which include detailed analyses of each component of the rate base;

(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules, which provide breakdowns by major account group and by individual account;

(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;

(e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;

(f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;

(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;

(h) A computation of the gross revenue conversion factor for the forecasted period;

(i) Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;

(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;

(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;

(l) A narrative description and explanation of all proposed tariff changes;

(m) A revenue summary for both the base period and forecasted period with supporting schedules, which provide detailed billing analyses for all customer classes; and

(n) A typical bill comparison under present and proposed rates for all customer classes.

(9) The commission shall notify the applicant of any deficiencies in the application within thirty (30) days of the application's submission. An application shall not be accepted for filing until the utility has cured all noted deficiencies.

(10) A request for a waiver from the requirements of this section shall include the specific reasons for the request. The commission shall grant the request upon good cause shown by the utility. In determining if good cause has been shown, the commission shall consider:

(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. Upon filing an application for a general rate adjustment, a utility shall provide notice as established in this section.

(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 sites:

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, 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, 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 the date the application is submitted to the commission.

(c) A utility that provides service in more than one (1) county 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 date 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 basic local service;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this application 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 at http://psc.ky.gov;

(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 securities, notes, bonds, stocks, or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof 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 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 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;

(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 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 written notification to the state local debt officer regarding the proposed issuance.

(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. 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;

(d) Identify all statutes, administrative regulations, and orders to which the application relates; and

(e) State the applicant's proposed resolution or conclusion.

(3) The commission may direct that a copy of the application for a declaratory order be served on a person who may be affected by the application.

(4) Unless the commission orders otherwise, responses, if applicable, to an application for declaratory order shall be filed with the commission within twenty-one (21) days after the date on which the application was filed with the commission and shall be served upon the applicant.

(5) A reply to a response shall be filed with the commission within fourteen (14) days after service.

(6) Each application, response, and reply containing an allegation of fact shall be supported by affidavit or shall be verified.

(7) The commission may dispose of an application for a declaratory order solely on the basis of the written submissions filed.

(8) The commission may take any action necessary to ensure a complete record, to include holding oral arguments on the application and requiring the production of additional documents and materials, and may extend the time for the filing of a reply or response under this section.

Section 20. 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 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;

(c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, 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.

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.

(3) Number of copies required. Upon the filing of an original complaint, the complainant shall also file two (2) more copies than the number of persons to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity 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 require the answer to be filed within a shorter period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(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 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.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint 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 constituting a defense.

(b) If the defendant does not have information sufficient to answer an allegation of the complaint, the defendant may so state in the answer and place the denial upon that ground.

Section 21. 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.

(a) 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 if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(b) 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. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "FERC Financial Report FERC Form No. 1", March 2007;

(b) "FERC Financial Report FERC Form No. 2", December 2007;

(c) "Notice of Election of Use of Electronic Filing Procedures", June 2014;

(d) "PSC Form-T (telephone)", August 2005;

(e) "Form 8-K", January 2012;

(f) "Form 10-K", January 2012;

(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. (8 Ky.R. 786; eff. 4-7-1982; Am. 10 Ky.R. 831; eff. 1-4-1984; 11 Ky.R. 1301; 12 Ky.R. 127; eff. 7-9-1985; 18 Ky.R. 191; 1025; eff. 9-24-1991; 19 Ky.R. 1142; 1604; 2044; eff. 3-12-1993; 39 Ky.R. 295; 995; 1117; eff. 1-4-2013; 40 Ky.R. 686; 1109; 1269; eff. 1-3-2014.)

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
907 KAR 1:516E

This emergency administrative repeals 907 KAR 1:515, 907 KAR 1:520, 907 KAR 1:525, and 907 KAR 1:530, 907 KAR 1:550, and 907 KAR 1:555. The Department for Medicaid Services (DMS) is repealing the aforementioned administrative regulations as they contain archaic and duplicative provisions that are being addressed in six (6) new administrative regulations being promulgated in conjunction with this repealer administrative regulation. The new administrative regulations are 907 KAR 15:040E, Coverage provisions and requirements regarding targeted case management for individuals with a substance use disorder; 907 KAR 15:045E, Reimbursement provisions and requirements regarding targeted case management for individuals with a substance use disorder; 907 KAR 15:050E, Coverage provisions and requirements regarding targeted case management for individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues; 907 KAR 15:055E, Reimbursement provisions and requirements regarding targeted case management for individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues; 907 KAR 15:060E, Coverage provisions and requirements regarding targeted case management for individuals with severe mental illness and children with a severe emotional disability; and 907 KAR 15:065E, Reimbursement provisions and requirements regarding targeted case management for individuals with severe mental illness and children with a severe emotional disability. This administrative regulation must be promulgated on an emergency basis as the companion administrative regulations are necessary to be promulgated on an emergency basis in order to prevent a loss of federal Medicaid funds and to meet a deadline for the promulgation of an administrative regulation necessary under federal law and regulation. This emergency administrative regulation shall not be replaced by an ordinary administrative regulation as this emergency administrative regulation repeals six (6) administrative regulations leaving nothing to be repealed by an ordinary administrative regulation. No ordinary administrative regulation is being promulgated.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

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

907 KAR 1:516E. Repeal of 907 KAR 1:515, 907 KAR 1:520, 907 KAR 1:525, 907 KAR 1:530, 907 KAR 1:550, and 907 KAR 1:555.

RELATES TO: 42 U.S.C. 1396a
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 13A.310(a)
EFFECTIVE: September 16, 2014
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Kentucky Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation, in accordance with KRS 13A.310(3)(a), repeals 907 KAR 1:515, 907 KAR 1:520, 907 KAR 1:525, 907 KAR 1:530, 907 KAR 1:550, and 907 KAR 1:555. 907 KAR 1:515, 907 KAR 1:520, 907 KAR 1:525, 907 KAR 1:530, 907 KAR 1:550, and 907 KAR 1:555 are being repealed because they contain obsolete provisions and requirements that are being addressed in new administrative regulations.

Section 1. The following administrative regulations are hereby repealed:
(1) 907 KAR 1:515, Targeted case management services for adults with chronic mental illness;
(2) 907 KAR 1:520, Payments for targeted case management services for adults with chronic mental illness;
(3) 907 KAR 1:525, Targeted case management services for children with a severe emotional disability;
(4) 907 KAR 1:530, Payments for targeted case management services for children with a severe emotional disability;
(5) 907 KAR 1:550, Incorporation by reference of the Targeted Case Management Services Adults Manual; and
(6) 907 KAR 1:555, Incorporation by reference of the Targeted Case Management Services Children Manual.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 9, 2014
FILED WITH LRC: September 16, 2014 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2014 at 9:00 a.m. in Suite B of 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, 2014 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 1, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, in accordance with KRS 13A.310(3)(a), repeals 907 KAR 1:515, Targeted case management services for adults with chronic mental illness; 907 KAR 1:520, Payments for targeted case management services for adults with chronic mental illness; 907 KAR 1:525, Targeted case management services for children with a severe emotional disability; 907 KAR 1:530, Payments for targeted case management services for children with a severe emotional disability; 907 KAR 1:550, Incorporation by reference of the Targeted Case Management Services Adult Manual; and 907 KAR 1:555, Incorporation by reference of the Targeted Case Management Services Children Manual.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal administrative regulations which contain obsolete provisions and requirements regarding subjects being addressed in new 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 repealing administrative regulations which contain obsolete provisions and requirements regarding subjects being addressed in new administrative regulations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation conforms to the content of the authorizing

statutes by repealing administrative regulations which contain obsolete provisions and requirements regarding subjects being addressed in new 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 not an amendment to an existing administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This repealer administrative regulation affects individuals and entities qualified to provide and be reimbursed for targeted case management services under the Medicaid Program. These individuals and entities include licensed psychologists, licensed clinical social workers, licensed professional clinical counselors, licensed marriage and family therapists, licensed psychological practitioners, licensed professional art therapists, licensed behavioral analysts, physicians, advanced practice registered nurses, community mental health centers, and behavioral health service organizations.

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Medicaid providers will benefit from the elimination of obsolete and duplicative provisions and requirements.

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

(a) Initially: The administrative regulation imposes no cost on the Department for Medicaid Services.

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

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee nor funding increase is necessary to implement the administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering is not applied as this is a repealer administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Not applicable, this administrative regulation is being repealed. 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? This administrative regulation will generate no revenue for state or local government.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
907 KAR 15:040E

This emergency administrative regulation is being promulgated in conjunction with 907 KAR 15:045E, Reimbursement provisions and requirements regarding targeted case management for individuals with a substance use disorder - to comply with a federal mandate. The Affordable Care Act mandates coverage of substance use disorder services for all Medicaid recipients (who meet qualifying criteria) and federal law requires Medicaid Programs to ensure that recipients have access to services. These two (2) administrative regulations will help ensure that Medicaid recipients are able to access mandated substance use disorder services. Targeted case management ensures that Medicaid recipients with a mental health diagnosis and a substance use disorder are monitored to ensure that they receive the services most beneficial to their particular illness. As mental illness and substance use disorders are often life-threatening and require long-term treatment, targeted case management gives continuity of care to a Medicaid recipient whose illness needs long-term monitoring. This action must be taken on an emergency basis to prevent a loss of Medicaid federal funds, to meet a deadline for the promulgation of an administrative regulation necessary under federal law and regulation, and so as not to delay providing this service to Medicaid recipients at risk. 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
(New Emergency Administrative Regulation)

907 KAR 15:040E. Coverage provisions and requirements regarding targeted case management for individuals with a substance use disorder.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396n(g).

EFFECTIVE: September 16, 2014

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for Medicaid recipients with a substance use disorder.

Section 1. General Coverage Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Medically necessary; and

(2) Provided:

(a) To a recipient; and

(b) By a provider that meets the provider participation requirements established in Section 3 of this administrative regulation.

Section 2. Eligibility Criteria. To be eligible to receive targeted case management services under this administrative regulation, a recipient shall:

(1) Have a primary moderate or severe substance use disorder diagnosis or co-occurring moderate or severe substance use disorder and mental health diagnoses;

(2) Have:

(a) A lack of access to recovery supports;

(b) A need for assistance with access to housing, vocational, medical, social, educational, or other community services and supports; or

(c) Involvement with one (1) or more child welfare or criminal justice agencies but not be an inmate of a public institution; and

(3) Not be:

(a) Between the age of twenty-one (21) years and sixty-four (64) years while receiving services in an institution for mental diseases; or

(b) An inmate of a public institution.

Section 3. Provider Requirements. (1) To be eligible to provide services under this administrative regulation, an individual, entity, or organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

(c) Be:

1. A community mental health center authorized to provide services pursuant to 907 KAR 1:044;

2. An individual or provider group authorized to provide behavioral health services pursuant to 907 KAR 15:010; or

3. A behavioral health services organization authorized to provide behavioral health services pursuant to 907 KAR 15:020; and

(d) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Demonstrated experience in serving the population of individuals with behavioral health disorders relevant to the particular services provided;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs;

5. The capacity to document and maintain individual case records;

6. Demonstrated programmatic and administrative experience in providing comprehensive case management services; and

7. Demonstrated referral systems and linkages and referral ability with essential social and health services agencies.

(2) In accordance with 907 KAR 17:015, Section 3(3), a targeted case management services provider which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A targeted case management services provider shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the act.

Section 4. Case Manager Requirements. (1) A case manager shall:

(a) Have at least a bachelor of arts or sciences degree in a behavioral science including:

1. Psychology;
2. Sociology;
3. Social work;
4. Family studies;
5. Human services;
6. Counseling;
7. Nursing; or
8. Another human service degree program approved by the department;

(b) Have successfully completed case management training approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) within six (6) months of employment; and

(c) Successfully completed recertification requirements approved by DBHDID every three (3) years.

(2)(a) Supervision by a behavioral health professional who has completed case management training approved by DBHDID shall occur at least twice per month.

(b) At least one (1) of these supervisory contacts shall be on an individual basis and face-to-face.

(3)(a) Except as established in paragraph (b) of this subsection, a case manager shall have at least one (1) year of full-time employment working directly with individuals in a human service setting after completing the educational requirements.

(b) A master's degree in one (1) of the following behavioral science disciplines may substitute for the one (1) year of experience:

1. Psychology;
2. Sociology;
3. Social work;
4. Family studies;
5. Human services;
6. Counseling;
7. Nursing; or
8. Another human service degree program approved by the department.

(4) A behavioral health professional shall be:

(a) An advanced practice registered nurse;

(b) A licensed clinical social worker;

(c) A licensed marriage and family therapist;

(d) A licensed professional clinical counselor;

(e) A licensed psychological practitioner;

(f) A licensed psychologist;

(g) A licensed professional art therapist;

(h) A physician;

(i) A psychiatrist;

(j) A behavioral health practitioner under supervision;

(k) A registered nurse working under the supervision of a physician or advanced practice registered nurse; or

(l) An individual with a bachelor's degree in a behavioral science program or other human service degree program approved by the department who:

1. Is working under the supervision of a billing supervisor; and

2. Has at least five (5) years of documented full-time experience providing specialized case management services.

Section 5. Freedom of Choice of Provider. (1) A recipient shall have the freedom to choose from which:

(a) Case manager to receive services within the recipient's geographic area identified in the recipient's care plan; and

(b) Provider of non-targeted case management Medicaid covered services to receive services.

(2) A case manager shall not have the authority to authorize or deny the provision of non-targeted case management Medicaid covered services to a recipient.

(3) A recipient shall not be required to receive targeted case management services as a condition of receiving non-targeted case management Medicaid-covered services.

Section 6. Covered Services. (1) Targeted case management services covered under this administrative regulation shall:

(a) Be services furnished to assist a recipient in gaining access to needed medical, social, educational, or other services; and

(b) Include:

1. A comprehensive assessment and periodic reassessments of the recipient's needs to determine the need for any medical, educational, social, or other services;

2. The development and periodic revision of a specific care plan for the recipient;

3. A referral or related activities to help the recipient obtain needed services;

4. Monitoring or follow-up activities; or

5. Contacts with non-recipients who are directly related to help with identifying the recipient's needs and care for the purpose of:

a. Helping the recipient access services;

b. Identifying supports necessary to enable the recipient to obtain services;

c. Providing a case manager with useful input regarding the recipient's past or current functioning, symptoms, adherence to treatment, or other information relevant to the recipient's behavioral health condition; or

d. Alerting a case manager to a change in the recipient's needs.

(2)(a) An assessment or reassessment shall include:

1. Taking the recipient's history;

2. Identifying the recipient's strengths and needs and completing related documentation; and

3. Gathering information from other sources including family members, medical providers, social workers, or educators, to form a complete assessment of the recipient.

(b) A face-to-face assessment or reassessment shall be completed:

1. At least annually; or

2. More often if needed based on changes in the recipient's condition.

(3) The development and periodic revision of the recipient's care plan shall:

(a) Specify the goals and actions to address the medical, social, educational, or other services needed by the recipient;

(b) Include ensuring the active participation of the recipient and working with the recipient, the recipient's authorized health care decision maker, or others to develop the goals; or

(c) Identify a course of action to respond to the assessed needs of the recipient.

(4) A referral or related activities shall include activities that help link the recipient with medical providers, social providers, educational providers, or other programs and services that are capable of providing needed services to:

(a) Address the identified needs; and

(b) Achieve goals specified in the care plan.

(5)(a) Monitoring and follow-up activities shall:

1. Be activities and contacts that:

a. Are necessary to ensure that the recipient's care plan is implemented;

b. Adequately address the recipient's strengths and needs; and

c. May be with the recipient, the recipient's family members, the recipient's service providers, or other entities or individuals;

2. Be conducted as frequently as necessary; and

3. Include making necessary adjustments in the recipient's care plan and service arrangements with providers.

(b) Monitoring shall:

1. Occur at least once every three (3) months;

2. Be face-to-face; and

3. Determine if:

a. The services are being furnished in accordance with the recipient's care plan;

b. The services in the recipient's care plan are adequate to meet the recipient's needs; and

c. Changes in the needs or status of the recipient are reflected in the care plan.

Section 7. No Duplication of Service. (1) The department shall not pay for targeted case management services which duplicate services provided by another public agency or a private entity.

(2)(a) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(b) For example, if a recipient is receiving targeted case management service from an independent behavioral health provider, the department shall not reimburse for targeted case management services provided to the same recipient during the same time period by a behavioral health services organization.

Section 8. Exclusions and Limits. (1) Targeted case management services shall not include services defined in 42 C.F.R. 440.169 if the activities:

(a) Are an integral and inseparable component of another covered Medicaid service; or

(b) Constitute the direct delivery of underlying medical, educational, social, or other services to which an eligible recipient has been referred, including:

1. Foster care programs;

2. Research gathering and completing documentation required by the foster care program;

3. Assessing adoption placements;

4. Recruiting or interviewing potential foster care parents;

5. Serving legal papers;

6. Home investigations;

7. Providing transportation;

8. Administering foster care subsidies; or

9. Making placement arrangements.

(2) A recipient who is receiving case management services under a 1915(c) home and community based waiver program shall not be eligible to receive targeted case management services under this administrative regulation.

(3) An individual who provides targeted case management to a recipient shall not provide any Medicaid covered service other than targeted case management.

Section 9. Records Maintenance, Documentation, Protection, and Security. (1) A targeted case management services provider shall maintain a current case record for each recipient.

(2)(a) A case record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(b) The individual who provided the service shall date and sign the case record on the date that the individual provided the service.

(3) A case record shall:

(a) Include:

1. The recipient's name;

2. The time and date corresponding to each occasion in which

a targeted case management service was provided to the recipient;

3. The name of the targeted case management services:

a. Provider agency, if an agency; and

b. Practitioner who provided the targeted case management services;

4. The nature, content, and units of the targeted case management services provided;

5. Whether or not goals in the recipient's care plan have been achieved;

6. Whether or not the recipient has declined to receive any services in the recipient's care plan;

7. A timeline for obtaining needed services; and

8. A timeline for reevaluating the recipient's care plan; and

(b) Be:

1. Maintained in an organized and secure central file;

2. Furnished upon request:

a. To the Cabinet for Health and Family Services; or

b. For an enrollee, to the managed care organization in which the recipient is enrolled;

3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or

b. Personnel of the managed care organization in which the recipient is enrolled if applicable;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient.

(4)(a) A discharge summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the recipient toward reaching goals and objectives established in the recipient's care plan; and

b. Recipient's condition upon termination and disposition.

(b) A case record relating to a recipient who was terminated from receiving services shall be fully completed within ten (10) business days following termination.

(5) If a recipient's case is reopened within ninety (90) calendar days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(6) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring targeted case management services provider shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

(a)1. The Health Insurance Portability and Accountability Act;

2. 42 U.S.C. 1320d-2 to 1320d-8; and

3. 45 C.F.R. Parts 160 and 164; or

(b)1. 42 U.S.C. 290ee-3; and

2. 42 C.F.R. Part 2.

(7)(a) If a targeted case management services provider's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the case records of the targeted case management services provider shall:

1. Remain the property of the targeted case management services provider; and

2. Be subject to the retention requirements established in subsection (8) of this section.

(b) A targeted case management services provider shall have a written plan addressing how to maintain case records in the event of an owner's death or owners' deaths.

(8)(a) Except as established in paragraph (b) or (c) of this subsection, a targeted case management services provider shall maintain a case record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17 the period established by the secretary shall be the required period.

(9)(a) A targeted case management services provider shall comply with 45 C.F.R. Part 164.

(b) All information contained in a case record shall:

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and

3. Be disclosed to an authorized representative of the:

a. Department; or

b. Federal government.

(c)1. Upon request, a targeted case management services provider shall provide to an authorized representative of the department or federal government information requested to substantiate:

a. Staff notes detailing a service that was rendered;

b. The professional who rendered a service; and

c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information referenced in subparagraph 1 of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 10. Medicaid Program Participation Compliance. (1) A targeted case management services provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a targeted case management services provider receives any duplicate payment or overpayment from the department, regardless of reason, the targeted case management services provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the targeted case management services provider accepts the payment:

1. The payment shall be considered payment in full;

2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the provider.

(b)1. A targeted case management services provider may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

a. Recipient requests the service; and

b. Targeted case management services provider makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1 of this paragraph, the:

a. Targeted case management services provider shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the targeted case management services provider regarding the service.

(4)(a) A targeted case management services provider attests by the targeted case management services provider signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;

2. Cabinet for Health and Family Services, Office of Inspector General or its designee;

3. Kentucky Office of Attorney General or its designee;

4. Kentucky Office of the Auditor for Public Accounts or its designee; or

5. United States General Accounting Office or its designee.

(c) If a targeted case management services provider receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the targeted case management services provider shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a targeted case management services provider shall result in the suspension or termination of the targeted case management services provider from Medicaid Program participation.

Section 11. Third Party Liability. (1) A targeted case management services provider shall comply with KRS 205.622.

(2) If a third party is liable to pay for targeted case management services, the department shall not pay for the services.

Section 12. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A targeted case management services provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the targeted case management services provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the targeted case management services provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 13. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 14. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 15. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 9, 2014

FILED WITH LRC: September 16, 2014 at 10 a.m.

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for Medicaid recipients with a substance use disorder. This administrative regulation is being promulgated in conjunction with 907 KAR 15:045E (Reimbursement for targeted case management service services for individuals with a substance use disorder). Targeted case management services are services that assist Medicaid recipients in accessing needed medical, social, educational, and other services. The components of targeted case management include assessing the recipient's need for services by taking the recipient's history, identifying the recipient's needs, and gathering information from other sources (family members, medical providers, social workers, and educators) to form a complete assessment; developing a customized care plan for the recipient; referring the recipient or related activities to help the recipient obtain needed services; and monitoring activities to ensure that the recipient's care plan is implemented effectively and adequately addresses the recipient's strengths and needs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to help ensure that recipients (who have a substance use disorder) receive necessary services and care. The targeted case manager provider is the individual or entity responsible for coordinating the recipient's services/care, facilitating access to services/care, and monitoring individual's progress or difficulties while receiving services/care. Targeted case management helps ensure that the recipient receives the appropriate and necessary services and care they need rather than randomly receive services/care or fail to receive any services/care at all.

(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 helping ensure that recipients with a substance use disorder receive necessary services and care.

(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 helping ensure that recipients with a substance use disorder receive necessary services and care.

(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 rather than an amendment.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this

administrative regulation: Entities eligible to provide targeted case management services (such as community mental health centers, individual behavioral health service providers/provider group or behavioral health services organizations) will be affected by this administrative regulation as well as the various professionals who are authorized to provide services either independently or via the aforementioned providers. Medicaid recipients who qualify for targeted case management services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify and wish to provide targeted case management services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation [complete and application and submit it to the Department for Medicaid Services (DMS)] and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. The professionals authorized to provide services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of targeted case management will benefit from having the option to receive these services.

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

(a) Initially: DMS estimates that implementing the administrative regulation will cost approximately $1.05 million state funds/$3.87 million federal funds initially.

(b) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately $1.79 million state funds/$6.64 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for recipients eligible under "Medicaid expansion" recedes from its current 100 percent to 90 percent.

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

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(10)(B).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Targeted case management services are not federally mandated however, substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the targeted case management service provider base to include targeted case management for substance use disorders will help ensure Medicaid recipient access to these services.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(10)(B).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS estimates that implementing the administrative regulation will cost approximately $1.05 million state funds/$3.87

million federal funds initially.

(d) How much will it cost to administer this program for subsequent years?: DMS estimates that implementing the administrative regulation will cost approximately $1.79 million state funds/$6.64 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for recipients eligible under "Medicaid expansion" recedes from its current 100% to 90%.

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 15:045E

This emergency administrative regulation is being promulgated in conjunction with 907 KAR 15:040E, Coverage provisions and requirements regarding targeted case management for individuals with a substance use disorder - to comply with a federal mandate. The Affordable Care Act mandates coverage of substance use disorder services for all Medicaid recipients (who meet qualifying criteria) and federal law requires Medicaid Programs to ensure that recipients have access to services. These two (2) administrative regulations will help ensure that Medicaid recipients are able to access mandated substance use disorder services. Targeted case management ensures that Medicaid recipients with a mental health diagnosis and a substance use disorder are monitored to ensure that they receive the services most beneficial to their particular illness. As mental illness and substance use disorders are often life-threatening and require long-term treatment, targeted case management gives continuity of care to a Medicaid recipient whose illness needs long-term monitoring. This action must be taken on an emergency basis to prevent a loss of Medicaid federal funds, to meet a deadline for the promulgation of an administrative regulation necessary under federal law and regulation, and so as not to delay providing this service to Medicaid recipients at risk. 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
(New Emergency Administrative Regulation)

907 KAR 15:045E. Reimbursement provisions and requirements for targeted case management services for individuals with a substance use disorder.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

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

EFFECTIVE: September 16, 2014

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program targeted case management services for individuals with a substance use disorder who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Medically necessary;

(2) Provided:

(a) To a recipient;

(b) By a provider that meets the provider participation requirements established in 907 KAR 15:040; and

(c) In accordance with the requirements established in 907 KAR 15:040; and

(3) Covered in accordance with 907 KAR 15:040.

Section 2. Reimbursement. (1) The department shall reimburse a monthly rate of $334 in total for all targeted case management services provided to a recipient during the month.

(2) To qualify for the reimbursement referenced in subsection (1) of this section, a targeted case management services provider shall provide services to a recipient consisting of at least four (4) targeted case management service contacts including:

(a) At least two (2) face-to-face contacts with the recipient; and

(b) At least two (2) additional contacts which shall be:

1.a. By telephone; or

b. Face-to-face; and

2. With the recipient or with another individual or agency on behalf of the recipient.

Section 3. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving targeted case management services from an independent behavioral health provider, the department shall not reimburse for the targeted case management services provided to the same recipient during the same time period by a behavioral health services organization.

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 15:040; and

(2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 9, 2014

FILED WITH LRC: September 16, 2014 at 10 a.m.

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for individuals with a substance use disorder. This administrative regulation is being promulgated in conjunction with 907 KAR 15:040E (Coverage provisions and requirements regarding targeted case management for individuals with a substance use disorder). Targeted case management services are services that assist Medicaid recipients in accessing needed medical, social, educational, and other services. The

components of targeted case management include assessing the individual's need for services by taking the individual's history, identifying the individual's needs, and gathering information from other sources (family members, medical providers, social workers, and educators) to form a complete assessment; developing a customized care plan for the individual; referring the individual or related activities to help the individual obtain needed services; and monitoring activities to ensure that the individual's care plan is implemented effectively and adequately addresses the individual's needs. For these services the Department for Medicaid Services (DMS) will pay a monthly rate (encompassing all services provided to the recipient in the given month) of $334.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to help ensure that individuals (who have a substance use disorder) receive necessary services and care. The targeted case manager provider is the individual or entity responding for coordinating the individual's services/care, facilitating access to services/care, and monitoring individual's progress or difficulties while receiving services/care. Targeted case management helps ensure that the individual receives the appropriate and necessary services and care they need rather than randomly receive services/care or fail to receive any services/care at all.

(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 helping ensure that individuals with a substance use disorder receive necessary services and care.

(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 helping ensure that individuals with a substance use disorder receive necessary services and care.

(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 rather than an amendment.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities eligible to provide targeted case management services (such as community mental health centers, individual behavioral health service providers/provider group, behavioral health provider groups, or behavioral health services organizations) will be affected by this administrative regulation as well as the various professionals who are authorized to provide services either independently or via the aforementioned providers. Medicaid recipients who qualify for targeted case management services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify and wish to provide targeted case management services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation [complete and application and submit it to the Department for Medicaid Services (DMS)] and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. The professionals authorized to provide services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of targeted case management will benefit from having the option to receive these services.

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

(a) Initially: DMS estimates that implementing the administrative regulation will cost approximately $1.05 million state funds/$3.87 million federal funds initially.

(b) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately $1.79 million state funds/$6.64 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for individuals eligible under "Medicaid expansion" recedes from its current 100 percent to 90 percent.

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

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and

Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Similarly, 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(10)(B).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS estimates that implementing the administrative regulation will cost approximately ($1.05 million state funds/$3.87 million federal funds) initially.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that implementing the administrative regulation will cost approximately $1.79 million state funds/$6.64 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for individuals eligible under "Medicaid expansion" recedes from its current 100% to 90%.

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 15:050E

This emergency administrative regulation is being promulgated in conjunction with 907 KAR 15:055E, Reimbursement provisions and requirements regarding targeted case management for individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues - to comply with a federal mandate. The Affordable Care Act mandates coverage of behavioral health services (including substance use disorder services) and federal law requires Medicaid Programs to ensure that recipients have access to services. These two (2) administrative regulations will help ensure that Medicaid recipients are able to access mandated behavioral health services. Targeted case management ensures that Medicaid recipients with a co-occurring mental health diagnosis and substance use disorder and chronic or complex physical health issues are monitored to ensure that they receive the services most beneficial to their particular illnesses. As mental illness and substance use disorders are often life-threatening and require long-term treatment, targeted case management gives continuity of care to a Medicaid recipient whose illness needs long-term monitoring. This action must be taken on an emergency basis to prevent a loss of Medicaid federal funds, to meet a deadline for the promulgation of an administrative regulation necessary under federal law and regulation, and so as not to delay providing this service to Medicaid recipients at risk. 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
(New Emergency Administrative Regulation)

907 KAR 15:050E. Coverage provisions and requirements regarding targeted case management for individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396n(g).

EFFECTIVE: September 16, 2014

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for Medicaid recipients with co-occurring mental health or substance use disorders and chronic or complex physical health issues.

Section 1. General Coverage Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Medically necessary; and

(2) Provided:

(a) To a recipient; and

(b) By a provider that meets the provider participation

requirements established in Section 3 of this administrative regulation.

Section 2. Eligibility Criteria. (1) To be eligible for targeted case management services under this administrative regulation, a recipient shall:

(a) Have a primary moderate or severe substance use disorder diagnosis;

(b) Have a severe mental illness;

(c) Be a child with a severe emotional disability as defined in KRS 200.503(2);

(d) Have a chronic or complex physical health issue;

(e) Not be:

1. Over the age of twenty-one (21) years and under the age of sixty-four (64) years while receiving services in an institution for mental diseases; or

2. An inmate of a public institution; and

(f)1. Need assistance with access to:

a. Housing; or

b. Vocational, medical, social, educational, or other community services or supports;

2. Have been involved with at least one (1) child welfare agency or criminal justice agency; or

3. Be:

a. In the custody of the Department for Community Based Services;

b. At risk of an out-of-home placement; or

c. At risk of inpatient mental health treatment.

(2)(a) A severe mental illness shall be a diagnosis of a major mental disorder as included in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders™ under:

1. Schizophrenia spectrum and other psychiatric disorders;

2. Bipolar and related disorders;

3. Depressive disorders;

4. Post-traumatic stress disorders (under trauma and stressor related disorders); and

5. Personality disorders.

(b) A recipient's information and history, for the purpose of determining if the recipient has a severe mental illness, shall indicate that the recipient exhibits persistent disability and significant impairment in major areas of community living.

(c) In addition to the requirements established in paragraph (a) and (b) of this subsection, to qualify as having a severe mental illness, a recipient shall:

1. Have clinically significant symptoms which have persisted for a continuous period of at least two (2) years; or

2.a. Have been hospitalized for mental illness more than once within the past two (2) years; and

b. Be significantly impaired in the ability to function socially or occupationally or both.

Section 3. Provider Requirements. (1) To be eligible to provide services under this administrative regulation, an individual, entity, or organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

(c) Be:

1. A community mental health center authorized to provide services pursuant to 907 KAR 1:044;

2. An individual or provider group authorized to provide behavioral health services pursuant to 907 KAR 15:010; or

3. A behavioral health services organization authorized to provide behavioral health services pursuant to 907 KAR 15:020; and

(d) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Demonstrated experience in serving the population of individuals with behavioral health disorders relevant to the particular services provided;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs;

5. The capacity to document and maintain individual case records;

6. Demonstrated programmatic and administrative experience in providing comprehensive case management services; and

7. Demonstrated referral systems and linkages and referral ability with essential social and health services agencies.

(2) In accordance with 907 KAR 17:015, Section 3(3), a targeted case management services provider which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A targeted case management services provider shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the act.

Section 4. Case Manager Requirements. (1) A case manager shall:

(a) Have at least a bachelor of arts or sciences degree in a behavioral science including:

1. Psychology;

2. Sociology;

3. Social work;

4. Family studies;

5. Human services;

6. Counseling;

7. Nursing; or

8. Another human service degree program approved by the department;

(b) Have successfully completed case management training approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) within six (6) months of employment; and

(c) Successfully completed recertification requirements approved by DBHDID every three (3) years.

(2)(a) Supervision by a behavioral health professional who has completed case management training approved by DBHDID shall occur at least twice per month.

(b) At least one (1) of these supervisory contacts shall be on an individual basis and face-to-face.

(3)(a) Except as established in paragraph (b) of this subsection, a case manager shall have at least one (1) year of full-time employment working directly with individuals in a human service setting after completing the educational requirements.

(b) A master's degree in one (1) or more of the following behavioral science disciplines may substitute for the one (1) year of experience:

1. Psychology;

2. Sociology;

3. Social work;

4. Family studies;

5. Human services;

6. Counseling;

7. Nursing; or

8. Another human service degree program approved by the department.

(4) A behavioral health professional shall be:

(a) An advanced practice registered nurse;

(b) A licensed clinical social worker;

(c) A licensed marriage and family therapist;

(d) A licensed professional clinical counselor;

(e) A licensed psychological practitioner;

(f) A licensed psychologist;

(g) A licensed professional art therapist;

(h) A physician;

(i) A psychiatrist;

(j) A behavioral health practitioner under supervision except that a certified alcohol and drug counselor shall not be considered

a behavioral health professional for the purpose of providing targeted case management to an individual with a complex or chronic physical health issue;

(k) A registered nurse working under the supervision of a physician or advanced practice registered nurse; or

(l) An individual with a bachelor's degree in a behavioral science program or other human service degree program approved by the department who:

1. Is working under the supervision of a billing supervisor; and

2. Has at least five (5) years of documented full-time experience providing specialized case management services for the target population.

Section 5. Freedom of Choice of Provider. (1) A recipient shall have the freedom to choose from which:

(a) Case manager to receive services within the recipient's geographic area identified in the recipient's care plan; and

(b) Provider of non-targeted case management Medicaid covered services to receive services.

(2) A case manager shall not have the authority to authorize or deny the provision of non-targeted case management Medicaid covered services to a recipient.

(3) A recipient shall not be required to receive targeted case management services as a condition of receiving non-targeted case management Medicaid-covered services.

Section 6. Covered Services. (1) Targeted case management services covered under this administrative regulation shall:

(a) Be services furnished to assist a recipient in gaining access to needed medical, social, educational, or other services; and

(b) Include:

1. A comprehensive assessment and periodic reassessments of the recipient's needs to determine the need for any medical, educational, social, or other services;

2. The development and periodic revision of a specific care plan for the recipient;

3. A referral or related activities to help the recipient obtain needed services;

4. Monitoring or follow-up activities; or

5. Contacts with non-recipients who are directly related to help with identifying the recipient's needs and care for the purpose of:

a. Helping the recipient access services;

b. Identifying supports necessary to enable the recipient to obtain services;

c. Providing a case manager with useful input regarding the recipient's past or current functioning, symptoms, adherence to treatment, or other information relevant to the recipient's behavioral health condition; or

d. Alerting a case manager to a change in the recipient's needs.

(2)(a) An assessment or reassessment shall include:

1. Taking the recipient's history;

2. Identifying the recipient's strengths and needs and completing related documentation; and

3. Gathering information from other sources including family members, medical providers, social workers, or educators, to form a complete assessment of the recipient.

(b) A face-to-face assessment or reassessment shall be completed:

1. At least annually; or

2. More often if needed based on changes in the recipient's condition.

(3) The development and periodic revision of the recipient's care plan shall:

(a) Specify the goals and actions to address the medical, social, educational, or other services needed by the recipient;

(b) Include ensuring the active participation of the recipient and working with the recipient, the recipient's authorized health care decision maker, or others to develop the goals; or

(c) Identify a course of action to respond to the assessed needs of the recipient.

(4) A referral or related activities shall include activities that help link the recipient with medical providers, social providers, educational providers, or other programs and services that are capable of providing needed services to:

(a) Address the identified needs; and

(b) Achieve goals specified in the care plan.

(5)(a) Monitoring and follow-up activities shall:

1. Be activities and contacts that:

a. Are necessary to ensure that the recipient's care plan is implemented;

b. Adequately address the recipient's strengths and needs; and

c. May be with the recipient, the recipient's family members, the recipient's service providers, or other entities or individuals;

2. Be conducted as frequently as necessary; and

3. Include making necessary adjustments in the recipient's care plan and service arrangements with providers.

(b) Monitoring shall:

1. Occur at least once every three (3) months;

2. Be face-to-face; and

3. Determine if:

a. The services are being furnished in accordance with the recipient's care plan;

b. The services in the recipient's care plan are adequate to meet the recipient's needs; and

c. Changes in the needs or status of the recipient are reflected in the care plan.

Section 7. No Duplication of Service. (1) The department shall not pay for targeted case management services which duplicate services provided by another public agency or a private entity.

(2)(a) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(b) For example, if a recipient is receiving targeted case management service from an independent behavioral health provider, the department shall not reimburse for targeted case management services provided to the same recipient during the same time period by a behavioral health services organization.

Section 8. Exclusions and Limits. (1) Targeted case management services shall not include services defined in 42 C.F.R. 440.169 if the activities:

(a) Are an integral and inseparable component of another covered Medicaid service; or

(b) Constitute the direct delivery of underlying medical, educational, social, or other services to which an eligible recipient has been referred, including:

1. Foster care programs;

2. Research gathering and completing documentation required by the foster care program;

3. Assessing adoption placements;

4. Recruiting or interviewing potential foster care parents;

5. Serving legal papers;

6. Home investigations;

7. Providing transportation;

8. Administering foster care subsidies; or

9. Making placement arrangements.

(2) A recipient who is receiving case management services under a 1915(c) home and community based waiver program shall not be eligible to receive targeted case management services under this administrative regulation.

(3) An individual who provides targeted case management to a recipient shall not provide any Medicaid covered service other than targeted case management to any recipient.

Section 9. Records Maintenance, Documentation, Protection, and Security. (1) A targeted case management services provider shall maintain a current case record for each recipient.

(2)(a) A case record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(b) The individual who provided the service shall date and sign the case record on the date that the individual provided the service.

(3) A case record shall:

(a) Include:

1. The recipient's name;

2. The time and date corresponding to each occasion in which a service was provided to the recipient;

3. The name of the targeted case management services:

a. Provider agency, if an agency; and

b. Practitioner who provided the targeted case management services;

4. The nature, content, and units of the targeted case management services provided;

5. Whether goals in the recipient's care plan have been achieved;

6. Whether the recipient has declined to receive any services in the recipient's care plan;

7. A timeline for obtaining needed services; and

8. A timeline for reevaluating the recipient's care plan; and

(b) Be:

1. Maintained in an organized and secure central file;

2. Furnished upon request:

a. To the Cabinet for Health and Family Services; or

b. For an enrollee, to the managed care organization in which the recipient is enrolled;

3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or

b. Personnel of the managed care organization in which the recipient is enrolled if applicable;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient.

(4)(a) A discharge summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the recipient toward reaching goals and objectives established in the recipient's care plan; and

b. Recipient's condition upon termination and disposition.

(b) A case record relating to a recipient who was terminated from receiving services shall be fully completed within ten (10) business days following termination.

(5) If a recipient's case is reopened within ninety (90) calendar days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(6) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring targeted case management services provider shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

(a)1. The Health Insurance Portability and Accountability Act;

2. 42 U.S.C. 1320d-2 to 1320d-8; and

3. 45 C.F.R. Parts 160 and 164; or

(b)1. 42 U.S.C. 290ee-3; and

2. 42 C.F.R. Part 2.

(7)(a) If a targeted case management services provider's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the case records of the targeted case management services provider shall:

1. Remain the property of the targeted case management services provider; and

2. Be subject to the retention requirements established in subsection (8) of this section.

(b) A targeted case management services provider shall have a written plan addressing how to maintain case records in the event of an owner's death or owners' deaths.

(8)(a) Except as established in paragraph (b) or (c) of this subsection, a targeted case management services provider shall maintain a case record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17 the period established by the secretary shall be the required period.

(9)(a) A targeted case management services provider shall comply with 45 C.F.R. Part 164.

(b) All information contained in a case record shall:

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and

3. Be disclosed to an authorized representative of the:

a. Department; or

b. Federal government.

(c)1. Upon request, a targeted case management services provider shall provide to an authorized representative of the department or federal government information requested to substantiate:

a. Staff notes detailing a service that was rendered;

b. The professional who rendered a service; and

c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information referenced in subparagraph 1 of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 10. Medicaid Program Participation Compliance. (1) A targeted case management services provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a targeted case management services provider receives any duplicate payment or overpayment from the department, regardless of reason, the targeted case management services provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the targeted case management services provider accepts the payment:

1. The payment shall be considered payment in full;

2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the provider.

(b)1. A targeted case management services provider may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

a. Recipient requests the service; and

b. Targeted case management services provider makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1 of this paragraph, the:

a. Targeted case management services provider shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the targeted case management services provider regarding the service.

(4)(a) A targeted case management services provider attests

by the targeted case management services provider signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;

2. Cabinet for Health and Family Services, Office of Inspector General or its designee;

3. Kentucky Office of Attorney General or its designee;

4. Kentucky Office of the Auditor for Public Accounts or its designee; or

5. United States General Accounting Office or its designee.

(c) If a targeted case management services provider receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the targeted case management services provider shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a targeted case management services provider shall result in the suspension or termination of the targeted case management services provider from Medicaid Program participation.

Section 11. Third Party Liability. (1) A targeted case management services provider shall comply with KRS 205.622.

(2) If a third party is liable to pay for targeted case management services, the department shall not pay for the services.

Section 12. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A targeted case management services provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the targeted case management services provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the targeted case management services provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 13. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 14. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 15. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 9, 2014

FILED WITH LRC: September 16, 2014 at 10 a.m.

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for Medicaid recipients with co-occurring mental health or substance use disorders and chronic or complex physical health issues. This administrative regulation is being promulgated in conjunction with 907 KAR 15:055E (Reimbursement provisions and requirements regarding targeted case management for individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues.) Targeted case management services are services that assist Medicaid recipients in accessing needed medical, social, educational, and other services. The components of targeted case management include assessing the recipient's need for services by taking the recipient's history, identifying the recipient's needs, and gathering information from other sources (family members, medical providers, social workers, and educators) to form a complete assessment; developing a customized care plan for the recipient; referring the recipient or related activities to help the recipient obtain needed services; and monitoring activities to ensure that the recipient's care plan is implemented effectively and adequately addresses the recipient's needs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to help ensure that recipients (who have co-occurring mental health or substance use disorders and chronic or complex physical health issues) receive necessary services and care. The targeted case manager provider is the individual or entity responding for coordinating the individual's services/care, facilitating access to services/care, and monitoring individual's progress or difficulties while receiving services/care. Targeted case management helps ensure that the recipient receives the appropriate and necessary services and care they need rather than randomly receive services/care or fail to receive any services/care at all.

(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 helping ensure that recipients with co-occurring mental health or substance use disorders and chronic or complex physical health issues receive necessary services and care.

(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 helping ensure that recipients with co-occurring mental health or substance use disorders and chronic or complex physical health issues receive necessary services and care.

(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 rather than an amendment.

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

amendment.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities eligible to provide targeted case management services (such as community mental health centers, individual behavioral health service providers or behavioral health provider groups, behavioral health services organizations, federally-qualified health centers (FQHCs), FQHC look-alikes, rural health clinics, primary care centers) will be affected by this administrative regulation as well as the various professionals who are authorized to provide services either independently or via the aforementioned providers. Medicaid recipients who qualify for targeted case management services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify and wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete and application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. The professionals authorized to provide services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of targeted case management will benefit from having the option to receive these services.

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

(a) Initially: DMS estimates that implementing the administrative regulation will cost approximately $1.33 million state funds/$5.47 million federal funds initially.

(b) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately $2.28 million state funds/$9.38 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for recipients eligible under "Medicaid expansion" recedes from its current 100 percent to 90 percent.

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

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Targeted case management services are not federally mandated; however, Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the targeted case management service provider base to include targeted case management for recipients with co-occurring mental health or substance use disorders and chronic or complex physical health issues will help ensure Medicaid recipient access to these services.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(10)(B).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

The amendment is not expected to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? DMS estimates that implementing the administrative regulation will cost approximately $1.33 million state funds/$5.47 million federal funds initially.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that implementing the administrative regulation will cost approximately $2.28 million state funds/$9.38 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for recipients eligible under "Medicaid expansion" recedes from its current 100% to 90%.

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 15:055E

This emergency administrative regulation is being promulgated in conjunction with 907 KAR 15:050E, Coverage provisions and requirements regarding targeted case management for individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues - to comply with a federal mandate. The Affordable Care Act mandates coverage of behavioral health services (including substance use disorder services) and federal law requires Medicaid Programs to ensure that recipients have access to services. These two (2) administrative regulations will help ensure that Medicaid recipients are able to access mandated behavioral health services. Targeted case management ensures that Medicaid recipients with a co-occurring mental health diagnosis and substance use disorder and chronic or complex physical health issues are monitored to ensure that they receive the services most beneficial to their particular illnesses. As mental illness and substance use disorders are often life-threatening and require long-term treatment, targeted case management gives continuity of care to a Medicaid recipient whose illness needs long-term monitoring. This action must be taken on an emergency basis to prevent a loss of Medicaid federal funds, to meet a deadline for the promulgation of an administrative regulation necessary under federal law and regulation, and so as not to delay providing this service to Medicaid recipients at risk. 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
(New Emergency Administrative Regulation)

907 KAR 15:055E. Reimbursement provisions and requirements regarding targeted case management for individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

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

EFFECTIVE: September 16, 2014

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program targeted case management services for individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Medically necessary;

(2) Provided:

(a) To a recipient;

(b) By a provider that meets the provider participation requirements established in 907 KAR 15:050; and

(c) In accordance with the requirements established in 907 KAR 15:050; and

(3) Covered in accordance with 907 KAR 15:050.

Section 2. Reimbursement. (1) The department shall reimburse a monthly rate of $541 in total for all targeted case management services provided to a recipient during the month.

(2) To qualify for the reimbursement referenced in subsection (1) of this section, a targeted case management services provider shall provide services to a recipient consisting of at least five (5) targeted case management service contacts including:

(a) At least three (3) face-to-face contacts with:

1. The recipient; or

2. If the recipient is under twenty-one (21) years of age, with:

a. The recipient; or

b. A parent or legal guardian of the recipient; and

(b) At least two (2) additional contacts which shall be:

1.a. By telephone; or

b. Face-to-face; and

2. With the recipient or with another individual on behalf of the recipient.

Section 3. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving targeted case management services from an independent behavioral health provider, the department shall not reimburse for the targeted case management services provided to the same recipient during the same time period by a behavioral health services organization.

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 15:050; and

(2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 9, 2014

FILED WITH LRC: September 16, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2014 at 9:00 a.m. in Suite B of 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 November 14, 2014, 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 1, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program targeted case management services for individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues. This administrative regulation is being promulgated in conjunction with 907 KAR 15:050E (Coverage provisions and requirements regarding targeted case management for individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues). Targeted case management services are services that assist Medicaid recipients in accessing needed medical, social, educational, and other services. The components of targeted case management include assessing the individual's need for services by taking the individual's history, identifying the individual's needs, and gathering information from other sources (family members, medical providers, social workers, and educators) to form a complete assessment; developing a customized care plan for the individual; referring the individual or related activities to help the individual obtain needed services; and monitoring activities to ensure that the individual's care plan is implemented effectively and adequately addresses the individual's needs. For these services, the Department for Medicaid Services (DMS) will pay a monthly rate (encompassing all services provided to the recipient in the month) of $541.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to help ensure that individuals (who have co-occurring mental health or substance use disorders and chronic or complex physical health issues) receive necessary services and care. The targeted case manager provider is the individual or entity responding for coordinating the individual's services/care, facilitating access to services/care, and monitoring individual's progress or difficulties while receiving services/care. Targeted case management helps ensure that the individual receives the appropriate and necessary services and care they need rather than randomly receive services/care or fail to receive any services/care at all.

(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 helping ensure that individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues receive necessary services and care.

(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 helping ensure that individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues receive necessary services and care.

(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 rather than an amendment.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities eligible to provide targeted case management services (such as community mental health centers, individual behavioral health service providers/provider group, behavioral health provider groups, or behavioral health services organizations) will be affected by this administrative regulation as well as the various professionals who are authorized to provide services either independently or via the aforementioned providers. Medicaid recipients who qualify for targeted case management services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify and wish to provide targeted case management services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation [complete and application and submit it to the Department for Medicaid Services (DMS)] and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. The professionals authorized to provide services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of targeted case management will benefit from having the option to receive these services.

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

(a) Initially: DMS estimates that implementing the administrative regulation will cost approximately $1.33 million state funds/$5.47 million federal funds initially.

(b) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately $2.28 million state funds/$9.38 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for individuals eligible under "Medicaid expansion" recedes from its current 100 percent to 90 percent.

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

funds of general fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Targeted case management services are not federally mandated; however, Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Similarly, 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(10)(B).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS estimates that implementing the administrative regulation will cost approximately $1.33 million state funds/$5.47 million federal funds initially.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that implementing the administrative regulation will cost approximately $2.28 million state funds/$9.38 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for individuals eligible under "Medicaid expansion" recedes from its current 100% to 90%.

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 15:060E

This emergency administrative regulation is being promulgated in conjunction with 907 KAR 15:065E, Reimbursement provisions and requirements regarding targeted case management for individuals with a severe mental illness and children with a severe emotional disability - to comply with a federal mandate. The Affordable Care Act mandates coverage of behavioral health services and federal law requires Medicaid Programs to ensure that recipients have access to services. These two (2) administrative regulations will help ensure that Medicaid recipients are able to access mandated behavioral health services. Targeted case management ensures that Medicaid recipients with a severe mental illness or with a severe emotional disability are monitored to ensure that they receive the services most beneficial to their particular illnesses. As mental illness can be life-threatening and require long-term treatment, targeted case management gives continuity of care to a Medicaid recipient whose illness needs long-term monitoring. This action must be taken on an emergency basis to prevent a loss of Medicaid federal funds, to meet a deadline for the promulgation of an administrative regulation necessary under federal law and regulation, and so as not to delay providing this service to Medicaid recipients at risk. 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
(New Emergency Administrative Regulation)

907 KAR 15:060E. Coverage provisions and requirements regarding targeted case management for individuals with a severe mental illness and children with a severe emotional disability.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396n(g).

EFFECTIVE: September 16, 2014

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for individuals with a severe mental illness and children who have a severe emotional disability.

Section 1. General Coverage Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Medically necessary; and

(2) Provided:

(a) To a recipient; and

(b) By a provider that meets the provider participation requirements established in Section 3 of this administrative regulation.

Section 2. Eligibility Criteria. (1) To be eligible for targeted case management services under this administrative regulation, a recipient shall:

(a)1. Have a severe mental illness; or

2. Be a child with a severe emotional disability as defined in KRS 200.503(3);

(b) Not be:

1. Over the age of twenty-one (21) years and under the age of sixty-four (64) years while receiving services in an institution for mental diseases; or

2. An inmate of a public institution; and

(c)1. Need assistance with access to:

a. Housing; or

b. Vocational, medical, social, educational, or other community services or supports;

2. Have been involved with at least one (1) child welfare agency or criminal justice agency; or

3. Be:

a. In the custody of the Department for Community Based Services;

b. At risk of an out-of-home placement; or

c. At risk of inpatient mental health treatment.

(2)(a) A severe mental illness shall be a diagnosis of a major mental disorder as included in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders™ under:

1. Schizophrenia spectrum and other psychiatric disorders;

2. Bipolar and related disorders;

3. Depressive disorders;

4. Post-traumatic stress disorders (under trauma and stressor related disorders); and

5. Personality disorders.

(b) A recipient's information and history, for the purpose of determining if the recipient has a severe mental illness, shall indicate that the recipient exhibits persistent disability and significant impairment in major areas of community living.

(c) In addition to the requirements established in paragraph (a) and (b) of this subsection, to qualify as having a severe mental illness, a recipient shall:

1. Have clinically significant symptoms which have persisted for a continuous period of at least two (2) years; or

2.a. Have been hospitalized for mental illness more than once within the past two (2) years; and

b. Be significantly impaired in the ability to function socially or occupationally or both.

Section 3. Provider Requirements. (1) To be eligible to provide services under this administrative regulation, an individual, entity, or organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

(c) Be:

1. A community mental health center authorized to provide services pursuant to 907 KAR 1:044;

2. An individual or provider group authorized to provide behavioral health services pursuant to 907 KAR 15:010; or

3. A behavioral health services organization authorized to provide behavioral health services pursuant to 907 KAR 15:020; and

(d) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Demonstrated experience in serving the population of individuals with behavioral health disorders relevant to the particular services provided;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs;

5. The capacity to document and maintain individual case records;

6. Demonstrated programmatic and administrative experience in providing comprehensive case management services; and

7. Demonstrated referral systems and linkages and referral ability with essential social and health services agencies.

(2) In accordance with 907 KAR 17:015, Section 3(3), a targeted case management services provider which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A targeted case management services provider shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the act.

Section 4. Case Manager Requirements. (1) A case manager shall:

(a) Have at least a bachelor of arts or sciences degree in a behavioral science including:

1. Psychology;

2. Sociology;

3. Social work;

4. Family studies;

5. Human services;

6. Counseling;

7. Nursing; or

8. Another human service degree program approved by the department;

(b) Have successfully completed case management training

approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) within six (6) months of employment; and

(c) Successfully completed recertification requirements approved by DBHDID every three (3) years.

(2)(a) Supervision by a behavioral health professional who has completed case management training approved by DBHDID shall occur at least twice per month.

(b) At least one (1) of these supervisory contacts shall be on an individual basis and face-to-face.

(3)(a) Except as established in paragraph (b) of this subsection, a case manager for a:

1. Recipient with a severe mental illness shall have at least one (1) year of full-time employment experience working directly with adults in a human service setting after completing the educational requirements; or

2. Child with a severe emotional disability shall have at least one (1) year of full-time employment experience working directly with individuals under the age of twenty-one (21) years in a human service setting after completing the educational requirements.

(b) A master's degree in one (1) of the following behavioral science disciplines may substitute for the one (1) year of experience:

1. Psychology;
2. Sociology;
3. Social work;
4. Family studies;
5. Human services;
6. Counseling;
7. Nursing; or
8. Another human service degree program approved by the department.

(4) A behavioral health professional shall be:

(a) An advanced practice registered nurse;
(b) A licensed clinical social worker;
(c) A licensed marriage and family therapist;
(d) A licensed professional clinical counselor;
(e) A licensed psychological practitioner;
(f) A licensed psychologist;
(g) A licensed professional art therapist;
(h) A physician;
(i) A psychiatrist;
(j) A behavioral health practitioner under supervision except for a certified alcohol and drug counselor;
(k) A registered nurse working under the supervision of a physician or advanced practice registered nurse; or
(l) An individual with a bachelor's degree in a behavioral science program or other human service degree program approved by the department who:

1. Is working under the supervision of a billing supervisor; and
2. Has at least five (5) years of documented full-time experience providing specialized case management services for the target population.

Section 5. Freedom of Choice of Provider. (1) A recipient shall have the freedom to choose from which:

(a) Case manager to receive services within the recipient's geographic area identified in the recipient's care plan; and

(b) Provider of non-targeted case management Medicaid covered services to receive services.

(2) A case manager shall not have the authority to authorize or deny the provision of non-targeted case management Medicaid covered services to a recipient.

(3) A recipient shall not be required to receive targeted case management services as a condition of receiving non-targeted case management Medicaid-covered services.

Section 6. Covered Services. (1) Targeted case management services covered under this administrative regulation shall:

(a) Be services furnished to assist a recipient in gaining access to needed medical, social, educational, or other services; and

(b) Include:

1. A comprehensive assessment and periodic reassessments of the recipient's needs to determine the need for any medical, educational, social, or other services;
2. The development and periodic revision of a specific care plan for the recipient;
3. A referral or related activities to help the recipient obtain needed services;
4. Monitoring or follow-up activities; or
5. Contacts with non-recipients who are directly related to help with identifying the recipient's needs and care for the purpose of:

a. Helping the recipient access services;
b. Identifying supports necessary to enable the recipient to obtain services;
c. Providing a case manager with useful input regarding the recipient's past or current functioning, symptoms, adherence to treatment, or other information relevant to the recipient's behavioral health condition; or
d. Alerting a case manager to a change in the recipient's needs.

(2)(a) An assessment or reassessment shall include:

1. Taking the recipient's history;
2. Identifying the recipient's strengths and needs and completing related documentation; and
3. Gathering information from other sources to form a complete assessment of the recipient including:

a. Family members;
b. Medical providers;
c. Social workers; or
d. Educators.

(b) A face-to-face assessment or reassessment shall be completed:

1. At least annually; or
2. More often if needed based on changes in the recipient's condition.

(3) The development and periodic revision of the recipient's care plan shall:

(a) Specify the goals and actions to address the medical, social, educational, or other services needed by the recipient;

(b) Include ensuring the active participation of the recipient and working with the recipient, the recipient's authorized health care decision maker, or others to develop the goals; or

(c) Identify a course of action to respond to the assessed needs of the recipient.

(4) A referral or related activities shall include activities that help link the recipient with medical providers, social providers, educational providers, or other programs and services that are capable of providing needed services to:

(a) Address the identified needs; and
(b) Achieve goals specified in the care plan.

(5)(a) Monitoring and follow-up activities shall:

1. Be activities and contacts that:

a. Are necessary to ensure that the recipient's care plan is implemented;
b. Adequately address the recipient's strengths and needs; and
c. May be with:
(i) The recipient;
(ii) The recipient's family members;
(iii) The recipient's service providers; or
(iv) Other entities or recipients;

2. Be conducted as frequently as necessary; and
3. Include making necessary adjustments in the recipient's care plan and service arrangements with providers.

(b) Monitoring shall:

1. Occur at least once every three (3) months;
2. Be face-to-face; and
3. Determine if:

a. The services are being furnished in accordance with the recipient's care plan;
b. The services in the recipient's care plan are adequate to meet the recipient's needs; and
c. Changes in the needs or status of the recipient are reflected in the care plan.

Section 7. No Duplication of Service. (1) The department shall

not pay for targeted case management services which duplicate services provided by another public agency or a private entity.

(2)(a) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(b) For example, if a recipient is receiving targeted case management service from an independent behavioral health provider, the department shall not reimburse for targeted case management services provided to the same recipient during the same time period by a behavioral health services organization.

Section 8. Exclusions and Limits. (1) Targeted case management services shall not include services defined in 42 C.F.R. 440.169 if the activities:

(a) Are an integral and inseparable component of another covered Medicaid service; or

(b) Constitute the direct delivery of underlying medical, educational, social, or other services to which an eligible recipient has been referred, including:

1. Foster care programs;
2. Research gathering and completing documentation required by the foster care program;
3. Assessing adoption placements;
4. Recruiting or interviewing potential foster care parents;
5. Serving legal papers;
6. Home investigations;
7. Providing transportation;
8. Administering foster care subsidies; or
9. Making placement arrangements.

(2) A recipient who is receiving case management services under a 1915(c) home and community based waiver program shall not be eligible to receive targeted case management services under this administrative regulation.

(3) An individual who provides targeted case management to a recipient shall not provide any other Medicaid covered service to any recipient.

Section 9. Records Maintenance, Documentation, Protection, and Security. (1) A targeted case management services provider shall maintain a current case record for each recipient.

(2)(a) A case record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(b) The individual who provided the service shall date and sign the case record on the date that the individual provided the service.

(3) A case record shall:

(a) Include:

1. The recipient's name;
2. The time and date corresponding to each occasion in which a service was provided to the recipient;
3. The name of the targeted case management services:
a. Provider agency, if an agency; and
b. Practitioner who provided the targeted case management services;
4. The nature, content, and units of the targeted case management services provided;
5. Whether goals in the recipient's care plan have been achieved;
6. Whether the recipient has declined to receive any services in the recipient's care plan;
7. A timeline for obtaining needed services; and
8. A timeline for reevaluating the recipient's care plan; and

(b) Be:

1. Maintained in an organized and secure central file;
2. Furnished upon request:
a. To the Cabinet for Health and Family Services; or
b. For an enrollee, to the managed care organization in which the recipient is enrolled;
3. Made available for inspection and copying by:
a. Cabinet for Health and Family Services' personnel; or
b. Personnel of the managed care organization in which the recipient is enrolled if applicable;
4. Readily accessible; and
5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient.

(4)(a) A discharge summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and
2. Contain a summary of the significant findings and events during the course of treatment including the:
a. Final assessment regarding the progress of the recipient toward reaching goals and objectives established in the recipient's care plan; and
b. Recipient's condition upon termination and disposition.

(b) A case record relating to a recipient who was terminated from receiving services shall be fully completed within ten (10) business days following termination.

(5) If a recipient's case is reopened within ninety (90) calendar days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(6) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring targeted case management services provider shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

(a)1. The Health Insurance Portability and Accountability Act;
2. 42 U.S.C. 1320d-2 to 1320d-8; and
3. 45 C.F.R. Parts 160 and 164; or

(b)1. 42 U.S.C. 290ee-3; and
2. 42 C.F.R. Part 2.

(7)(a) If a targeted case management services provider's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the case records of the targeted case management services provider shall:

1. Remain the property of the targeted case management services provider; and
2. Be subject to the retention requirements established in subsection (8) of this section.

(b) A targeted case management services provider shall have a written plan addressing how to maintain case records in the event of an owner's death or owners' deaths.

(8)(a) Except as established in paragraph (b) or (c) of this subsection, a targeted case management services provider shall maintain a case record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17 the period established by the secretary shall be the required period.

(9)(a) A targeted case management services provider shall comply with 45 C.F.R. Part 164.

(b) All information contained in a case record shall:

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. Be disclosed to an authorized representative of the:
a. Department; or
b. Federal government.

(c)1. Upon request, a targeted case management services provider shall provide to an authorized representative of the department or federal government information requested to substantiate:

a. Staff notes detailing a service that was rendered;
b. The professional who rendered a service; and

c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information referenced in subparagraph 1 of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 10. Medicaid Program Participation Compliance. (1) A targeted case management services provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a targeted case management services provider receives any duplicate payment or overpayment from the department, regardless of reason, the targeted case management services provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the targeted case management services provider accepts the payment:

1. The payment shall be considered payment in full;

2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the provider.

(b)1. A targeted case management services provider may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

a. Recipient requests the service; and

b. Targeted case management services provider makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1 of this paragraph, the:

a. Targeted case management services provider shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the targeted case management services provider regarding the service.

(4)(a) A targeted case management services provider attests by the targeted case management services provider signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;

2. Cabinet for Health and Family Services, Office of Inspector General or its designee;

3. Kentucky Office of Attorney General or its designee;

4. Kentucky Office of the Auditor for Public Accounts or its designee; or

5. United States General Accounting Office or its designee.

(c) If a targeted case management services provider receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the targeted case management services provider shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a targeted case management services provider shall result in the suspension or termination of the targeted case management services provider from Medicaid Program participation.

Section 11. Third Party Liability. (1) A targeted case management services provider shall comply with KRS 205.622.

(2) If a third party is liable to pay for targeted case management services, the department shall not pay for the services.

Section 12. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A targeted case management services provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the targeted case management services provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the targeted case management services provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 13. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 14. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 15. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 9, 2014

FILED WITH LRC: September 16, 2014 at 10 a.m.

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for individuals with a severe mental illness or children with a severe emotional disability. This administrative regulation is being promulgated in conjunction with 907 KAR 15:065E (Reimbursement provisions and requirements regarding

targeted case management for individuals with a severe mental illness and children with a severe emotional disability.) Targeted case management services are services that assist Medicaid recipients in accessing needed medical, social, educational, and other services. The components of targeted case management include assessing the recipient's need for services by taking the recipient's history, identifying the recipient's needs, and gathering information from other sources (family members, medical providers, social workers, and educators) to form a complete assessment; developing a customized care plan for the recipient; referring the recipient or related activities to help the recipient obtain needed services; and monitoring activities to ensure that the recipient's care plan is implemented effectively and adequately addresses the recipient's needs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to help ensure that children who have a severe emotional disability or individuals who have a severe mental illness receive necessary services and care. The targeted case manager provider is the individual or entity responding for coordinating the recipient's services/care, facilitating access to services/care, and monitoring recipient's progress or difficulties while receiving services/care. Targeted case management helps ensure that the recipient receives the appropriate and necessary services and care they need rather than randomly receive services/care or fail to receive any services/care at all.

(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 helping ensure that children with a severe emotional disability and individuals with a severe mental illness receive necessary services and care.

(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 helping ensure that children with a severe emotional disability and individuals with a severe mental illness receive necessary services and care.

(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 rather than an amendment.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities eligible to provide targeted case management services (such as community mental health centers, individual behavioral health service providers/provider group, behavioral health provider groups, or behavioral health services organizations) will be affected by this administrative regulation as well as the various professionals who are authorized to provide services either independently or via the aforementioned providers. Medicaid recipients who qualify for targeted case management services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify and wish to provide targeted case management services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation [complete and application and submit it to the Department for Medicaid Services (DMS)] and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. The professionals authorized to provide services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of targeted case management will benefit from having the option to receive these services.

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

(a) Initially: DMS estimates that implementing the administrative regulation will cost approximately ($1.35 million state funds/$12.04 million federal funds) initially.

(b) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately $2.32 million state funds/$20.64 million federal funds for the second year of implementation. The federal funding will decrease somewhat when the federal matching percent for recipients eligible under "Medicaid expansion" recedes from its current 100 percent to 90 percent .

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

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Targeted case management services are not federally mandated however, Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care

organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the targeted case management service provider base to include targeted case management for children with a severe emotional disability or individuals with a severe mental illness will help ensure Medicaid recipient access to these services.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(10)(B).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS estimates that implementing the administrative regulation will cost approximately $1.05 million state funds/$3.87 million federal funds initially.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that implementing the administrative regulation will cost approximately $1.79 million state funds/$6.64 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for individuals eligible under "Medicaid expansion" recedes from its current 100% to 90%.

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 15:065E

This emergency administrative regulation is being promulgated in conjunction with 907 KAR 15:060E, Coverage provisions and requirements regarding targeted case management for individuals with a severe mental illness and children with a severe emotional disability - to comply with a federal mandate. The Affordable Care Act mandates coverage of behavioral health services and federal law requires Medicaid Programs to ensure that recipients have access to services. These two (2) administrative regulations will help ensure that individuals are able to access mandated behavioral health services. Targeted case management ensures that Medicaid recipients with a severe mental illness or with a severe emotional disability are monitored to ensure that they receive the services most beneficial to their particular illnesses. As mental illness can be life-threatening and require long-term treatment, targeted case management gives continuity of care to a Medicaid recipient whose illness needs long-term monitoring. This action must be taken on an emergency basis to prevent a loss of Medicaid federal funds, to meet a deadline for the promulgation of an administrative regulation necessary under federal law and regulation, and so as not to delay providing this service to Medicaid recipients at risk. 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
(New Emergency Administrative Regulation)

907 KAR 15:065E. Reimbursement provisions and requirements regarding targeted case management for individuals with a severe mental illness and children with a severe emotional disability.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

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

EFFECTIVE: September 16, 2014

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program targeted case management services for individuals with a severe mental illness and children with a severe emotional disability who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Medically necessary;

(2) Provided:

(a) To a recipient;

(b) By a provider that meets the provider participation requirements established in 907 KAR 15:060; and

(c) In accordance with the requirements established in 907 KAR 15:060; and

(3) Covered in accordance with 907 KAR 15:060.

Section 2. Reimbursement. (1) The department shall reimburse a monthly rate of $334 in total for all targeted case management services provided to a recipient during the month.

(2) To qualify for the reimbursement referenced in subsection (1) of this section, a targeted case management services provider shall provide services to a recipient consisting of at least four (4) targeted case management service contacts including:

(a) At least two (2) face-to-face contacts with the recipient; and

(b) At least two (2) additional contacts which shall be:

1.a. By telephone; or

b. Face-to-face; and

2. With the recipient or with another individual on behalf of the recipient.

Section 3. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving targeted case management services from an independent behavioral health provider, the department shall not reimburse for the targeted case management services provided to the same recipient during the same time period by a behavioral health services organization.

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 15:060; and

(2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 9, 2014

FILED WITH LRC: September 16, 2014 at 10 a.m.

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for individuals with a severe mental illness and children with a severe emotional disability. This administrative regulation is being promulgated in conjunction with 907 KAR 15:060E (Coverage provisions and requirements regarding targeted case management for individuals with a severe mental illness and children with a severe emotional disability.) Targeted case management services are services that assist Medicaid recipients in accessing needed medical, social, educational, and other services. The components of targeted case management include assessing the individual's need for services by taking the individual's history, identifying the individual's needs, and gathering information from other sources (family members, medical providers, social workers, and educators) to form a complete assessment; developing a customized care plan for the individual; referring the individual or related activities to help the individual obtain needed services; and monitoring activities to ensure that the individual's care plan is implemented effectively and adequately addresses the individual's needs. For these services the Department for Medicaid Services (DMS) will pay a monthly rate (encompassing all services provided to the recipient during the given month) of $334.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to help ensure that children who have a severe emotional disability or individuals who have a severe mental illness receive necessary services and care. The targeted case manager provider is the individual or entity responding for coordinating the individual's services/care, facilitating access to services/care, and monitoring individual's progress or difficulties while receiving services/care. Targeted case management helps ensure that the individual receives the appropriate and necessary services and care they need rather than randomly receive services/care or fail to receive any services/care at all.

(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 helping ensure that children who have a severe emotional disability and individuals who have a severe mental illness receive necessary services and care.

(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 helping ensure that children who have a severe emotional disability and individuals who have a severe mental illness receive necessary services and care.

(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 rather than an amendment.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities eligible to provide targeted case management services (such as community mental health centers, individual behavioral health service providers/provider group, behavioral health provider groups, or behavioral health services organizations) will be affected by this administrative regulation as well as the various professionals who are authorized to provide services either independently or via the aforementioned providers. Medicaid recipients who qualify for targeted case management services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify and wish to provide targeted case management services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation [complete and application and submit it to the Department for Medicaid Services (DMS)] and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. The professionals authorized to provide services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of targeted case management will

benefit from having the option to receive these services.

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

(a) Initially: DMS estimates that implementing the administrative regulation will cost approximately $1.05 million state funds/$3.87 million federal funds initially.

(b) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately $1.79 million state funds/$6.64 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for individuals eligible under "Medicaid expansion" recedes from its current 100 percent to 90 percent.

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

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Similarly, 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(10)(B).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS estimates that implementing the administrative regulation will cost approximately $1.05 million state funds/$3.87 million federal funds initially.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that implementing the administrative regulation will cost approximately $1.79 million state funds/$6.64 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for individuals eligible under "Medicaid expansion" recedes from its current 100% to 90%.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
922 KAR 2:160E

This emergency administrative regulation is necessary to maintain compliance with provisions of 2014 Ky. Acts ch. 117, which restore the Child Care Assistance Program (CCAP), in tandem with new standards to improve the quality of child care purchased through the program and provided to Kentucky's most vulnerable and at-risk child populations. The emergency administrative regulation assures compliance with recent state appropriations; preserves and makes additional gains for the positive development (i.e., health), safety, and welfare of children prioritized for CCAP, including children receiving Child Protective Services, children with special needs, children of teen parents, children whose parents are transitioning from cash assistance or welfare, and children from low-income households; and readies Kentucky's child care community for forthcoming federal legislation or regulation redefining purposes of the Child Care and Development Fund Block Grant to include enhanced focuses on quality. An ordinary administrative regulation would not allow the agency sufficient time to implement changes in standards for child care providers participating in CCAP, to assure accountability for public funds and the highest quality services for Kentucky's most vulnerable or at-risk child populations, concurrent with CCAP's restoration. Child care providers are required to take steps in the near-term to adhere to the new quality rating standards by the timeframe identified within the emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. This emergency administrative regulation differs from the previous emergency regulation filed August 1, 2014, due to the new quality standards applied to child care providers participating in CCAP.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

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

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

RELATES TO: KRS[~~81.010,~~] 194A.060, 199.892, 199.894(1),(5), 199.896, 199.898(1), (2), 199.8982, 199.899, 199.8994, 214.036, 314.011(5), 337.275, 600.020(49), 605.120(5), 620.020(10), 2014 Ky. Acts ch. 117, Part 1, G.9(3), 7 C.F.R. 1463, 2012, 20 C.F.R. 652, 660-671, 45 C.F.R. 98, 205.10(a)(6), 205.50(a)(1)(i), 400.66(d), 25 U.S.C. 459, 1261, 1401, 29 U.S.C. 723(a)(5), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1451, 1771, 1775, 2000d, 3001, 4950-5084, 8621, 9902(2), 9858-9858g, 10602(c)[~~, Pub.L. 110-246~~]

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

EFFECTIVE: October 15, 2014

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

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that affects eligibility or benefit amounts and includes:

(a) Beginning or ending employment;

(b) Change in an employer or obtaining additional employment;

(c) Increase or decrease in the number of work hours;

(d) Increase or decrease in the rate of pay;

(e) Increase or decrease in family members;

(f) Change in self-employment activity;

(g) Change in scheduled hours care is needed;

(h) Beginning or ending an educational activity;

(i) Change in child care provider;

(j) Change in address or residence;

(k) Change in marital status; or

(l) Beginning or ending receipt of unearned income.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(5) "Child care and development fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined in 922 KAR 1:330, Section 1(3).

(9) "Child with a special need" means a child who has multiple or severe functional needs requiring ongoing specialized care.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for compensation or as an unpaid job requirement.

(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.

(12) "Family child-care home":

(a) Is defined by KRS 199.894(5);

(b) Is described in KRS 199.8982; and

(c) Means a home certified in accordance with 922 KAR 2:100.

(13) "Full day" means child care that is provided for five (5) or more hours per day.

(14) "Health professional" means a person actively licensed as a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner;

(d) Qualified mental health professional as defined by KRS 600.020(49); or

(e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(15) "In loco parentis" means a person acting in place of a parent, including:

(a) A legal guardian;

(b) An individual related by blood, marriage, or adoption to the child; or

(c) A nonrelative pursuing legal custody of the child within one (1) year of application.

(16) "Infant" means a child who is less than one (1) year old.

(17) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(18)[~~"Nonurban" means a county without a first, second, or third class city as specified in KRS 81.010(1) through (3).~~

~~(19)~~] "Parent" is defined by 45 C.F.R. 98.2.

(19)[~~(20)~~] "Part day" means child care that is provided for less

than five (5) hours per day.

(20)[~~(21)~~] "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(21)[~~(22)~~] "Preventive services" is defined by KRS 620.020(10).

(22)[~~(23)~~] "Provider" means the entity providing child care services.

(23)[~~(24)~~] "Qualified alien" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).

(24)[~~(25)~~] "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(25)[~~(26)~~] "Related" means having one (1) of the following relationships:

(a) Child;

(b) Stepchild;

(c) Grandchild;

(d) Great-grandchild;

(e) Niece;

(f) Nephew;

(g) Sibling;

(h) Child in legal custody; or

(i) Child living in loco parentis.

(26)[~~(27)~~] "Responsible adult" means a person other than the applicant who is in the child's household and who is:

(a) The natural parent, adoptive parent, or stepparent; or

(b) The spouse of an individual caring for a child in loco parentis.

(27)[~~(28)~~] "School-age child" means a child who has reached the sixth birthday.

(28) "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:

(a) Defined by 7 U.S.C. 2012; and

(b) Governed by 921 KAR Chapter 3.

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

(30) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.[~~(31) "Urban" means a county listed in KRS 81.010(1) through (3) as having a first, second, or third class city.~~]

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

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. A signed DCC-90, Application for Subsidized Child Care Assistance, or DCC-90.1, Intent to Apply for Child Care Assistance, is received at the cabinet or its designee office; or

2. The agency is contacted, if the person:

a. Has a physical or mental disability; and

b. Needs special accommodation due to the impairment.

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

(c) The applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for persons who are:

1. Deaf; or

2. Hard of hearing.

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

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

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

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

1. Furnish verification of:

a. Income;

b. Technical eligibility; and

c. Employment; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

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

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Send a DCC-105, Child Care Assistance Program Notice of Action, to the applicant in accordance with Section 11(5) of this administrative regulation to provide written notification of the decision within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section.

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

(7) A family shall not receive:

(a) Assistance until approval of the application for benefits; or

(b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

1. Resident of Kentucky; and

2. U.S. citizen or qualified alien;

(b) Is under age:

1. Thirteen (13); or

2. Nineteen (19) and is:

a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

a. Licensed child-care[~~child care~~] center;

b. Certified child-care[~~child care~~] home;

c. Public school;

d. Head Start; or

e. Other entity that requires the immunization record.

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

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K-TAP or SNAP[~~food stamp assistance~~] case in which the child in need of child care assistance is included;

(d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) Effective August 15, 2015, a licensed child-care center or certified family child-care home that does not participate in the quality rating program governed by 922 KAR 2:170 or 922 KAR

2:210 unless an exception is granted pursuant to Section 12(8) of this administrative regulation;

(g) A Head Start program unless the child care is provided before, after, or in between the Head Start program's operating hours as wrap-around child care[~~An alternative program such as Head Start, state preschool, or state kindergarten~~]; or

(h)[~~(g)~~] Another child care provider if the family operates the child care business in the home.

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

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

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who has employment an average twenty (20) hours per week;

(b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;

(d) An applicant who:

1. Loses employment through no fault of their own up to four (4) weeks;

2. Is on maternity leave for up to six (6) weeks; or

3. Is on medical leave from employment due to a health condition verified by a health professional for up to six (6) weeks;

(e) A relative caregiver pursuant to the conditions of a program established by KRS 605.120(5), who meets:

1. All requirements in this section; and

2. Income eligibility standards in Section 7[~~(1)~~]; or

(f) A teen parent attending high school or pursuing a general equivalency degree (GED).

(2) Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 7(7)(d) of this administrative regulation by minimum wage established in accordance with KRS 337.275.

(3) An applicant eligible in accordance with this section shall sign and return the DCC-91, Client Rights and Responsibilities Sheet, and the DCC-94, Child Care Service Agreement and Certificate.

Section 5. Requirements for Protection and Permanency Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or

2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan in accordance with 922 KAR 1:430.

(3) A child who participates in the CCAP as a result of a child protective or preventive services authorization shall not be eligible for more than six (6) months without further authorization.

(4)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 10 of this administrative regulation for a child who participates in CCAP as a result of child protective services authorization.

(b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan.

(5) An applicant eligible in accordance with this section shall sign and return the DCC-91.

Section 6. Kentucky Works Child Care Eligibility Determination. (1) A child shall be eligible for CCAP if the child:

(a) Resides with an applicant who is participating in the Kentucky Works Program described in 921 KAR 2:370; and

(b) Meets the requirements listed in Section 3 of the administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application as an integral part of a Kentucky Works Program self-sufficiency plan.

(3) An applicant eligible in accordance with this section shall sign and return the DCC-91.

Section 7. Income Eligibility. (1)(a) A child shall be eligible for the CCAP if the family's income is less than or equal to 140 percent of the 2011 federal poverty level at:

1. Initial application; or

2. Redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.

(b) On or after July 1, 2015, a child shall be eligible for the CCAP if the family's income is less than or equal to:

1. 150 percent of the 2011 federal poverty level at initial application; or

2. 165 percent of the 2011 federal poverty level at redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation[~~Prior to July 1, 2013, a child shall be eligible for the CCAP if the family's income is less than or equal to:~~

~~1. 150 percent of the federal poverty level at the initial application; or~~

~~2. 165 percent of the federal poverty level at the redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.~~

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

~~1. 100 percent of the federal poverty level at the initial application; or~~

~~2. 100 percent of the federal poverty level at the redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation~~].

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

(a) 140 percent of the 2011 federal poverty level; or

(b) 165 percent of the 2011 federal poverty level on or after July 1, 2015[~~165 percent of the federal poverty level prior to July 1, 2013; or~~

~~(b) 100 percent of the federal poverty level effective July 1, 2013~~].

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

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

(5) Excluded income shall be:

(a) K-TAP child only payments, including back payment;

(b) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(c) Educational grant, loan, scholarship, and work study income;

(d) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;

(e) The value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly allotment under SNAP[~~the Supplemental Nutrition Assistance Program (formerly known as the Food Stamp Program):~~

~~a. Defined by 7 U.S.C. 2012, as amended by P.L. 110-246; and~~

~~b. Governed by Title 921 KAR Chapter 3~~];

(f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(g) In-kind income;

(h) Reimbursement for transportation in performance of an employment duty, if identifiable;

(i) Nonemergency medical transportation payment;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grant;

(m) Home produce utilized for household consumption;

(n) Housing subsidy received from federal, state, or local governments;

(o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(p) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5084 if less than the minimum wage under state or federal law, whichever is greater, including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(s) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(t) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(u) The principal of a verified loan;

(v) Up to $12,000 to Aleuts and $20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(w) The advance payment or refund of earned income tax credit;

(x) Payment made from the Agent Orange Settlement Fund;

(y) Payment made from the Radiation Exposure Compensation Trust Fund;

(z) Up to $2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(cc) A payment received from the National Tobacco Growers Settlement Trust;

(dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;

(ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);

(ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(gg) A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-31(g)(6) of the Social Security Act, 42 U.S.C. 601-619;

(hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);

(ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5); or

(jj) Income or earnings from a program funded under the Work Investment Act (WIA) pursuant to 20 C.F.R. 652 and 660 to 671.

(6) Deductions from gross income shall be:

(a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and

(b) Operating costs to determine adjusted gross income from self-employment.

(7) Best estimate.

(a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.

(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:

1. Cents shall not be rounded at any step in the calculation;

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;

3. A monthly amount shall be determined by:

a. Adding gross income from each pay period;

b. Dividing by the total number of pay periods considered; and

c. Converting the pay period figure to a monthly figure by multiplying a:

(i) Weekly amount by 4.334;

(ii) Biweekly amount by 2.167; or

(iii) Semimonthly amount by two (2); and

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the:

(i) Hourly rate by the estimated number of hours to be worked in a pay period; or

(ii) Daily rate by the estimated number of days to be worked in the pay period; and

b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c. of this paragraph.

(c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Not rounding cents at any step in the calculation;

2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

3. Averaging the amount of nonstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1. Cents shall not be rounded at any step in the calculation;

2. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

3. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

4. Profit shall be determined by:

a. Dividing the allowable expenses permitted by the Internal Revenue Service except for depreciation by:

(i) Twelve (12) if the enterprise has been in operation for at least a year; or

(ii) The number of months the business has been operating if

the business has been in existence for less than a year; and

b. Subtracting the monthly expense from the monthly income.

Section 8. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be redetermined at least every:

(a) Twelve (12) months; or

(b) Six (6) months for a child eligible pursuant to requirements in Section 5 of this administrative regulation.

(2) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

(3) A nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

Section 9. Payment Rates and Policy. (1) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rates Chart.

(a) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.

(b) The maximum payment rates shall include the following categories:

1. Full day;

2. Part day;

3.[~~Urban;~~

~~4. Nonurban;~~

~~5.~~] Licensed;

4.[~~6.~~] Certified;

5.[~~7.~~] Registered;

6.[~~8.~~] Infant/Toddler;

7.[~~9.~~] Preschool child; and

8.[~~10.~~] School-age child.

(2) To the extent funds are available, a licensed or certified provider shall receive:

(a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education for Young Children;

2. National Early Childhood Program Accreditation;

3. National Association for Family Child Care;

4. Council on Accreditation; or

5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

(b) One (1) dollar per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:

1. 7 p.m. to 5 a.m. daily; or

2. Friday, 7 p.m. through Monday, 5 a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:

(a) With a special need; or

(b) Who is age thirteen (13), but under age nineteen (19), and is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or

2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

(a) Three (3) children receiving CCAP per day; or

(b) Six (6) children receiving CCAP per day, if those children are:

1. A part of a sibling group; and

2. Related to the provider.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 10. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(4) of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:

Family Co-Payment Per Day								
Income Range Monthly		Family Size 2 Family Co-Pay With 1 Child	Family Size 3 Family Co-Pay		Family Size 4 Family Co-Pay		Family Size 5 or More Family Co-Pay	
			With 1 Child	With 2 or more	With 1 Child	With 2 or more	With 1 Child	With 2 or more
0	899	$0	$0	$0	$0	$0	$0	$0
900	999	$2	$2	$3	$2	$2	$2	$2
1,000	1,099	$3	$3	$3	$2	$3	$2	$3
1,100	1,199	$4	$4	$4	$3	$3	$2	$3
1,200	1,299	$4	$4	$5	$4	$4	$3	$3
1,300	1,399	$5	$5	$5	$5	$5	$3	$4
1,400	1,499	$6	$5	$6	$5	$6	$4	$4
1,500	1,599	$7	$6	$6	$6	$6	$5	$5
1,600	1,699	$8	$6	$7	$6	$7	$6	$6
1,700	1,799	$9	$7	$8	$7	$8	$6	$7
1,800	1,899	$10	$8	$9	$7	$8	$7	$8
1,900	1,999	$10	$9	$10	$8	$9	$8	$9
2,000	2,099	$11	$10	$11	$8	$9	$8	$9
2,100	2,199.99	$12	$10	$11	$9	$10	$9	$10
2,200	2,299.99	$12	$11	$12	$10	$11	$9	$10
2,300	2,399.99	$12	$12	$13	$11	$12	$9	$10
2,400	2,499.99	$12	$12	$13	$12	$13	$10	$11

2,500	2,599.99	$12	$13	$14	$12	$13	$10	$11
2,600	2,699.99	$12	$13	$14	$13	$14	$12	$13
2,700	2,799.99	$12	$13	$14	$13	$14	$13	$14
2,800	2,899.99	$12	$13	$14	$14	$15	$14	$15
2,900	2,999.99	$12	$13	$14	$14	$15	$16	$17
3,000	3,099.99	$12	$13	$14	$15	$16	$18	$19
3,100	3,199.99	$12	$13	$14	$15	$16	$20	$21
3,200	3,299.99	$12	$13	$14	$15	$16	$20	$21
3,300	3,399.99	$12	$13	$14	$15	$16	$22	$23
3,400	3,499.99	$12	$13	$14	$15	$16	$22	$23
3,500	3,599.99	$12	$13	$14	$15	$16	$24	$25
3,600	3,699.99	$12	$13	$14	$15	$16	$25	$25

(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

(4)(a) If a provider notifies the cabinet or its designee that a family has failed to comply with a required copayment for two (2) weeks, the cabinet or its designee shall request that the provider develop a payment plan with the family.

(b) If a provider notifies the cabinet or its designee that a family fails to enter into a payment plan within ten (10) days from a provider's notification that a payment plan is necessary, or a family fails to make two (2) payments in accordance with the payment plan, the cabinet shall:

1. Not pay a subsequent provider until the family demonstrates compliance with the payment plan; and

2. Terminate CCAP for the family.

(c) The cabinet or its designee may grant an exception to paragraph (b) of this subsection due to:

1. A disaster verified by utility provider, local, state, or federal government;

2. The closure of a provider;

3. Family circumstances, such as relocation, illness, or death; or

4. A risk to the health, welfare, or safety of the child or parent.

Section 11. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

(a) Be offered choice of child care assistance subject to the availability of state and federal funds; and

(b) Receive a child care certificate, the DCC-94.

(3) An applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the DCC-91 and the DCC-94.

(4) An applicant approved in accordance with Section 5 or 6 of this administrative regulation shall sign and return the DCC-91.

(5) Notification of action.

(a) A DCC-105 shall serve many purposes in the administration of CCAP, including notice to an applicant or recipient of:

1. Changes in:

a. Copayment;

b. Certification period; or

c. Household size;

2. Approval of:

a. Application; or

b. Continued eligibility; or

3. Adverse action, including:

a. Denial of application;

b. Reduction of CCAP benefits; or

c. Termination of CCAP benefits.

(b) The DCC-105 providing notice of an adverse action shall include:[;]

1. Reason for the adverse action;

2. Citation from an applicable state administrative regulation; and

3. Information regarding the:

a. Informal dispute resolution process in accordance with Section 17 of this administrative regulation; and

b. Opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation.

(c) The language on the DCC-105 shall differ according to the purpose of the notice described in paragraphs (a) and (b) of this subsection.

(6) An applicant may change the applicant's provider a maximum of three (3) times in a twelve (12) month period, unless an exception is authorized by the cabinet or its designee due to:

(a) A disaster verified by utility provider, local, state, or federal government;

(b) Closure of a provider;

(c) Family circumstances, such as relocation, illness, or death;

(d) A risk to the health, welfare, or safety of the child or the applicant; or

(e) Failure of the provider to comply with Section 13(1) of this administrative regulation.

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

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

(9) Failure to report a change in a circumstance may result in a:

(a) Decrease or discontinuance of CCAP benefits based on the type of change; or

(b) Claim in accordance with 922 KAR 2:020.

(10) An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:

(a) Discontinued from CCAP benefits; and

(b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

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

Section 12. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

(b) 922 KAR 2:090, Child care center licensure;

(c)[~~(b)~~] 922 KAR 2:100, Certification of family child care homes;

(d)[~~(c)~~] 922 KAR 2:110, Child care facility provider requirements;

(e)[~~(d)~~] 922 KAR 2:120, Child care facility health and safety standards;

(f) 922 KAR 2:170, STARS for KIDS NOW Program for Type I licensed child-care centers, effective August 15, 2015, unless an exception is granted in accordance with Section 12(8) of this administrative regulation;

(g)[~~(e)~~] 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(h)[~~(f) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties; and~~

~~(g)~~] 922 KAR 2:190, Civil penalties; and

(i) 922 KAR 2:210, STARS for KIDS NOW Program for Type II licensed child-care centers and certified family child-care homes, effective August 15, 2015, unless an exception is granted in accordance with Section 12(8) of this administrative regulation.

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

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

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

(7) The cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective or preventive services authorization;

(b) A child with a special need;

(c) K-TAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;

(d) Teen parents attending high school or pursuing a general equivalency degree (GED);

(e) A K-TAP recipient attempting to transition off assistance through employment;

(f) A parent whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;

(g) A low income working parent; or

(h) A parent in education or training programs leading to self-sufficiency.

(8)(a) The cabinet shall grant an exception for a CCAP-eligible child's placement with a child care provider participating in the quality rating program governed by 922 KAR 2:170 and 922 KAR 2:210 if:

1. A violation of or conflict with 45 C.F.R. 98.30 would result, such as:

a. A geographic area in which an adequate supply of child care is lacking;

b. A parent's scheduling, transportation, or other circumstance that prevents the use of a child care provider participating within the quality rating program;

c. A child approved for CCAP in accordance with Section 5 or 6 of this administrative regulation;

d. A child with special needs; or

e. The provision of child care through a provider:

(i) Registered in accordance with 922 KAR 2:180;

(ii) Operated by the armed services located on an armed forces base; or

(iii) Regulated by another state;

2. A situation or circumstance, such as an emergency or disaster, necessitates the provision of emergency child care; or

3. Noncompliance or federal penalty under 421 U.S.C. 601-619 or 42 U.S.C. 9858-9858g would result.

(b) The DCC-400, Request for Exception from Placement with a STAR-Rated Child Care Provider:

1. Shall be used to request an exception in accordance with paragraph (a)1 of this subsection; and

2. May be used to request an exception in accordance with paragraphs (a)2 and (a)3 of this subsection.

(c) The cabinet shall respond to a completed and signed DCC-400 in accordance with Section 11(3) of this administrative regulation within ten (10) calendar days of its submission unless:

1. The cabinet experiences a circumstance that prolongs the review of the request; and

2. Notice of the extension is provided to the requesting parent.

Section 13. Provider Requirements. (1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and submit the DCC-94 to the cabinet or its designee prior to receiving payment from the CCAP;

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;

(c)1. Maintain the DCC-94E, Child Care Daily Attendance Record, in which the attendance is[~~daily arrival and departure times of each child have been~~]:

a. Recorded legibly each time the child arrives and each time the child departs the provider's care[~~on a daily basis~~]; and

b. Signed by the parent or applicant for the child served by CCAP; and

2. Submit the DCC-94E upon request of the cabinet or its designee;[~~and~~]

(d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

2. 922 KAR 2:090, Child care center licensure;

3.[~~2.~~] 922 KAR 2:100, Certification of family child care homes;

4.[~~3.~~] 922 KAR 2:110, Child care facility provider requirements;

5.[~~4.~~] 922 KAR 2:120, Child care facility health and safety standards;

6. 922 KAR 2:170, STARS for KIDS NOW Program for type I licensed child-care centers, effective August 15, 2015, unless an exception is granted in accordance with Section 12(8) of this administrative regulation;

7.[~~5.~~] 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

8.[~~6. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties; and~~

~~7.~~] 922 KAR 2:190, Civil penalties; and

9. 922 KAR 2:210, STARS for KIDS NOW Program for type II licensed child-care centers and certified family child-care homes, effective August 15, 2015, unless an exception is granted in accordance with Section 12(8) of this administrative regulation; and

(e) Complete the cabinet approved training on billing and the DCC-94E:

1. Prior to receiving an initial payment from CCAP if the provider will begin participation in CCAP after the effective date of this administrative regulation; or

2. By August 4, 2015, if the provider began participation in CCAP prior to the effective date of this administrative regulation.

(2) A licensed or certified child care provider shall complete and submit the DCC-94B, Licensed or Certified Provider Agreement[~~Information~~] Form, prior to receiving payment from the CCAP.

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4)(a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as specified in 922 KAR 2:100 or 922 KAR 2:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

1. Each employee of each shift;

2. The work hours for each employee of each shift;

3. The management for each shift;

4. The work hours for each management employee of each shift; and

5. The children enrolled for each shift.

(c) The cabinet shall approve an operating plan that

demonstrates the health, safety, and welfare of a child in care in accordance with this administrative regulation and an administrative regulation listed in subsection (1)(d) of this section.

Section 14. Other Services. To the extent state funds are available, a child whose family's income is over the income limits for the CCAP described in Section 7 may be eligible for:

(1) Child care payments;

(2) Enrollment fees;

(3) Activity or day trip fees;

(4) Material fees;

(5) Transportation fees; or

(6) Other items relating to child care services with prior approval of the cabinet.

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

Section 16. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:

1. A death in the family;

2. An illness of the:

a. Child; or

b. Applicant; or

3. A Disaster verified by utility provider, local, state, or federal government;

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in accordance with Section 10(4) of this administrative regulation or 922 KAR 2:020;

(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90) days after the date of service;

(h) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;

(i) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet's designee, or a representative of an agency with regulatory authority:

a. Entry into the provider's premises during operating hours; or

b. Access to a child in care; or

2. The cabinet, the cabinet's designee, or a representative of an agency with regulatory authority access to the provider's records relevant to a:

a. Cabinet review, including CCAP quality control or case review; or

b. Review by another agency with regulatory authority;

(j) Not be made to a provider if the provider's DCC-94E in accordance with Section 13(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97;[~~or~~]

(k) Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94; or

(l) Not be made to a provider for a child in care over the capacity of the provider, as governed by 922 KAR 2:100 or 922 KAR 2:120, unless an operating plan is approved in accordance with Section 13(4) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 12(7)[~~(8)~~] of this administrative regulation.

Section 17. Informal Dispute Resolution and Appeals. (1) An applicant for CCAP or a parent of a child receiving CCAP:

(a) May seek an informal dispute resolution if the applicant or parent is dissatisfied with an action by the cabinet or its designee concerning a denial, reduction, or termination of CCAP benefits;

(b) Shall request an informal dispute resolution with the cabinet or its designee within ten (10) days of the:

1. Notice of denial for CCAP in accordance with Section 2(5) of this administrative regulation; or

2. Date of the adverse action for which notice is provided in accordance with Section 12(6) of this administrative regulation; and

(c) Who is dissatisfied with the decision of the informal dispute resolution, may submit an administrative hearing request:

1. In accordance with Section 18 of this administrative regulation; and

2. Within thirty (30) calendar days of the date of the decision made by the cabinet or its designee in accordance with subsection (3) of this section.

(2)(a) If the child's parent provides notice within ten (10) calendar days from the date of adverse action in accordance with 45 C.F.R. 205.10(a)(6), a child receiving CCAP may continue to receive CCAP during the informal dispute resolution or administrative hearing process pending the outcome of the informal dispute resolution or the administrative hearing.

(b) If an informal dispute resolution or administrative hearing process upholds the denial, reduction, or termination of CCAP, the child's parent who continued to receive CCAP benefits during the informal dispute resolution or administrative hearing process shall repay the CCAP back to the effective date of the denial, reduction, or termination.

(3) Upon receipt of a request for the informal dispute resolution, the cabinet or its designee shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within ten (10) days, unless:

1. The commissioner or designee grants an extension to the timeframe specified in this paragraph due to extenuating circumstances that prolong the review of the request; and

2. Notice of the extension is provided to the applicant or parent who made the request for informal dispute resolution.

(4) An applicant for CCAP or a parent of a child receiving CCAP may request an administrative hearing in accordance with Section 18 of this administrative regulation at any time during the informal dispute resolution process established in this section.

Section 18. Administrative Hearings. An administrative hearing may be requested in accordance with:

(1) 922 KAR 1:320; or

(2) 922 KAR 2:020.

Section 19. Records. Records of CCAP shall be maintained and disclosed in accordance with:

(1) KRS 194A.060;

(2) 45 C.F.R. 98.90(e); and

(3) 45 C.F.R. 205.50(a)(1)(i).

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-90, Application for Subsidized Child Care Assistance",[~~edition~~] 11/09;

(b) "DCC-90.1, Intent to Apply for Child Care Assistance",[~~edition~~] 11/09.

(c) "DCC-91, Client Rights and Responsibilities Sheet",[~~edition~~] 04/13;

(d) "DCC-94, Child Care Service Agreement and Certificate",[~~edition~~] 11/09;

(e) "DCC-94B, Licensed or Certified Provider Agreement[~~Information~~] Form", 10/14[~~edition 7/13~~];

(f) "DCC-94E, Child Care Daily Attendance Record[~~Records~~]",[~~edition~~] 7/13;

(g) "DCC-97, Provider Billing Form",[~~edition~~] 04/13;

(h) "DCC-105, Child Care Assistance Program Notice of Action",[~~edition~~] 11/09;[~~and~~]

(i) "DCC-300, Kentucky Child Care Maximum Payment Rates Chart", 10/14; and

(j) "DCC-400, Request for Exception from Placement with a

STAR-Rated Child Care Provider", 10/14[~~edition 11/09~~].

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

TERESA C. JAMES, LCSW, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: October 13, 2014

FILED WITH LRC: October 15, 2014 at 11 a.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation enables the Cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishing procedures for the implementation of CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the CCAP in a manner which is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers.

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

(a) How the amendment will change this existing administrative regulation: The amendment increases the CCAP income eligibility criteria, specifically the federal poverty level, in accordance with available revenues, including the restoration of CCAP authorized by 2014 Ky. Acts ch. 117. In addition, the amendment delinks child care provider payment rates from the classification of cities, reinforces quality within CCAP by requiring licensed and certified child care providers' participation in the STARS for KIDS NOW Program and one-time free-of-charge training concerning CCAP billing, and makes technical corrections and clarifications in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to restore CCAP to a higher service level in response to 2014 Ky. Acts ch. 117, state budgetary context, and to protect and preserve provider rates from fluctuations that would otherwise be created by changes to city classifications. In addition, the amendment is necessary to improve the quality of child care purchased through the program and provided to Kentucky's most vulnerable and at-risk child populations thereby preserving and making additional gains for the positive development (i.e., health), safety, and welfare of children prioritized for CCAP, including children receiving Child Protective Services, children with special needs, children of teen parents, children whose parents are transitioning from cash assistance or welfare, and children from low-income households; and readying Kentucky's child care community for forthcoming federal legislation or regulation redefining purposes of the Child Care and Development Fund Block Grant to include enhanced focuses on quality. Lastly, the amendment is necessary to assure compliance with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by restoring CCAP in accordance with available federal and state funding and assuring stable child care provider payment rates and quality within CCAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by ensuring CCAP operates within available funding and quality standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of September 2014, CCAP served 21,323 children in 11,153 families, which was an increase from July's figures, 18,857 and 9,829 respectively. As of September 30, 2014, there were 392 certified family child-care homes. Of those, 330 certified family child-care homes were not in STARS and were serving 838 children receiving benefits through the CCAP. Sixty-two (62) certified homes were STARS-rated and were serving 139 children receiving benefits through CCAP. There were 2,041 licensed child-care centers. Of those, 1,263 licensed centers were not participating in STARS and were serving 13,086 children receiving benefits through CCAP. Seven hundred and seventy-eight (778) licensed centers were participating in STARS and were serving 9,259 children receiving CCAP benefits. There are no registered child care providers participating in STARS. Three hundred fifty-four (354) CCAP children are receiving child care through 203 registered providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will open the program for newly eligible low-income working families and will assure the use of public funds for the highest quality child care for Kentucky's most vulnerable and at-risk children.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation imposes no direct cost to applicants and recipients of CCAP. If not already participating, a licensed or certified child care provider will realize new administrative burden and operating costs to participate in the state's quality rating program; however, the burden and costs should be minimal for providers entering the quality rating program at a Level 1 and should be offset by incentives and awards provided through the quality rating program. There is no fee associated with a provider's application to participate in the state's quality rating program; services are provided by the state without charge. Exceptions to a licensed or certified child care provider's participation within the state's quality rating program are also outlined within the administrative regulation to maintain compliance with associated federal mandates and to avoid imposing hardships on CCAP-eligible families and children.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky's most vulnerable and at-risk children will have improved access to quality child care.

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

(a) Initially: Funds to restore CCAP were appropriated in 2014 Ky. Acts ch.117. Changes contained in this amendment are within available revenues.

(b) On a continuing basis: Funds to restore CCAP were appropriate in 2014 Ky. Acts ch.117. Changes contained in this amendment are within available revenues. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this administrative regulation are federal Child Care and Development Fund Block Grant, state matching, state maintenance of effort 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: An increase in funding for CCAP was provided in 2014 Ky. Acts ch. 117.

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

(9) TIERING: Is tiering applied? The Child Care Assistance Program is implemented in a like manner statewide. Provider payment rates are tiered to recognize the higher operating costs of certain geographical, more populated areas. While this administrative regulation protects and preserves the current provider payment rates by delinking the rates from the classification of cities, the provider payment rates were originally established based on the classification of cities. The rates are further supported by the analysis of the market rate survey results specified in KRS 199.899.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619, 45 C.F.R. 98

2. State compliance standards. KRS 194A.050, 199.892, 199.8994

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619, 45 C.F.R. 98

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services will be impacted by this administrative regulation.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Child Care Assistance Program (CCAP) has been operational for a number of years. It does not directly generate revenues for the state; however, it supports the health, safety, and welfare of children and the ability of low-income parents to work and obtain additional skills and training. This administrative regulation will not directly generate any new revenue for the first year. Research suggests that quality early care and education help avoid future public costs.

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

(c) How much will it cost to administer this program for the first year? The restoration of CCAP is supported through funds appropriated in 2014 Ky. Acts ch. 117. The restoration as proposed within this amendment is projected to fall within available federal and state revenues.

(d) How much will it cost to administer this program for subsequent years? The restoration of CCAP, as proposed within this amendment, is supported through funds appropriated in 2014 Ky. Acts ch. 117. The restoration as proposed within this amendment is projected to fall within available federal and state revenues. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY STATE BOARD OF ELECTIONS
(As Amended at ARRS, October 14, 2014)

31 KAR 3:030. Voting precinct and address of overseas voter whose last place of residence in the Commonwealth is no longer a recognized residential address.

RELATES TO: KRS ***117A.010(1)(e),*** 117A.040
STATUTORY AUTHORITY: KRS ***117A.030(2),*** 117A.040(2)***[, 117A.030(2)]***
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117A.040(2) requires the Secretary of State to promulgate administrative regulations covering the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address. KRS 117A.030(2) ***authorizes[permits]*** the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility to promulgate administrative regulations covering the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address. This administrative regulation ***establishes[covers]*** the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address.

Section 1. Definition. "Overseas voter" is defined by KRS 117A.010(6).

Section 2. Voting Precinct and Address of Overseas Voter Whose Last Place of Residence in the Commonwealth is No Longer a Recognized Residential Address. If the last place of residence in the Commonwealth of Kentucky of an overseas voter who is eligible to vote in the Commonwealth, or ***the last place of residence of*** the parent or legal guardian of a voter described by KRS 117A.010(1)(e), is no longer a recognized residential address, the county clerk shall:

(1) In consultation with federal, state and local government agencies, as necessary, determine and designate in the statewide voter registration database the voting precinct, school board district, city, and ward, if any, in which the voter's last place of residence, or ***the last place of residence of*** the parent or legal guardian of a voter described by KRS 117A.010(1)(e), would have been located if the address were still a recognized residential address; and

(2) Designate the voter's residential address in the statewide voter registration database as "Overseas."

ALISON LUNDERGAN GRIMES, Chair
APPROVED BY AGENCY: July 22, 2014
FILED WITH LRC: July 22, 2014 at 2 p.m.
CONTACT PERSON: Lindsay Hughes Thurston, Assistant Secretary of State, 700 Capital Ave., Ste. 152, Frankfort, Kentucky 40601, phone (502) 564-3490, fax (502) 564-5687.

KENTUCKY STATE BOARD OF ELECTIONS
(As Amended at ARRS, October 14, 2014)

31 KAR 4:130. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically[~~Facsimile transmission of the Federal Post Card Application and delivery of the absentee ballot for military, their dependents, and overseas citizens~~].

RELATES TO: KRS[~~116.045, 116.0452, 117.079,~~] 117.085, 117.086, 117A.030, 117A.080, 117A.120, 117A.130[~~42 U.S.C. 1973ff~~], ***52 U.S.C. 20302[42 U.S.C. 1973ff-1]***
STATUTORY AUTHORITY: KRS[~~116.045(4)(e),~~] 117.079, 117.086(1), 117A.030(2), (4)-(6), ***117A.130, 52 U.S.C. 20302(e)[42 U.S.C.]***[~~1973ff,~~]***[1973ff-1]***
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS ***117A.010[117A.100]***. KRS 117.086(1) authorizes the State Board of Elections to promulgate ***administrative regulations establishing*** security requirements for the transmission of voted absentee ballots. ***52 U.S.C. 20302(e)[42 U.S.C. 1973ff-1(a-f)]*** requires the states to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request voter registration applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 117A.030(4) requires the Secretary of State to establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information authorized under KRS Chapter 117A. KRS 117A.030(5) requires the Secretary of State to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the Commonwealth. KRS 117A.030(6) requires the Secretary of State to prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of a military-overseas ballot. ***[KRS 117A.080(2) permits a covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission to choose facsimile transmission or the electronic transmission system established under KRS 117A.030(4). KRS 117A.120 requires that a military-overseas ballot include or be accompanied by a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the United States or the Commonwealth of Kentucky.]*** KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot has been received. KRS 117A.030(2) ***authorizes[permits]*** the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating

administrative regulations implementing KRS Chapter 117A, including establishing and implementing the electronic transmission system established by KRS 117A.030(4), developing standardized absentee-voting materials to be used with military-overseas ballots pursuant to KRS 117A.030(5), prescribing the form of a declaration for use by a covered voter pursuant to KRS 117A.030(6), and establishing an electronic free-access system pursuant to KRS 117A.130. This administrative regulation establishes the procedures for the county clerk to follow when transmitting a military-overseas ballot to a covered voter via facsimile or electronically and ***for*** a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically, incorporates by reference standardized absentee-voting materials and a declaration to be used by covered voters, and implements the electronic free-access system pursuant to KRS 117A.130[~~KRS 117.079 requires the State Board of Elections to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. 42 U.S.C. 1973ff-1 provides that each state shall use the official post card form for simultaneous voter registration application and absentee ballot application. The Military and Overseas Voter Empowerment Act of 2009, Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1(a-f), requires the states to provide not less than one (1) means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, balloting, and election materials and information. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117.086(1) authorizes the State Board of Elections to promulgate absentee ballot security requirements. This administrative regulation establishes procedures for the county clerk and the qualified voter to follow when transmitting and receiving the Federal Post Card Application and transmitting the blank absentee ballot by facsimile~~].

Section 1. Definitions. (1) "Covered voter" is defined by KRS 117A.010(1).

(2) "Federal postcard application" is defined by KRS 117A.010(3).

(3)[~~"Application" means the Federal Post Card Application, Standard Form 76. (2)~~] "Instructions to Voter" means the Instructions for Voting to a Covered Voter[~~Qualified Kentucky Resident~~] Who Has Been Faxed or Electronically Transmitted a Military-Overseas Ballot[~~Emailed an Absentee Ballot~~], SBE 46A ***[(Rev. July 2014)]***.

(4) "Military-overseas ballot" is defined by KRS 117A.010(5).

(5)[~~(3)~~] "Transmission sheet" means the Official Election Materials – Electronic Transmission Sheet prescribed by the Federal Voting Assistance Program.

Section 2. Delivering a Military-Overseas Ballot to a Covered Voter Via Facsimile or Electronically. (1) If the county clerk receives a properly completed federal postcard application from a covered voter who is eligible to vote in the jurisdiction and who requests that balloting materials be transmitted to the covered voter via facsimile or electronically, then for each election in which the covered voter is eligible to vote, the county clerk shall:

(a) Prepare a copy of the military-overseas ballot and mark the original, blank military-overseas ballot, "Faxed to Covered Voter," if the covered voter requested the military-overseas ballot to be transmitted to the covered voter via facsimile, or "Electronically Transmitted to Covered Voter," if the covered voter requested the military-overseas ballot to be transmitted to the covered voter electronically;

(b) Complete the county clerk's portion of the Instructions to Voter;

(c) If the covered voter has requested that the blank absentee ballot be transmitted through the Federal Voting Assistance Program, complete the Transmission Sheet; and

(d) Transmit the copy of the military-overseas ballot, Instructions to Voter, Voter Verification and Declaration, Voter Assistance Form, and Transmission Sheet, if the covered voter has requested that the military-overseas ballot be transmitted through the Federal Voting Assistance Program, to the covered voter via the method requested by the covered voter.

(2) The original blank military-overseas ballot shall be retained and not reused.

(3) A properly completed federal postcard application shall be treated as an application for a military-overseas ballot for all elections held after the date of the application through the next regular election or December 31 of the year of the application, whichever is later, unless the covered voter specifies a shorter time period.

Section 3. Ballot Security Requirements for Returning a Military-Overseas Ballot Transmitted to a Covered Voter Via Facsimile or Electronically. When a covered voter receives a military-overseas ballot via facsimile or electronically:

(1) If the covered voter requires assistance in voting, the covered voter and the person who ***assists[assisted]*** the covered voter shall complete the Voter Assistance Form, except the "Section to be Completed by Precinct Election Officer";

(2) The covered voter shall mark the military-overseas ballot and seal it in an envelope;

(3) The covered voter shall complete and sign the Voter Verification and Declaration;

(4) The covered voter shall place the Voter Verification and Declaration, Voter Assistance Form, if the voter received assistance in voting, and the envelope containing the military-overseas ballot in a separate envelope and seal it;

(5) The covered voter shall print the covered voter's name, voting address, and precinct number on the back of the outer envelope;

(6) The covered voter shall sign across the back flap of the outer envelope;

(7) The covered voter shall print "Absentee Ballot" on the front of the outer envelope, without obstructing the address area; and

(8) The covered voter shall mail the envelope to the county clerk.

Section 4. Electronic Free-Access System. Each county clerk shall either participate in the electronic free-access system established by the State Board of Elections or establish a local electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received[~~Who May Request Federal Post Card Application by Facsimile. (1) Any resident of Kentucky may transmit a request for an application to the office of the county clerk of the county where the applicant resides via facsimile if the applicant meets one (1) of the following criteria:~~

~~(a) Is a member of the Armed Forces;~~

~~(b) Is a dependent of a member of the Armed Forces; or~~

~~(c) Is a citizen residing overseas.~~

~~(2) If the applicant desires to have the application faxed, the applicant shall indicate this and the appropriate facsimile number on the request.~~

~~Section 3. Requests for Applications.~~

~~(1) Upon receiving a request for an application by facsimile from or on behalf of a person who meets the requirements listed in Section 2(1), a county clerk shall complete the transmission sheet and the county clerk's portion of the application. The county clerk shall then do one (1) of the following:~~

~~(a) Transmit the transmission sheet and the application to the Federal Voting Assistance Program at one (1) of the numbers listed on the transmission sheet; or~~

~~(b) Transmit the transmission sheet and the application to the~~

~~voter at the facsimile number provided by the voter on the absentee ballot application.~~

~~(2) If the county clerk has faxed the materials through the Federal Voting Assistance Program's facsimile numbers, the Federal Voting Assistance Program shall transmit the application to the applicant via facsimile.~~

~~(3) If the applicant does not clearly request that the application be sent via a facsimile machine, then the county clerk may transmit the application by the U.S. mail.~~

~~Section 4. Processing a Completed Application by Facsimile.~~

~~(1) The county clerk shall accept any properly-completed Federal Post Card Application by facsimile for the purposes of voter registration and application for an absentee ballot for all elections that occur after the date the application is received until the next general election from any person who fulfills the eligibility requirements listed in Section 2(1) of this administrative regulation.~~

~~(2) The county clerk shall accept a properly-completed application for voter registration when consistent with the timelines established by KRS 116.0452.~~

~~(3) If an application for an absentee ballot is received by facsimile less than seven (7) days before the applicable election, the county clerk shall not process the application. If a completed application for an absentee ballot is received by facsimile not less than seven (7) days before the election, then the county clerk shall affix his or her seal to the application, in accordance with KRS 117.085(1)(b).~~

~~(4) The county clerk shall verify the applicant's eligibility. If the applicant is eligible to vote in the current election, then the county clerk shall prepare a faxable copy of the original blank absentee ballot.~~

~~(5) The county clerk shall mark the original blank absentee ballot "Faxed to {Military or Overseas} Voter" and the ballot shall be retained. The original blank absentee ballot shall not be reused.~~

~~(6) The county clerk shall complete a transmission sheet, the county clerk's portion of the voter verification sheet, and the instructions to voter sheet. The faxable copy of the original blank absentee ballot shall be sent via facsimile, along with the voter verification sheet, the instructions to voter sheet, and the transmission sheet to one (1) of the Federal Voting Assistance Program facsimile numbers listed on the transmission sheet or directly to the facsimile number provided by the voter.~~

~~(7) If the county clerk has faxed the materials through the Federal Voting Assistance Program's facsimile numbers, the Federal Voting Assistance Program shall transmit the documents to the voter via facsimile.~~

~~(8) If the county clerk receives a faxed application that does not clearly indicate whether the ballot is to be transmitted by mail or by facsimile, the county clerk shall transmit the blank absentee ballot by U.S. mail.~~

~~Section 5. Voter's Instructions on Completing an Absentee Ballot Received Via Facsimile.~~

~~(1) When a voter receives an absentee ballot via facsimile, the voter shall mark the absentee ballot and seal it in an inner envelope. The voter shall then complete and sign the voter verification sheet.~~

~~(2) If the voter required assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.~~

~~(3) The voter shall:~~

~~(a) Print the voter's name, voting address, and precinct number on the back of the outer envelope as found on the voter verification sheet;~~

~~(b) Seal the voter verification sheet and the inner envelope containing the absentee ballot in an outer envelope;~~

~~(c) Place the voter's signature across the back flap of the outer envelope;~~

~~(d) Print "Absentee Ballot" on the front of the outer envelope without obstructing the address area; and~~

~~(e) Mail the envelope to the address for the county clerk located on the voter instruction sheet.~~

~~(4) The absentee ballot shall be received by the county clerk through U.S. mail by the time established by the general election laws for the closing of the polls in accordance with KRS 117.086(1) in order to be counted~~].

Section 5[~~6~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a)[~~"Instructions for Faxing or Emailing an Absentee Ballot to a Qualified Kentucky Resident", SBE 46, June 2010;~~

~~(b) "Official Elections Material – Electronic Transmission Sheet";~~

~~(c) "Federal Post Card Application", Standard Form 76 (Rev. 10-2005);~~

~~(d)~~] "Instructions for Voting to a Covered Voter[~~Qualified Kentucky Resident~~] Who Has Been Faxed or Electronically Transmitted a Military-Overseas Ballot[~~Emailed an Absentee Ballot~~]", SBE 46A, rev. July 2014;

(b) "Voter Assistance Form", SBE 31, 02/06; and

(c)[~~June 2010; and (e)~~] "Voter Verification and Declaration[~~Sheet~~]", SBE 46B, rev. July 2014[~~June 2010~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALISON LUNDERGAN GRIMES, Chair

APPROVED BY AGENCY: July 22, 2014

FILED WITH LRC: July 22, 2014 at 2 p.m.

CONTACT PERSON: Lindsay Hughes Thurston, Assistant Secretary of State, 700 Capital Ave., Ste. 152, Frankfort, Kentucky 40601, phone (502) 564-3490, fax (502) 564-5687.

KENTUCKY STATE BOARD OF ELECTIONS
(As Amended at ARRS, October 14, 2014)

31 KAR 4:140. Submission of the federal postcard application via electronic mail[~~Electronic submission of the Federal Post Card Application and delivery of the absentee ballot for military, their dependents, and overseas citizens~~].

RELATES TO: KRS 116.045(4)(e)[~~116.995~~], 117.079, 117.085, ***117A.030(4),*** 117A.050(3), 117A.060(3), ***52 U.S.C. 20302(e)[42 U.S.C. 1973ff-1]***[~~117.995, 119.265, 369.107, 42 U.S.C. 1973~~]

STATUTORY AUTHORITY: KRS 116.045(4)(e),[~~117.015(1)(a),~~] 117.079, 117.086(1), ***52 U.S.C. 20302(e)[42 U.S.C. 1973ff-1]***

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. ***52 U.S.C. 20302(e)[42 U.S.C. 1973ff-1(a-f)]*** requires the states to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request voter registration applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. ***KRS 117.086(1) authorizes the board to promulgate administrative regulations establishing security requirements for the transmission of voted absentee ballots[~~KRS 117A.050(3) provides that a covered voter may use the electronic transmission system or any other approved method to register to vote. KRS 117A.060(3) provides that a covered voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot~~]***. This administrative regulation authorizes covered voters to submit federal postcard applications via electronic mail and establishes

the procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail[~~KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Military and Overseas Voter Empowerment Act of 2009, Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1(a-f), requires the states to provide not less than one means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, blank balloting, and election materials and information. 42 U.S.C. 1973ff-1(h) requires each state to develop a free access system by which an absent uniformed services voter or overseas voter may determine whether the absentee ballot has been received by the county clerk. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117.086(1) authorizes the State Board of Elections to promulgate absentee ballot security requirements. This administrative regulation establishes procedures for the county clerk and the qualified voter to follow when transmitting and receiving the Federal Post Card Application and transmitting the absentee ballot electronically~~].

Section 1. Definitions. (1) "Covered voter" is defined by KRS 117A.010(1).

(2) "Federal postcard application" is defined by KRS 117A.010(3).

(3) "Military-overseas ballot" is defined by KRS 117A.010(5)[~~"Absentee ballot application" means the Federal Post Card Application, Standard Form 76, electronically sent to the county clerk.~~

~~(2) "FVAP" means the Federal Voting Assistance Program, an office within the Department of Defense responsible for administering UOCAVA and MOVE.~~

~~(3) "Instructions to voter sheet" means the "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Emailed an Absentee Ballot," SBE 46A.~~

~~(4) "MOVE" means the Military and Overseas Citizen Empowerment Act, Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1.~~

~~(5) "Registered voter" means a resident of Kentucky who is eligible to vote and is a:~~

~~(a) Military personnel;~~

~~(b) Dependent of a member of the Military; or~~

~~(c) Other resident of Kentucky residing outside the United States.~~

~~(6) "Transmission sheet" means the Official Election Materials – Electronic Transmission Sheet.~~

~~(7) "UOCAVA" means the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff.~~

~~(8) "Voter verification sheet" means the SBE 46B, the form the registered voter signs and includes the voter assistance oath~~].

Section 2. County Clerk's Electronic Mailing Address.[~~(1) A county clerk that has online capabilities shall follow the process established by this administrative regulation in administering UOCAVA and MOVE for the electronic transmission of Federal Post Card Applications, absentee ballot requests, and blank absentee ballots.~~

~~(2)~~] The county clerk shall use the county clerk's electronic mailing address provided or recognized by the Kentucky Department of Transportation to send to and receive from covered voters voter registration applications, military-overseas ballot applications, military-overseas ballots, and related voting, balloting, and election information[~~receive a voter's Federal Post Card Application, to send a blank absentee ballot, and to send election related materials.~~

~~(3) The county clerk shall accept any properly completed Federal Post Card Application received electronically for the purposes of voter registration and application for an absentee ballot for all elections that occur after the date the application is received until the next general election from any registered voter as defined by this administrative regulation~~].

Section 3. Federal Postcard Applications Submitted Via Electronic Mail. (1) A covered voter may submit a federal postcard application to the county clerk via electronic mail to register, reregister, and to apply for a military-overseas ballot.

(2) The county clerk shall treat a federal postcard application submitted by a covered voter via electronic mail in the same manner as a federal postcard application submitted via the electronic transmission system established under KRS 117A.030(4)[~~Processing a Completed Application electronically.~~

~~(1) If the county clerk receives notification of a voter's absentee ballot application electronically less than seven (7) days before the applicable election, the county clerk shall not process the application.~~

~~(2) If the county clerk receives notification of a voter's completed absentee ballot application electronically not less than seven (7) days before the election, then the county clerk shall affix his or her seal to the absentee ballot application.~~

~~(3) The county clerk shall then verify the voter's eligibility. If the voter is eligible to vote in the current election, then the county clerk shall prepare a PDF copy of the original blank absentee ballot. The original blank absentee ballot shall then be marked "Emailed to {Military or Overseas} Voter" and retained.~~

~~(4) The original blank absentee ballot shall not be reused. The electronic copy of the original blank absentee ballot shall be sent electronically to the voter, along with the transmission sheet, Instructions to voter sheet, and the voter verification sheet, to either the FVAP Electronic Transmission Service at the email address listed on the transmission sheet or directly to the voter at the email address provided on the voter's absentee ballot application.~~

~~Section 4. Voter's Instructions on Completing an Absentee Ballot Received Electronically.~~

~~(1) When a voter receives an absentee ballot electronically from the county clerk, the voter shall print the absentee ballot, mark the absentee ballot, and seal it in an inner envelope.~~

~~(2) The voter shall then complete and sign the Voter Verification Sheet. If the voter requires assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.~~

~~(3) The voter shall print the voter's name, voting address, and precinct number on the back of the outer envelope as found on the voter verification sheet. The voter shall then seal the voter verification sheet and the inner envelope containing the absentee ballot in an outer envelope. The voter shall then sign across the back flap of the outer envelope. The voter shall print "Absentee Ballot" on the front of the outer envelope without obstructing the address area.~~

~~(4) The voter shall mail the envelope to the appropriate county clerk. The absentee ballot shall be required to be received, by 6 p.m. local time on Election Day, to the county clerk through the mail in order to be counted.~~

~~Section 5. Military and Overseas Voter Free Access System.~~

~~(1) The voter may determine the date the county clerk delivered the blank absentee ballot to the voter and the date the voter's voted ballot was received by the county clerk by utilizing the Absentee Ballot Status Inquiry System on the State board of Elections' Web site, http://www.elect.ky.gov/.~~

~~(2) The county clerk shall participate in the free access system developed by the State Board of Elections or create a similar system on the local level by which the requirements of 42 U.S.C. 1973ff-1(h) are fulfilled.~~

~~Section 6. If any person has knowledge of a failure to execute the duties established by this administrative regulation, the person shall contact the State Board of Elections or the Attorney General's Office to make a complaint of a violation in accordance with KRS 116.995, 117.995(2), or 119.265.~~

~~Section 7. Incorporation by Reference.~~

~~(1) The following material is incorporated by reference:~~

~~(a) "Instructions for Faxing or Emailing an Absentee Ballot to a Qualified Kentucky Resident", SBE 46, June 2010;~~

~~(b) "Federal Post Card Application", Standard Form 76A (Rev. 10-2005);~~

~~(c) "Official Elections Material – Electronic Transmission Sheet";~~

~~(d) "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Electronically Sent an Absentee Ballot", SBE 46A, June 2010; and~~

~~(e) "Voter Verification Sheet", SBE 46B, June 2010.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Offices of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m~~].

ALISON LUNDERGAN GRIMES, Chair

APPROVED BY AGENCY: July 22, 2014

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CONTACT PERSON: Lindsay Hughes Thurston, Assistant Secretary of State, 700 Capital Ave., Ste. 152, Frankfort, Kentucky 40601, phone (502) 564-3490, fax (502) 564-5687.

KENTUCKY STATE BOARD OF ELECTIONS
(As Amended at ARRS, October 14, 2014)

31 KAR 5:010. Use of the federal write-in absentee ballot[~~in elections for federal office~~].

RELATES TO: KRS 117.079, ***117.086(6),*** 117A.050(2), 117A.060(3), 117A.100, 117A.130, 117A.160(1), ***52 U.S.C. 20302[42 U.S.C. 1973ff-1]***[~~117.085, 42 U.S.C. 1973ff-2, 42 U.S.C. 1973ff-6~~]

STATUTORY AUTHORITY: KRS 117.079, 117A.030(2), ***117A.130, 52 U.S.C. 20302(a)(3)[42 U.S.C. 1973ff-1]***[~~42 U.S.C. 1973ff-2~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. ***52 U.S.C. 20302(a)(3)[42 U.S.C. 1973ff-1(a)(3)]*** requires states to permit absent uniformed service voters and overseas voters to use federal write-in absentee ballots in general elections for federal office.***[KRS 117A.050(2) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of a federal write-in absentee ballot, if the declaration is received during the period registration is open under KRS 116.045. KRS 117A.060(4) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official by the close of business hours seven (7) days before the election. KRS 117A.100 provides that a covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in KRS 117A.020.]*** KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received.***[KRS 117A.160(1) establishes the criteria for accepting as a valid vote a write-in ballot authorized under KRS Chapter 117A.]*** KRS 117A.030(2) ***authorizes[~~permits~~]*** the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating administrative regulations covering the use of the federal write-in absentee ballot and establishing an electronic-free access system pursuant to KRS 117A.130. This administrative regulation establishes the procedures for the use of the federal write-in absentee ballot in elections in Kentucky and implements the electronic free-access system pursuant to KRS 117A.130[~~KRS 117.079 requires the State Board of Elections to promulgate administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States. This administrative regulation establishes the requirements and procedures for absentee voting in a runoff primary election for residents of Kentucky residing outside of the United States and Kentucky residents who are military personnel serving on active duty outside of the United States to cast a ballot by use of the Federal Write-in Absentee Ballot~~].

Section 1. Definitions. (1) "Covered Voter" is defined by KRS 117A.010(1).

(2) "Federal write-in absentee ballot" is defined by KRS 117A.010(4).

(3) "Military-overseas ballot" is defined by KRS 117A.010(5).

Section 2. ***Suspension of Provisions of 31 KAR 6:030[~~Definition of a Vote for Federal Write-in Absentee Ballots~~]***. The requirements of 31 KAR 6:030***, Uniform Definition of a Vote***, Section 5(2)(a) and Section 6(1), (2), and (9), shall be suspended for the purposes of this administrative regulation.

Section 3. Receipt of Federal Write-in Absentee Ballot. Upon receiving a federal write-in absentee ballot, the county clerk shall:

(1) Not open the inner security envelope;

(2) Examine the voter's declaration/application accompanying the federal write-in absentee ballot to determine whether it was submitted by a covered voter for the purpose of registering to vote or requesting an absentee ballot;

(3) If the voter's declaration/application accompanying the federal write-in absentee ballot was submitted by a covered voter for the purpose of registering to vote or requesting an absentee ballot, process the application in the same manner as a federal postcard application;

(4) Enclose the voter's declaration/application accompanying the federal write-in absentee ballot and the inner security envelope in a separate envelope and label the outer envelope "FWAB"; and

(5) Deposit the outer envelope in a locked ballot box pursuant to KRS 117.086(6).

Section 4. Receipt of State Ballot Overrides Federal Write-in Absentee Ballot.

(1) The federal write-in absentee ballot shall remain in the locked ballot box pursuant to KRS 117.086(6) and not be opened until after the deadline for receipt of the state absentee ballot.

(2) If the county clerk receives no later than the deadline for receipt of the state absentee ballot a valid and voted state absentee ballot from a covered voter from whom the county clerk also receives a federal write-in absentee ballot, the county clerk shall not unseal the inner security envelope containing the federal write-in absentee ballot and shall write on the inner security envelope containing the federal write-in absentee ballot, "Cancelled because state absentee ballot received."

Section 5. Electronic Free-Access System. Each county clerk shall either participate in the electronic free-access system established by the State Board of Elections or establish a local electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received[~~"Absent voter" means a resident of Kentucky who is~~

~~eligible and registered to vote and is an:~~

~~(a) "Absent uniformed services voter" as defined by 42 U.S.C. 1973-ff-6(1); or~~

~~(b) "Overseas voter" as defined by 42 U.S.C. 1973ff-6(5).~~

~~(2) "FWAB" means the Federal Write-in Absentee Ballot developed by the Federal Voting Assistance Program.~~

~~Section 2. Any absent voter may cast a ballot by use of the FWAB in any primary, regular, or special election for federal office as long as the voter has made or attempts to make timely application for, and does not receive the state absentee ballot in time to cast a ballot for the election. Any county board of elections that receives a voted FWAB shall assume that the absent voter has made or attempted to make timely application for a state absentee ballot.~~

~~Section 3. When to count the FWAB.~~

~~(1) A FWAB received by the county board of elections from an absent uniformed services voter shall not be counted if the FWAB is submitted from within the voter's county of residence.~~

~~(2) A FWAB received by the county board of elections from an overseas voter shall not be counted if the ballot is submitted from any location in the United States.~~

~~Section 4. Completing the FWAB. (1) In completing the FWAB:~~

~~(a) The absent voter may designate a candidate in the following ways:~~

~~1. In a primary, by writing in the name of the candidate; or~~

~~2. In a general election, by writing in the name of the candidate or by writing in the name of a political party, in which case the ballot shall be counted for the candidate of that political party.~~

~~(b) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the electors supporting the candidate named.~~

~~(c) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot if the intention of the voter can be ascertained.~~

~~(d) The requirements of 31 KAR 6:030 shall be suspended for the purposes of this administrative regulation.~~

~~(2) The Federal Write-In Absentee Ballot shall not be used for purposes of voter registration or to request an absentee ballot.~~

~~Section 5. Receipt Of State Ballot Overrides FWAB. (1) An absent voter who submits a FWAB and subsequently receives a state absentee ballot may submit the state absentee ballot.~~

~~(2) The county board of elections shall not unseal or count the FWAB if the county clerk receives a valid and voted state ballot by 6:00 p.m., prevailing time, on election day.~~

~~(3) The county clerk shall mark on the outer envelope of the sealed FWAB the words, Cancelled because state ballot received.~~

~~Section 6. Prohibiting Refusal To Accept Ballot For Failure To Meet Certain Requirements. A county board of elections shall not refuse to accept and process any otherwise valid FWAB submitted in any manner by an absent voter solely on the basis of the following:~~

~~(1) Notarization requirements;~~

~~(2) Restrictions on paper type, including weight and size; and~~

~~(3) Restrictions on envelope type, including weight and size.~~

~~Section 7. Incorporation by Reference. (1) "Federal Write-In Absentee Ballot", Standard Form 186A, October 2005 edition, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Offices of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m~~].

ALISON LUNDERGAN GRIMES, Chair

APPROVED BY AGENCY: July 22, 2014

FILED WITH LRC: July 22, 2014 at 2 p.m.

CONTACT PERSON: Lindsay Hughes Thurston, Assistant Secretary of State, 700 Capital Ave., Ste. 152, Frankfort, Kentucky 40601, phone (502) 564-3490, fax (502) 564-5687.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Accountancy
(As Amended at ARRS, October 14, 2014)

201 KAR 1:190.[~~Computer-based~~] Examination sections, applications, and procedures.

RELATES TO: KRS 325.270, 325.261(4)

STATUTORY AUTHORITY: KRS 325.240***(2)[~~(4)~~]***, 325.270***(1),*** (2)

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 325.240(2) authorizes the board to promulgate administrative regulations to administer KRS Chapter 325.*** KRS 325.270***(1) and (2) require[~~requires~~]*** the board to ***authorize[~~conduct~~]*** examinations for individuals seeking to become certified public accountants***, and permit the board to, by administrative regulation, adopt standards and fees governing all examination policies and procedures***. KRS 325.261(4) requires passage of an examination prior to a person becoming licensed as a certified public accountant and for the board to determine the subjects to be included on the examination. This administrative regulation establishes the subjects, also referred to as sections, to be included on the examination, the procedures, and fees associated with the administration of the examination.

Section 1. Definitions. (1) "Accounting course" means the subject matter contained in the course description or catalog issued by a college or university includes auditing, tax, accounting standards, principles, or processes[~~a course that contains in the course prefix or title, the word accounting or a substantially-equivalent word~~].

(2) "AICPA" means the American Institute of Certified Public Accountants, the entity that[~~prepared and graded the paper and pencil based Uniform CPA Examination and now~~] prepares and grades the Uniform CPA[~~computer-based certified public accountant~~] Examination.

(3) "Business-related subjects" means courses that contain in the course prefix or title an indication that the course subject matter is one (1) of the following: business, finance, marketing, management, economics, computers, statistics, or accounting.

(4) "CLEP credit" means credit granted by a university or college to a prospective student who obtains a passing score on an exam administered through the College Level Examination Program[~~"Conditional credit" means the procedure utilized by the board for the paper and pencil based licensure examination that allowed an exam candidate who received a passing score of seventy-five (75) or higher on two (2) or more of the sections of the examination and a grade of fifty (50) or higher on each section taken but not passed during the same examination to retain the passing scores earned only for the next six (6) examinations regardless of whether the candidate sat for the future examinations~~].

(5) "DSST credit" means credit granted by a university or college to a prospective student who obtains a passing score on an exam administered through the Dantes Subject Standardized Testing program.

(6) "Life assessment course" means a course where a student earns credit at a university or college based upon the student's personal life and work experiences.

(7) "Major or concentration in accounting" means a minimum of thirty-nine (39) semester hours in business-related subjects of which twenty-seven (27) semester hours shall consist of accounting courses[~~subjects~~].

(8)[~~(6)~~] "NASBA" means the National Association of State Boards of Accountancy, which operates a nationwide computer data bank for candidates applying to sit for the Uniform CPA[~~computer-based certified public accountants~~] Examination.

(9)[~~(7)~~] "Official transcript" means an official document issued

by [~~record from~~] a college or university that specifies the college course work completed, degrees awarded, the date the degree was awarded, and contains an authorizing signature or seal.

(10)[~~(8)~~] "Prometric or its successor" means the testing service in charge of administering the Uniform CPA[~~computer-based certified public accountants~~] Examination.

(11)[~~(9)~~] "Quarter hour" means 66/100ths of a semester hour.

(12)[~~(10)~~] "Testing window" means the two (2) months out of each three (3) month period during a calendar year when an exam candidate may sit for the Uniform CPA[~~computer-based certified public accountants~~] Examination.

(13)[~~(11)~~] "Uniform CPA Examination" means the computer[~~paper and pencil~~] based version of the licensure examination administered by the AICPA[~~board prior to January 1, 2004~~].

Section 2. Examination Sections. The board has adopted the Uniform CPA[~~computer-based certified public accountants~~] Examination prepared by the AICPA as the examination every candidate seeking to receive a license shall sit for and obtain a passing grade. The sections[~~to be~~] included on this examination shall be:

(1) Auditing and Attestation[~~. This section replaces the auditing section on the paper and pencil-based examination~~];

(2) Financial Accounting and Reporting;

(3) Regulation[~~. This section replaces the accounting and reporting section on the paper and pencil-based examination~~]; and

(4) Business Environment and Concepts.[~~This section replaces the business law and professional responsibilities section on the paper and pencil-based examination.~~]

Section 3. Grading Procedures and Acquiring Credit for Obtaining a Passing Score. (1) An exam candidate shall receive a passing score on all sections of the examination to be eligible to receive a license.

(2) The passing score shall be seventy-five (75) on each section. An exam candidate may retain a passing score on any section even though the candidate may have sat for and failed other sections of the examination at the same sitting.

(3) Subject to the exception contained in subsection (4) of this section, an exam candidate may sit for one (1) or any number of the four (4) sections of the examination at a time during a testing window.

(4) An exam candidate shall not sit more than once for the same section of the examination during a testing window.

(5)[~~Conditional credit received under the paper and pencil examination shall be transferred to the four (4) sections of the computer-based examination as follows:~~

~~(a) Accounting and Reporting to Regulation;~~

~~(b) Financial Accounting and Reporting remains the same;~~

~~(c) Auditing to Auditing and Attestation; and~~

~~(d) Business Law and Professional Responsibilities to Business Environment and Concepts.~~

~~(6) Transition period for conditional credit.~~

~~(a) An exam candidate awarded conditional credit on the paper and pencil examination shall be allowed a transition period to complete the remaining sections of the computer-based certified public accountants examination.~~

~~(b) The transition period shall begin to run January 1, 2004 and last until the candidate utilizes the opportunities to sit for the examination remaining to him or her if the paper and pencil examination was still in effect.~~

~~(c) This shall be six (6) testing windows or less, or the number of opportunities remaining under the paper and pencil examination multiplied by six (6) months, whichever occurs first.~~

~~(d) This time period shall control even when a passing score on a section of the computer-based examination is received.~~

~~(e) Failure to receive a passing score on the remaining sections of the examination at the conclusion of this transition period shall result in the conditional credit expiring.~~

~~(7)(a)~~] When an exam candidate[~~without conditional credit~~] initially receives a passing score on a section of the Uniform CPA [~~computer-based certified public accountants~~] Examination, the candidate shall have[~~a minimum of~~] eighteen (18) months following the last day of the month of the administration of that examination section to obtain a passing score on the remaining sections of the[~~computer-based~~] examination.

(a)[~~(b)~~] Failure to receive a passing score on the remaining sections of the[~~computer~~] examination within the eighteen (18) months shall result in the expiration of the initial passing score but not other sections passed during that eighteen (18) month period.

(b)[~~(c)~~] All sections of the[~~computer-based~~] examination shall be passed during an eighteen (18) month time period for the candidate to be considered to have passed the examination.

(6)[~~(8)~~] ***One (1) request to extend the time to retain[~~An additional number of opportunities to sit for the examination and maintain any~~]***[~~earned conditional credit or~~] passing scores beyond the ***time*** restrictions contained in this section ***shall[~~may~~]*** be granted ***to a candidate who has sat for one (1) section of the exam during the same testing window when the passing score was to expire. The time extension shall expire on the last day of the testing window that immediately follows the month in which the score was scheduled to expire[~~at the discretion of the board for good cause~~]***.

Section 4. Initial Examination Applicants. ***(1) Initial examination application process.***

(a) An initial examination applicant shall submit a complete, notarized Application for the Uniform CPA Examination.

(b) The applicant shall:

1. Indicate whether the applicant has been convicted, plead guilty, entered an Alford plea, or a plea of no contest to a felony or misdemeanor, other than a minor traffic violation, and if so, submit with the application:

a. A copy of the judgment or sentence of conviction;

b. A criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of the application, or a similar document from the out of state agency where the conviction was entered; and

c. A letter of explanation;

2. Indicate whether the applicant has been denied admission to the Uniform CPA Examination, and if so, attach to the application a letter explaining the reason, date, and jurisdiction of the denial;

3. Indicate whether the applicant has had disciplinary action taken against any professional license, and if so, attach to the application:

a. A letter indicating the jurisdiction and date of action;

b. A copy of all records associated with the action; and

c. An explanation of the circumstances; and

4. Submit an official transcript from each college or university that evidences completion of the educational requirements established in KRS 325.261, which includes a major or concentration in accounting. Course credit hours that are based upon a quarter hour system shall be converted to semester hours.

(c) An applicant requesting reasonable accommodations in testing due to a disability shall complete an Exam Applicant Special Accommodations Request Form supported by documentation no more than three (3) years old from a qualified examiner that shall include:

1. A diagnosis of the disability; and

2. Recommendation for the specific accommodations.

(d) The board shall not be responsible for the costs associated with obtaining the required documentation, but shall be responsible for the costs of reasonable accommodations that are provided to the applicant.

(e) The applicant shall submit a fee with the Application for the Uniform CPA Examination in the amount of:

1. Thirty (30) dollars for the application; and

2. Thirty (30) dollars for each section of the examination the applicant intends to take.

(f) Fees shall be nonrefundable and payment shall be in the form of a check or money order made payable to the

Kentucky State Board of Accountancy. If the institution the check or money order is drawn on does not honor the check or money order, the application shall be incomplete and returned.

(2) Educational Requirements.

(a) Educational requirements shall have been completed at:

1. A college or university within the United States that was accredited by one (1) of the following accrediting associations when the degree was granted:

a. Middle States Association of Colleges and Schools;

b. North Central Association of Colleges and Schools;

c. New England Association of Schools and Colleges;

d. Northwest Association of Schools, Colleges and Universities;

e. Southern Association of Colleges and Schools; or

f. Western Association of Schools and Colleges; or

2. A postsecondary educational institution outside the United States with course credits certified by a credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc., or NASBA.

(b) The certification required by paragraph (a)2. of this subsection shall indicate:

1. That the foreign degree is equivalent to a baccalaureate or master's degree earned in an accredited United States college or university as described in KRS 325.261 and this administrative regulation;

2. That the applicant had a major or concentration in accounting;

3. The title of all courses completed by the applicant outside of the United States; and

4. The amount of credit awarded to the applicant for each course.

(c) The board may consult with a Kentucky state-funded four (4) year institution of higher education for assistance in evaluating the hours earned and the accreditation of an educational institution under this subsection.

(3)(a) Effective January 1, 2015, an applicant shall not receive credit toward satisfying the education requirements in KRS 325.261 and this administrative regulation for any credit hours awarded through a life assessment course or for DSST credit.

(b) Effective January 1, 2015, an applicant who received CLEP credit, or credit hours from a college or university for completing an internship or co-op program may use a maximum of six (6) of those hours from each program for a total of twelve (12) hours solely toward satisfying the 150 hour requirement in KRS 325.261(5).[An applicant shall submit an application to sit for the examination. The applicant shall submit:

(1) A completed "Application for the Uniform CPA][Certified Public Accountant]***[Examination" that includes the following information:***

(a) The applicant's name, address, primary][and secondary]***[telephone number]***[numbers]***[, date of birth, mother's maiden name, and Social Security number. If the applicant does not have a Social Security number then the candidate shall submit documentation]***[an identification number]***[issued by the appropriate]***[a]***[federal agency that has authorized the candidate to enter and remain in the United States during the testing period;***

(b) The state of which the applicant is a legal resident;

(c) An e-mail address;

(d) Whether the applicant has:

1. Ever changed his or her name; and if so, a list of the prior names;

2. Taken the Uniform CPA Examination][or the computer-based certified public accountant examination]***[before; and if so, the date and state where it was taken;***

3. Been convicted, plead guilty, entered an Alford plea or a plea of no contest to a felony or misdemeanor, other than a minor traffic violation; and if so submit with the application a:

a.][, a]***[Copy of the judgment, or sentence of conviction;***

b. Kentucky Administrative Office of the Courts Criminal Court Criminal Background Check form AOC-RU-004, or similar document from the out of state agency where the conviction was entered;][,]***[and***

c.][a]***[Letter of explanation]***[shall be attached to the application]***[;***

4. Been denied admission to the Uniform CPA Examination][or the computer-based certified public accountant examination]***[; and if so, a letter explaining the reason, date, and jurisdiction of denial shall be attached to the application; and***

5. Had disciplinary action taken against any professional license; and if so, a letter indicating the jurisdiction, date of action, a copy of all records associated with the action, and an explanation of the circumstances shall be attached to the application;

(e) The specific section or sections of the examination the applicant is applying to take;

(f) If applicable, an Exam Applicant Special Accommodations Request Form requesting a reasonable accommodation in testing due to a disability supported by documentation described in the form.][the applicant requests accommodations to the exam administration because of a disability that limits one (1) or more of his or her major life activities (e.g., walking, hearing, speaking, seeing, reading, or writing), a description of the disability and requested accommodations from the applicant and written documentation from an appropriately-licensed health care professional supporting the requested accommodation:

1. The documentation shall include a diagnosis of the disability and a specific recommendation and justification for the requested accommodation.

2.]***[The board shall not be responsible for the costs associated with]***[of]***[obtaining the required documentation]***[diagnosis and recommendation]***[, but shall be responsible for the costs of reasonable accommodations that are provided to the applicant;***

(g) The names of the colleges from which a transcript shall be attached to the application;

(h) The signature of the applicant certifying that:

1. The information in the application is true and correct;

2. The applicant:

a. Is applying for admission to the Uniform CPA][computer-based certified public accountants]***[Examination in conformity with Kentucky law;***

b. Has submitted the required application, attachments, and fees;

c. Has read and agrees to abide by the applicable laws and administrative regulations; and

d. A certification by a notary public that the application was subscribed and sworn to before the notary.

(2) An official transcript from each college or university which evidences completion of the educational requirements specified in KRS 325.261 which includes a major or concentration in accounting as defined in this administrative regulation.

(a) Effective January 1, 2015, an applicant shall not receive credit toward satisfying the education requirements in KRS 325.261 and this administrative regulation for any credit hours awarded through a life assessment course or the DSST program.

(b) Effective January 1, 2015, an applicant who received credit hours through the CLEP program or from a college or university for completing an internship or co-op program may use a maximum of six (6) of those hours from each program for a total of twelve (12) hours solely toward satisfying the 150 hour requirement in KRS 325,261(5).

(c) The educational requirements shall have been completed at:

1. A college or university within the United States that was accredited by one (1) of the following accrediting associations at the time the degree was granted:

a. Middle States Association of Colleges and Schools;

b. North Central Association of Colleges and Schools;

c. New England Association of Schools and Colleges;

d. Northwest Association of Schools, Colleges and Universities;

e. Southern Association of Colleges and Schools; or

f. Western Association of Schools and Colleges;

2. The board may consult with a Kentucky state-funded four (4) year institution of higher education for assistance in evaluating the hours purportedly earned and the accreditation of an educational institution; or

3. A postsecondary educational institution outside the United States whose course credits are certified by a][the Foreign Academics Credentialing Service (FACS) or another]***[credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc. or NASBA.***

(d)][(b)]***[The certification required by subparagraph (c)]***[(a)]***[3. of this subsection shall indicate]***[state that]***[the:***

1. Foreign degree is equivalent to a baccalaureate or master's degree earned in an accredited United States college or university as described in KRS 325.261 and this administrative regulation;][and]

[2. Applicant had a major or concentration in accounting as defined in this administrative regulation;

3. Title of all courses the applicant completed outside of the United States; and

4. Amount of credit awarded to the applicant for each course.][(c) A copy of the "Request for Advisory Evaluation of Foreign Credentials" form that FACS requires an applicant to use to request certification from its service.]

[(3) A fee in the amount of:

(a) Thirty (30) dollars for the application; and

(b) Thirty (30) dollars for each section of the examination the candidate intends to take.

(4) The fees shall be nonrefundable and payment shall be in the form of a check or money order made payable to the "Kentucky State Board of Accountancy". If the institution the check or money order is drawn on does not honor the check or money order, the application shall be deemed incomplete and returned.]

Section 5. (1)(a) The executive director of the board shall review all applications.

(b) If the executive director determines the application satisfies the requirements of this administrative regulation, the application shall be approved.

(c) If the executive director refuses to approve the application, it shall be submitted to the board for its review and consideration at its next regularly scheduled meeting.

(2) Applications approved by the executive director or the board shall be entered[forwarded to NASBA for entry] into the data bank operated by NASBA[that association]. NASBA shall then issue a payment coupon to the applicant that specifies the fees to be paid to NASBA, the AICPA, and Prometric to sit for the exam[advise the board that the candidate is eligible to schedule a date and time to sit for the examination with Prometric or its successor].

(3) Following payment of the required fees, NASBA shall issue a notice to schedule to the candidate which states the candidate[The executive director shall notify a candidate that he or she] is eligible to contact Prometric or its successor to schedule a date and time to sit for the examination.[This notification shall be known as a notice to schedule.]

(4)(a) A candidate shall have six (6) months from the date of issuance by NASBA[the board] of a notice to schedule to sit for the sections of the examination approved by the executive director or the board.

(b) The notice to schedule shall expire when the candidate has sat for the sections approved by the executive director or the board or at the conclusion of the six (6) month period whichever comes first.

(c) A notice to schedule ***that is not expired*** may be extended ***if a candidate describes in writing that the extension is necessary due to an emergency or a serious illness that will prohibit the candidate from sitting for a section of the exam prior to the conclusion of the six (6) month time period[for good cause]***.

(d) To obtain approval to sit for additional sections of the examination, a candidate shall submit a ***reexam[reexamination]*** application as described in Section 9 of this administrative regulation.

(5)(a) The exam candidate shall pay all costs associated with sitting for the Uniform CPA[computer-based certified public accountants] Examination charged by NASBA, Prometric or its successor, and the AICPA.

(b) The costs shall be paid no later than ninety (90) days following the date of issuance of the payment coupon[an invoice] from NASBA.

(c) Failure to pay these fees prior to the end of the ninety (90) day time period shall result in the cancellation of the payment coupon[notice to schedule] and require the candidate to submit a ***reexam[reexamination]*** application accompanied by the appropriate fees.

Section 6. Examination Rules of Conduct. (1) An examination candidate shall present two (2) forms of current and valid identification at the Prometric or its successor examination center. One (1) of these forms of identification shall be a state driver's license, a picture identification card issued by a state motor vehicle licensing agency, or a passport.

(2) The license or picture identification card shall be currently in effect and shall contain a photograph and signature.

(3) Failure to bring this identification to the examination center shall result in the candidate being prohibited from sitting for the examination.

(4) An examination candidate shall comply with all directives of the staff at the Prometric or its successor testing center and the rules of conduct in effect at the testing center.

(5) An examination candidate shall not:

(a) Use written materials or mechanical aids inside or outside the examination room during the course of the examination;

(b) Communicate with any person, other than the testing center staff, inside or outside the examination room, during the course of the examination;

(c) Copy answers or allows his or her answers to be copied;

(d) Substitute an individual in his or her place;

(e) Disclose in any manner any information concerning the examination questions or content;

(f) Falsify or misrepresent educational credentials or other information required for admission to the examination; or

(g) Fail to follow written or announced examination administration procedures.

Section 7. Examination Misconduct Penalties. An examination candidate who violates any of the provisions of this administrative regulation may be prohibited from:

(1) Further participation in that particular examination section;

(2) Receiving grades after sitting for any examination; or

(3) Sitting for subsequent examinations.

Section 8. An exam applicant shall immediately notify the board of a change in his or her mailing address.

Section 9. Reexam[Reexamination] Applicants. (1) Upon request the board shall mail a Reexam[reexamination] Application ***for the Uniform CPA Exam*** to every candidate who fails to pass the Uniform CPA[computer-based] Examination.

(2) The reexam[reexamination] application shall be mailed to the most recent address provided by the candidate.

(3) The board shall not be responsible if the reexam[reexamination] application is not delivered by the United States Postal Service.

(4)(a) ***The applicant shall:***

1. Indicate since the approval of the applicant's initial application whether the applicant has been convicted, plead guilty, entered an Alford plea, or a plea of no contest to a felony or misdemeanor, other than a minor traffic violation,

and if so, submit with the reexam application:

a. A copy of the judgment or sentence of conviction;

b. A criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application, or a similar document from the out of state agency where the conviction was entered; and

c. A letter of explanation; and

2. If not previously submitted, and if the applicant is requesting reasonable accommodations in testing due to a disability, complete an Exam Applicant Special Accommodations Request Form supported by documentation no more than three (3) years old from a qualified examiner that shall include:

a. A diagnosis of the disability; and

b. Recommendation for the specific accommodations.[~~To obtain approval to sit as a reexam candidate, the individual shall return the reexam~~][reexamination]***[~~application to the board. The reexam~~]***[reexamination]***[~~application shall contain the following information:~~***

[~~1. The applicant's name, current mailing address and current daytime telephone number, and date of birth~~][, mother's maiden name and Social Security number. If the applicant does not have a Social Security number then the candidate shall submit an identification number issued by a federal agency that has authorized the candidate to enter the United States]***[~~;~~]***

[~~2. The specific sections of the examination the applicant is requesting to sit for;~~]

[~~3. A statement that the required fee is attached;~~]

[~~4. If the applicant requests accommodations to the exam administration because of a disability, whether the required information is on file or is attached to the reexamination application; and~~]

[~~5. The applicant's signature.~~]

(b) The reexam[~~reexamination~~] application shall be received in the board's office prior to the reexam[~~reexamination~~] candidate being considered eligible to sit for any section of the exam.

(5)(a) The candidate shall return the completed reexam[~~reexamination~~] application with the reexam[~~reexamination~~] fee.

(b) The reexam[~~reexamination~~] fee shall be thirty (30) dollars per section. The reexam[~~reexamination~~] fee shall be nonrefundable and paid by check or money order made payable to the Kentucky State Board of Accountancy. If the institution the check or money order is drawn on does not honor the check or money order, the application shall be***[~~deemed~~]*** incomplete and returned.

(6) A reexam[~~reexamination~~] candidate who fails to comply with the requirements of this section shall not be permitted to sit for reexam[~~reexamination~~].

(7) The procedures and policies in Section 5 of this administrative regulation shall be applicable to a reexam[~~reexamination~~] application.

(8) The reexam[~~reexamination~~] candidate shall comply with the requirements of Sections 6, 7, and 8 of this administrative regulation.

Section 10.[~~The executive director shall review~~] Examination grades received from NASBA[~~before they are released to a candidate. Upon approval of the executive director, a copy of an examination candidate's grades~~] shall be:

(1) Posted on the board's Web site; and

(2) A copy mailed to each affected[~~him or her at the last known address provided by the~~] candidate.

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

(a) "Application for the Uniform CPA Examination"***, October*** 2014[~~Certified Public Accountant Examination", 2006, Kentucky State Board of Accountancy~~];

(b) "Reexam[~~Reexamination~~] Application for the Uniform CPA Examination", 2014[~~Certified Public Accountant Examination", 2006, Kentucky State Board of Accountancy~~]; and

(c) "Exam Applicant Special Accommodations Request Form", ***October*** 2014[~~"Request for Advisory Evaluation of Foreign Credentials", 2003~~].

(2) This material[~~These documents~~] may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

TONI CARVER SMITH, President

APPROVED BY AGENCY: August 13, 2014

FILED WITH LRC: August 15, 2014 at noon

CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

GENERAL GOVERNMENT CABINET
Kentucky Board of Optometric Examiners
(As Amended at ARRS, October 14, 2014)

201 KAR 5:055. Telehealth.

RELATES TO: KRS ***320.300,*** 320.390

STATUTORY AUTHORITY: KRS 320.390(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.390(2) requires the Board of Optometric Examiners to promulgate administrative regulations to prevent abuse and fraud through the use of telehealth services, prevent fee-splitting through the use of telehealth services, and utilize telehealth in the provision of optometric services and in the provision of continuing education. This administrative regulation establishes***[these]*** requirements ***for the use of telehealth services***.

Section 1. Definitions. (1) "Contact lens prescription" is defined by KRS 367.680(3).

(2) "Eye examination" ***means an examination that meets the requirements for a complete eye examination established in[~~is defined by~~]*** 201 KAR 5:040, Section 7(1)***[(a)]***.

(3) "Face to face" means in person and not via telehealth.

(4) "Licensed health care professional" means an optometrist licensed pursuant to KRS Chapter 320, or a physician or osteopath licensed under KRS 311.550(12).

(5) "Optometrist" means an individual licensed by the Kentucky Board of Optometric Examiners ***to engage in the practice of optometry[~~as defined by KRS 320.210(2)~~]***.

(6) "Patient" means the person receiving services or items from an optometrist or a physician.

(7) "Physician" ***is[~~means an individual licensed by the Kentucky Board of Medical Licensure as~~]*** defined by KRS 311.550(12).

(8) ***"Practice of optometry" is defined by KRS 320.210(2).***

(9) "Prescription" means an order for a pharmaceutical agent, or any other therapy within the scope of practice of an optometrist or a physician.

(10)[(9)] "Prescription for eyewear" means a written prescription for visual aid glasses or ***a*** contact ***lens prescription[~~lenses~~]*** after a complete eye examination is performed by an optometrist or physician.

(11)[(10)] "Telehealth" is defined by KRS 320.390(3).

(12)[(11)] "Telehealth provider" means an optometrist or physician who performs a telehealth consultation.

(13)[(12)] "Telepractice" means the practice of optometry***[~~as defined in KRS Chapter 320~~]*** that is provided by using communication technology that is two (2) way, interactive, simultaneous audio and video.

(14)[(13)] "Visual aid glasses" is defined by KRS 320.210(4).

Section 2. Patient Identity, Communication and Informed Consent Requirements. (1) An optometrist-patient relationship shall not commence via telehealth.

(2) An initial, in-person meeting for the optometrist and patient who will prospectively utilize telehealth shall occur in order to evaluate whether the potential or current patient is a candidate to

receive services via telehealth.

(3) An optometrist who uses telehealth to deliver vision or eye care services shall at the initial, face-to-face meeting with the patient:

(a) Verify the identity of the patient;

(b) Establish a medical history and permanent record for the patient;

(c) Obtain alternative means of contacting the patient other than electronically such as by the use of a telephone number or mailing address;

(d) Provide to the patient alternative means of contacting the optometrist other than electronically such as by the use of a telephone number or mailing address;

(e) Provide contact methods of alternative communication the optometrist shall use for emergency purposes such as an emergency on call telephone number;

(f) Document if the patient has the necessary knowledge and skills to benefit from the type of telepractice provided by the optometrist; and

(g) Inform the patient in writing and document acknowledgement of the risk and limitations of:

1. The use of technology in the use of telepractice;

2. The potential breach of confidentiality of information or inadvertent access of protected health information due to technology in telepractice;

3. The potential disruption of technology in the use of telepractice;

4. When and how the optometrist will respond to routine electronic messages;

5. The circumstances in which the optometrist will use alternative communications for emergency purposes;

6. ***Others who[Who else]*** may have access to patient communications with the optometrist;

7. How communications shall be directed to a specific optometrist;

8. How the optometrist stores electronic communications from the patient; and

9. Whether the optometrist may elect to discontinue the provision of services through telehealth.

Section 3. Jurisdictional Considerations. A ***licensed health care professional[person]*** providing eye and vision services via telehealth***[:***

(1)] shall be licensed by the Kentucky Board of Optometric Examiners or the Kentucky Board of Medical Licensure if***[, at the time]*** services are provided***[, the services are provided]***:

(1)[(a)] To a person physically located in Kentucky; or

(2)[(b)] By a person who is physically located in Kentucky***[; and***

(2) May be subject to licensure requirements in other states where the services are received by the client].

Section 4. Representation of Services and Code of Conduct. (1) A telehealth provider shall not engage in false, misleading, or deceptive advertising. A person shall not advertise an eye examination unless the requirements of 201 KAR 5:040, Section 7(1)***[(a)]*** are met. A person shall not purport to write a prescription for ***eyewear[visual aid glasses or contact lenses]*** solely by using an autorefractor or other automated testing device.

(2) Treatment and consultation recommendations made in an online setting, including a prescription or a prescription for ***eyewear[visual aid glasses]*** via electronic means, shall be held to the same standards of appropriate practice as those in traditional practice, face-to-face settings. Treatment, including issuing a prescription for ***eyewear[visual aid glasses]*** based solely on an online autorefraction, shall not constitute an acceptable practice or standard of care.

(3) Prescriptions for controlled substances shall not be made via telehealth.

(4) A telehealth provider shall:

(a) Not split fees in accordance with KRS 320.300(3);

(b) Shall maintain a medical record of a service or item provided to a patient via telepractice;

(c) Document the patient's presenting problem, purpose, or diagnosis and include which services were provided by telepractice;

(d) Use secure communications with each patient including encrypted text messages, via email or secure Web site and not use personal identifying information in non-secure communications; and

(e) Dispense visual aids only in accordance with KRS 320.300(1).

Section 5. Utilization of Telehealth in Provision of Continuing Education. ***Credit for telehealth*** educational presentations ***shall be granted[are permitted via telehealth]*** in accordance with 201 KAR 5:030***, Section 2. Educational hours obtained through telehealth shall be considered as part of the credit hours granted in accordance with 201 KAR 5:030, Section 6(1)***.

JERALD COMBS, President

APPROVED BY AGENCY: August 14, 2014

FILED WITH LRC: August 15, 2014 at 11 a.m.

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

GENERAL GOVERNMENT CABINET
Board of Embalmers and Funeral Directors
(As Amended at ARRS, October 14, 2014)

201 KAR 15:015. Per diem compensation of board members.

RELATES TO: KRS ***316.170, 316.210[325.230, 325.240]***

STATUTORY AUTHORITY: KRS ***316.170(5), 316.210(1)[325.230(2), 325.240]***

NECESSITY, FUNCTION, AND CONFORMITY: KRS ***316.210(1) authorizes the Kentucky Board of Embalmers and Funeral Directors to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. KRS 316.170(5)[325.230(2)]*** requires the board to establish the amount of per diem compensation to be paid ***beginning January 1, 2015,*** to board members, not to exceed $200. This administrative regulation establishes the per diem amount to be received by board members.

Section 1. ***Beginning January 1, 2015,*** each member of the board shall receive $175.00 for each day spent in the discharge of his or her official duties.

KATHLEEN KEARNEY SCHELL, Counsel

LETICIA CHANDLER, Executive Director

APPROVED BY AGENCY: June 16, 2014

FILED WITH LRC: June 18, 2014 at 11 a.m.

CONTACT PERSON: Kathleen Kearney Schell, Counsel for the Board of Embalmers and Funeral Directors, 422 East Seventh Street, Jeffersonville, IN 47130, phone 812-282-2646, fax 812-284-9621, email KathleenkSchell@aol.com.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, October 14, 2014)

201 KAR 30:180. Distance education standards.

RELATES TO: KRS 324A.035(3)(d), (f)***, 324A.050, 12 U.S.C. 3331-3351***

STATUTORY AUTHORITY: KRS ***324A.015(1),*** 324A.020, 324A.035(3)(d), (f)

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 324A.015(1) and 324A.020 authorize the board to promulgate administrative regulations and perform functions and duties***

necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. ***Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes the requirements for the renewal of certification or licensure of appraisers of real property in federally related transactions.*** This administrative regulation establishes the requirements for approval of distance education courses for real estate appraisers.

Section 1. Definitions. (1) "Distance education course" means an organized instructional program presented through the use of computer technology, satellite transmission, or optical fiber transmission.

(2) "Instructor" means the individual responsible for the dissemination of the educational information in a distance education course.

(3) "Provider" means an organization or individual offering an education course via computer technology, satellite transmission, or optical fiber transmission.

Section 2. Limitations on Distance Education Courses. A distance education course that involves less than two (2) hours of credit shall not be approved.

Section 3. Standards for Distance Education Course Approval. (1) To qualify for education credit, each distance education course, with information that specifically outlines the content of the course, shall be submitted for approval by the board in advance of the presentation of the course in accordance with this administrative regulation.

(2) The education provider applying for approval shall complete and submit the[~~following~~]:

(a) [~~The "~~]Distance Education Course Approval Application[~~"~~]; and

(b [~~The "~~]Distance Education Instructor Application[~~"~~].

(3) Board approval shall be given to a distance education course that[~~which~~] provides competent instruction in real estate appraisal to establish, maintain, and increase the student's skill, knowledge, and competency in real estate appraising.

(4) The content of a distance education course shall be reviewed to ensure that the course contributes to the licensee's professional knowledge and competence and for compliance with this administrative regulation.

(5) Course reviewers.

(a) The course shall be reviewed by a distance education course delivery consultant and two (2) appraisal content reviewers appointed by the board.

1. The distance education course delivery consultant appointed shall be an academic educator with demonstrated competency in the distance education field.

2. The appraisal content reviewer shall be an educator who is academically qualified in appraisal subjects ***and*** who holds a certified general real property appraisal certification.

(b) A report of findings and of the reviewers shall be***:***

1. Consolidated into a recommendation for approval or disapproval***;*** and

2. Delivered to the board within forty-five (45) days of receipt of a complete edition of the course.

(6) Each applicant who submits a distance education course for approval shall submit a letter of approval, to the board, for each class submitted, from one (1) of the following institutions:

(a) The International Distance Education Certification Center (IDECC);

(b) A college or university that is accredited by the Commission on Colleges; or

(c) A regional or national accrediting agency recognized by the U.S. Secretary of Education[~~and the Appraiser Qualifications Board of the Appraisal Foundation, for each education course being applied for approval~~].

(7) Every distance education course shall include a final examination with a comprehensive assessment of the student's overall mastery of the materials presented in the course which shall be administered after the completion of the course by:

(a) A proctor approved by the board in accordance with Section 5 of this administrative regulation; or

(b) ***Administration*** electronically on a computer workstation or other device.

Section 4. Provider Approval. (1) Credit for the classroom hour requirement for education courses delivered via distance education may be obtained from[~~the following~~]:

(a) A college or university;

(b) A community or junior college;

(c) A real estate appraisal or real estate related organization;

(d) A state or federal agency or commission;

(e) A proprietary school; or

(f) An education provider approved by the board in accordance with 201 KAR 30:150.

(2) Credit shall be granted for continuing education distance education courses that are consistent with the purposes of continuing education and that cover real estate appraisal related topics including:

(a) Ad valorem taxation;

(b) Arbitration;

(c) Business courses related to the practice of real estate appraisal;

(d) Development cost estimating;

(e) Ethics and standards of professional practice;

(f) Land use planning, zoning, and taxation;

(g) Management, leasing, brokerage, and timesharing;

(h) Property development;

(i) Real estate appraisal;

(j) Real estate financing and investment;

(k) Real estate law;

(l) Real estate litigation;

(m) Real estate related computer applications;

(n) Real estate securities and syndication;

(o) Real property exchange;

(p) Valuation of green buildings;

(q) Impact of seller concessions;

(r) The impact of personal property on the value of real property; or

(s) The impact of business value on real property value.

(3) Credit shall be granted for qualifying education distance education courses that cover Required Core Curriculum topics listed in 201 KAR 30:190, Section 8.

Section 5. Instructors and Proctors. (1) An instructor of a distance education course shall:

(a) Hold a Certified General Real Property Appraiser Certification or Certified Residential Real Property Appraiser Certification with:

1. A minimum of five (5) years of experience; and

2. Competency in the specific area of appraisal subject being taught;

(b) Hold a Certified Distance Education Instructor certification from the ***IDECC[~~International Distance Education Certification Center~~]***;

(c) Not have been found by the board to have violated the requirements of KRS 324A.050 or 201 KAR Chapter 30; and

(d) Submit a copy of the instructor's curriculum vitae and appraisal certification.

(2) If an instructor is replaced or added, the credentials of the new instructor shall be submitted for approval before that instructor may teach a course.

(3)(a) A proctor shall be the board approved individual responsible for supervising the distance education course examination.

(b) ***A proctor[~~Proctors~~]*** shall not be subject to the same requirements as those for ***a*** distance ***instructor[~~instructors~~]*** established[~~specified~~] in subsections (1) and (2) of this section.

(c) A proctor shall not be:

1. A licensed real estate salesperson or broker;

2. A licensed or certified real property appraiser;

3. Professionally affiliated with a real estate sales or real property appraisal office or business;

4. A member of the student's family; ***or[~~and~~]***

5. Professionally or personally associated with the student.

(d) A proctor may be selected from different professions, including:

1. A university, college, or community college professor or instructor;

2. A registered public librarian;

3. A public school administrator;

4. A Notary Public;

5. An attorney; or

6. A nominee of the provider approved by the board if the nominee has qualifications substantially equivalent to members of the groups identified in this paragraph.

(e) The proctor shall:

1. Verify that the person taking the examination is the person registered for the course by confirmation:

a. With a picture ID;

b. With another identification document, including ***a*** driver's license or student ID card; or

c. By familiarity;

2. Observe the student taking the exam;

3. Assure that the student does all the work alone without aids of any kind, including books, notes, conversation with others, or any other external resource;

4. Verify that the calculator used during the exam shall be a nonprogrammable, hand-held calculator;

5. Provide for the administration of a printed (hard copy) or CD-ROM based final examination;

6. Provide the student with the URL for the course examination which shall be supplied by the provider if a request for the examination is received from the student;

7. Assure that the student adheres to the time limit requirement specified for the examination;

8. Assure that the examination shall be completed in one (1) sitting;

9.a. Assure that, if there is an interruption, the board shall be notified that the examination was interrupted and the reason for the interruption; and

b. ***Assure that*** the board, or its designee, shall approve the request to resume; and

10. Upon completion of the examination, submit a certificate that [~~which~~] confirms that the:

a. Proctor verified the identity of the student;

b.[~~, that the~~] Examination was completed on the date assigned during the time permitted;[~~,~~] and

c.[~~that the~~] Student has done all the work alone without aids of any kind, including books, notes, conversation with others, or any other external resource while taking the examination, including access to Internet search engines or Web sites other than the examination.

Section 6. Course Delivery Medium. (1) A course delivery system shall contain provisions for interactivity including:

(a) Instructor feedback with a response time of no more than two (2) business days from student lesson assignment, quiz submissions, and inquiries;

(b) Readily available opportunity for student inquiry and general questions concerning the course;

(c) Timely clarification of confusing points or errors in the study text; and

(d) Instructor's review of a student's activity in the course at least every thirty (30) days to assess progress ***and find[~~determine~~]*** the cause of potential delays in the student's completion of the course.

(2) The provider shall provide the board's course reviewers with:

(a) Two (2) full copies of the courseware with free access to the course text, assignments, quizzes, and final examination; and

(b) The URL and any username or password required for free access, if Internet course delivery shall be used.

Section 7. Record Keeping and Reports. (1) The provider shall furnish to the board notification identifying the student, along with the name of the course in which the student is enrolled, as each enrollment is received by the provider.

(2) At the conclusion of the course, the student shall submit a Distance Education Student Independent Work Certification for the course.

(3) Upon the completion of the final examination, the proctor shall submit a Distance Education Proctor's Examination Certification.

(4) A Distance Education Course Evaluation of the student's on-line experience during the course shall be submitted at the conclusion of the course.

(5) A Certificate of Completion shall be delivered to the board and the student upon successful completion of the course and[~~a satisfactory score on~~] the final examination that contains:

(a) The course name and the provider's course number exactly as it appears on the Distance Education Course Approval Application;

(b) The student's name and address;

(c) Whether the student passed the course;

(d) An original authorized signature of a representative for the course provider;

(e) The dates and location that the course was in session;

(f) Information that the student was in attendance a minimum of fifty (50) minutes of each hour of instruction time excluding lunch and breaks; and

(g) The address and telephone number of the provider[~~containing, at a minimum, the information on the Real Estate Appraisers Board form~~].

Section 8. Fees. A provider shall pay a $100 nonrefundable fee in connection with each distance education course submitted for approval by the board for the review of the distance education delivery system and the course content.

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

(a) "Distance Education Course Approval Application", 2005;

(b) "Distance Education Student Independent Work Certification", 2005;

(c) "Distance Education Proctor's Examination Certification", 2005;

(d) "Distance Education Course Evaluation", 2005; and

(e) "Distance Education Instructor Application", 2007.

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HAROLD G. BRANTLEY, Chair

APPROVED BY AGENCY: August 14, 2014

FILED WITH LRC: August 14, 2014 at 2 p.m.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, October 14, 2014)

201 KAR 30:200. Reciprocity requirements for applicants licensed or certified in another state.

RELATES TO: KRS 324A.035(1), (3), 324A.065, 324A.075, 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.035(1), (3), 324A.075, 12 U.S.C. 3331 - 3351

NECESSITY, FUNCTION, AND CONFORMITY: 12 U.S.C. 3331 through 3351 requires the board to promulgate administrative

regulations for certification and licensure of appraisers of real property in federally related transactions. KRS 324A.075 authorizes the board to issue a license or certification to a person licensed or certified in another state under certain requirements. This administrative regulation establishes the requirements for certification or licensure of persons licensed or certified in another state.

Section 1. General. A licensee from another state who seeks to obtain a certification or license in Kentucky by reciprocity shall obtain a Kentucky real property appraiser certification upon terms and conditions established in this administrative regulation.

Section 2. (1) An individual who is a certified residential or a certified general real property appraiser out-of-state may apply for a Kentucky certification that is the same as the out-of-state certification held by that individual in the other state if the appraiser licensing program of the other state:

(a) Is in compliance with the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of Title XI Real Estate Appraisal Reform Amendments (12 U.S.C. 3331-3351) as administered by the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC); and

(b) Meets or exceeds the minimum certification criteria established by the Appraiser Qualifications Board (AQB) of The Appraisal Foundation upon application.

(2) To obtain a Kentucky certification issued by the board, an out-of-state applicant shall:

(a) Complete the ***notarized*** Application for ***KREAB Appraiser Credential[~~Out-of-state Resident Certification~~]***;

(b) File with the board a letter of good standing, license history, the current National Registry Appraiser Report from the National Registry of the ASC, or other proof of good standing issued to the applicant for reciprocity by the out-of-state appraiser regulatory agency;

(c) Be identified on the National Registry of The Appraisal Subcommittee as an active certified real property appraiser that currently conforms to the AQB criteria;

(d) Not have received disciplinary action that limited or stopped the ability to complete the practice of real property appraising; and

(e) Not have lost a license to practice any profession by revocation, suspension, or voluntary surrender***.***

(3) The out-of-state applicant shall indicate whether the applicant:

(a) Has had an application for certification or licensure as an appraiser denied by any agency within the Commonwealth or any other state, and if so, explain and submit with the application a copy of the denial notice;

(b) Has been reprimanded, fined, or had a license, certificate, or registration suspended, revoked, restricted, denied, or surrendered in the Commonwealth or in any other state, and if so, submit with the application:

1. A written explanation; and

2. A copy of any documentation that describes the charges and action taken by the agency;

(c) Is the subject of any pending investigation, administrative sanction proceeding, hearing, trial, or similar action by any agency that granted or denied the license, certificate, or registration, and if so, explain and submit with the application a copy of any documentation describing the charges;

(d) Has ever entered a plea of nolo contendere, been found guilty of, or been convicted of a felony, or within the last ten (10) years of a misdemeanor, and if so, submit with the application:

1. An explanation of the offense;

2. The location of the proceedings; and

3. A copy of all final court documents identifying the charges and assessing the penalties;

(e) Is awaiting trial or sentencing in any criminal proceeding, and if so, submit with the application:

1. An explanation of the facts of the alleged offense; and

2. The location of the proceedings; and

(f) Has had any disciplinary action brought against him or her as a member of any professional organization or trade association, and if so, submit with the application:

1. An explanation of the action;

2. A copy of any document reflecting the allegations; and

3. The final action or decision if rendered[~~;(f) Certify completion of the experience requirements in 201 KAR 30:050, Section 2, for the type of certification requested on the Application for Reciprocal Appraisal License/Certification; and~~

~~(g) Successfully complete a Kentucky real property appraiser law and administrative regulation course developed and offered by the board~~].

Section 3. Exemption from requirements. No provision of this administrative regulation shall be construed to prohibit the professional appraisal practice activities of any out-of-state certified appraiser who is performing the duties and responsibilities while a direct full-time employee of any entity of the United States government.

Section 4. Incorporation by Reference. (1) ***"Application for KREAB Appraiser Credential", October 2014, is incorporated by reference[~~The following material is incorporated by reference:~~***

~~(a) "Application for Out-of-State Resident Certification", June 2013, Kentucky Real Estate Appraisers Board; and~~

~~(b) "Application for Reciprocal Appraisal License/Certification", June 2013~~].

(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 G. BRANTLEY, Chair

APPROVED BY AGENCY: August 15, 2014

FILED WITH LRC: August 14, 2014 at 2 p.m.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Marriage and Family Therapists
(As Amended at ARRS, October 14, 2014)

201 KAR 32:035. Supervision of marriage and family therapist associates.

RELATES TO: KRS ***335.300,*** 335.320(6), ***335.330,*** 335.332

STATUTORY AUTHORITY: KRS 335.320(4), (5)***, (9)***

NECESSITY FUNCTION AND CONFORMITY: ***KRS 335.320(9) requires the board to promulgate administrative regulations to implement KRS 335.300 to 335.399.*** KRS 335.320(4) requires the board to license applicants who satisfy the experience and educational requirements and who have paid the fee. KRS 335.320(5) requires the board to review and approve supervision contracts between marriage and family therapy associates and their approved supervisors. This administrative regulation establishes the supervision requirements for marriage and family therapy associates and their board-approved supervisors.

Section 1. Definitions. (1) "Group supervision" means supervision of three (3) to six (6) supervisees with the supervisor.

(2) ***"Individual supervision" means supervision of one (1) or two (2) supervisees with the supervisor.***

(3) "Qualified mental health professional" means a licensed marriage and family therapist, licensed psychologist, licensed psychiatrist, licensed professional clinical counselor, or licensed

clinical social worker.

(4)[(3)] "Raw data" means video recorded sessions, live observation, or co-therapy with a board-approved supervisor.***[(4) "Individual supervision" means supervision of one (1) or two (2) supervisees with the supervisor.]***

Section 2. Qualifications for Board-Approved Supervisors Status. (1) ***Until December 31, 2015, a board-approved supervisor shall be:***

(a) An American Association of Marriage and Family Therapists (AAMFT) approved supervisor in good standing;

(b) An AAMFT supervisor in training;

(c) A marriage and family therapist licensed in Kentucky and in good standing with a minimum of five (5) years of experience in the practice of marriage and family therapy; or

(d) A person licensed and in good standing with a minimum of five (5) years of experience as a marriage and family therapist in another state, and who meets the licensure requirements for Kentucky.

(2) Effective January 1, 2016[~~2011~~], a board-approved supervisor shall be:

(a) An American Association of Marriage and Family Therapists (AAMFT) approved supervisor in good standing, who has been licensed in Kentucky for a minimum of five (5) years;

(b) An AAMFT supervisor in training who has been licensed in Kentucky for a minimum of five (5) years; or

(c) A marriage and family therapist licensed in Kentucky and in good standing with a minimum of five (5) years of experience in the practice of marriage and family therapy with the last eighteen (18) months of experience being in Kentucky[~~; or~~

~~(d) A person licensed and in good standing with a minimum of five (5) years of experience as a marriage and family therapist in another state, and who meets the licensure requirements for Kentucky~~].

(3)[(2)] To obtain initial board-approved supervisor status, an applicant who is not an AAMFT supervisor or supervisor in training in good standing shall provide proof of completion of six (6) hours of board-approved continuing education courses in supervision.

(a) The course shall be taken within the two (2) years preceding the date of application to become a board-approved supervisor.

(b) This requirement shall be in addition to the[~~fifteen (15)~~] hours of continuing education required for licensure renewal.

(c) Each approved course shall be live or online and shall include:

1. Kentucky law governing the practice of marriage and family therapy, both ***in*** KRS ***335.300 to 335.399[~~Chapter 335~~]*** and 201 KAR Chapter 32;

2. Theories of supervision;

3. Ethical issues involved in supervision; and

4. Supervisor responsibilities such as logs, treatment planning, and recording.

(4)[(3)] To maintain board-approved supervisor status, a non-AAMFT approved supervisor shall complete at least two (2) hours of continuing education in supervision every year. These two (2) hours shall be included in the[~~fifteen (15)~~] hours of continuing education required for licensure renewal.

(a) Each approved course shall be live or online and shall include:

1. Kentucky law governing the practice of marriage and family therapy, both ***in*** KRS ***335.300 to 335.399[~~Chapter 335~~]*** and 201 KAR Chapter 32;

2. Theories of supervision;

3. Ethical issues involved in supervision; and

4. Supervisor responsibilities such as logs, treatment planning, and recording.

(5)[(4)] To renew as a board-approved supervisor, an AAMFT approved supervisor ***or supervisor in training*** shall complete at least one (1) hour of continuing education every year in Kentucky law governing the practice of marriage and family therapy ***found both in KRS 335.300 to 335.399 and 201 KAR Chapter 32***. The course shall be attended live or on-line. The one (1) hour shall be included in the[~~fifteen (15)~~] hours of continuing education required for licensure renewal.

Section 3. Clinical Supervision. (1) Clinical supervision shall:

(a) Be equally distributed throughout the qualifying period and shall average at least four (4) hours per month as specified in the supervision contract;

(b) Be clearly distinguishable from psychotherapy, didactic enrichment, or training activities;

(c) Focus on raw data from the supervisee's[~~current~~] clinical work within in the last twelve (12) months;

(d) Be direct, face-to-face contact between the supervisor and supervisee, unless an alternative form of supervision has been approved by the board based on undue burden for the supervisor or supervisee ***such as in cases of serious illness or injury***; and

(e) Continue until the supervisee is licensed by the board.

(2) The supervision process shall focus on:

(a) Accurate diagnosis of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment ***as established in DSM-IV-TR: Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (2000), or DSM-V: Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (2013)[~~according to the currently accepted diagnostic standards~~]***[~~as established in the Diagnostic and Statistical Manual of Mental Disorders~~];

(b) Development of treatment skills appropriate to the therapeutic process;

(c) Development of sensitivity to context and issues relating specifically to the family or individual being counseled;

(d) Acknowledgment of an awareness of the use of the professional self of the therapist in the process of therapy;

(e) Increased theoretical and applied knowledge for the therapist;

(f) Acquisition of a greater depth of knowledge and range of techniques in the provision of marriage and family therapy; and

(g) Awareness of ethical issues in practice, in order to safeguard and enhance the quality of care available to marriage and family therapy clients.

Section 4. Standards for Raw Data Used for Supervision. The use of raw data in a supervision session shall constitute a minimum of fifty (50) hours of the 200 hours of required supervision.

Section 5. In a therapy session involving a board-approved supervisor and supervisee:

(1) The role of the board-approved supervisor as a supervisor or co-therapist shall be clearly defined prior to beginning a therapy session; and

(2) The supervisees shall receive credit for client contact hours and supervision hours.

Section 6. Documentation Requirements. (1) The board-approved supervisor and marriage and family therapist associate shall maintain copies of the completed Supervision Log, which shall document:

(a) The frequency and type of supervision provided; and

(b) The method of supervision utilized, such as observation, dialogue and discussion, and instructional techniques employed.

(2) No more than 100 hours of supervision shall take place in group supervision.

(3) At least 100 hours shall take place in individual supervision.

Section 7. Number of Supervisees. (1) A board-approved supervisor shall not supervise more than six (6) marriage and family therapist associates at the same time, unless approved by the board.

(2) A request to supervise more than six (6) marriage and family therapist associates shall be submitted to the board for approval and shall demonstrate in writing the supervisor's plan and ability to supervise additional marriage and family therapist associates.

Section 8. Temporary Supervision. (1) In extenuating

circumstances, if a marriage and family therapist associate is without supervision, the associate may continue working up to ninety (90) calendar days under the supervision of a qualified mental health professional while an appropriate board-approved supervisor is sought and a new supervision contract is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

(2)***(a) Within thirty (30) calendar days of a change in status of board-approved supervision, the supervisee shall:***

1. Notify the board of these circumstances; and

2. Submit, in writing, a plan for resolution of the situation.

(b)[The supervisee shall notify the board of these circumstances and shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of the change in status of board-approved supervision.] The written plan shall include:

1.[(a)][a.] The name of the temporary supervisor;

2.[(b)][b.] Verification of the credential held by the temporary supervisor;

3.[(c)][c.] An address for the temporary supervisor; and

4.[(d)][d.] A telephone number for the temporary supervisor.

Section 9. Board-approved Supervisor's Responsibilities to Clients and Supervisees. (1) A board-approved supervisor shall be responsible for ensuring the proper and appropriate delivery of marriage and family therapy services to clients.

(2) A board-approved supervisor shall be responsible for fostering the professional competence and development of the marriage and family therapist associates under his or her supervision.

(3) A board-approved supervisor shall be responsible for compliance with the code of ethics established in 201 KAR 32:050 and take steps to ensure that supervisees comply with the code of ethics as well.

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

(a) "Diagnostic and Statistical Manual of Mental Disorders", 2009; and

(b)] "Supervision Log", 8/2014, is incorporated by reference[10/2011].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office[Division] of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JANE PROUTY, Board Chair

APPROVED BY AGENCY: August 13, 2014

FILED WITH LRC: August 13, 2014 at 4 p.m.

CONTACT PERSON: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

GENERAL GOVERNMENT CABINET
Kentucky Department of Veterans' Affairs
Kentucky Veterans' Program Trust Fund
(As Amended at ARRS, October 14, 2014)

201 KAR 37:010. Kentucky Veterans' Program Trust Fund, administration of fund.

RELATES TO: KRS 40.310(3), (7), 40.353(5)[11A.055], 40.460(2)(b), 141.444, 186.162(2), 186.168, 434.444(5)

STATUTORY AUTHORITY: KRS 40.310(3), (7), 40.450(3), 40.460(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.450(3) requires the department to promulgate administrative regulations required for the effective administration of KRS ***40.310[40.410]*** through 40.560. KRS 40.310(3) authorizes the Department of Veterans' Affairs to accept gifts, grants, and other contributions from a governmental unit and authorizes the department to administer these funds through the use of trust and agency accounts. KRS ***40.310(7)[40.410(7)]*** requires ***the[to]*** department to manage the fund and authorize expenditures once the board has approved a request for funds. KRS 40.460(2)(b) establishes the Veterans' Program Trust Fund[and authorizes the Kentucky Department of Veterans Affairs to administer the fund and programs financed by the proceeds and interest derived from the fund]. This administrative regulation establishes a board of directors to administer the fund and establishes criteria for expenditures made from[programs financed by] the fund.

Section 1. Definitions. (1) "Board" means the Board of Directors of the Kentucky Veterans' Program Trust Fund.

(2) "Commissioner" means the Commissioner of the Kentucky Department of Veterans'[Veterans] Affairs.

(3)[(2)] "Fund" means the Kentucky Veterans' Program Trust Fund.

(4)[(3)] "Honorably separated veteran" means an individual discharged or released from the military with an honorable discharge, a discharge under honorable conditions, or a general discharge.

Section 2. Expenditures and Fundraising. (1) Upon board approval in accordance with this subsection and subsection (2) of this section, money appropriated from the fund shall be expended for a program or request that provides assistance that directly benefits a veteran, including the following veterans and activities:

(a) A homeless veteran;

(b) An indigent veteran in need of emergency assistance;

(c) An incarcerated veteran in need of emergency assistance that cannot otherwise be provided by the criminal justice system;

(d) A wounded, disabled, or other veteran who needs transportation to a VA medical facility and who cannot arrange for transportation because of a lack of financial means;

(e) ***Assistance to[Assist]*** a veteran to obtain employment through job fairs, training programs, job placement services, other similar programs, or a combination of these;

(f) A wounded or disabled veteran as determined by the U.S. Department of Veterans' Affairs, and including those veterans diagnosed with post-traumatic stress disorder arising from military service;

(g) A wounded or disabled veteran returning from combat in need of specialized therapeutic services that cannot be provided by the U.S. Department of Veterans' Affairs or the Kentucky Department of Veterans' Affairs;

(h) Dissemination of veteran benefit information through circulars, brochures, and other media;

(i) Services or goods for a veteran who is a resident in a long-term care facility operated by the Kentucky Department of Veterans' Affairs that cannot otherwise be provided by the department but that will improve the veteran's quality of life;

(j) Services or goods for state veterans' cemeteries operated by the Kentucky Department of Veterans' Affairs that cannot otherwise be provided by the department, but that will enhance the dignity, solemnity, and respect shown for each veteran interred at the cemetery;

(k) Other assistance to ensure that each veteran interred in a state veterans' cemetery receives burial honors befitting of the veteran's service to the Commonwealth and country;

(l) Assistance to a veterans' service organization for training members to assist veterans; and

(m) Programs, events, memorials, monuments, and other projects that bring public recognition and awareness to the sacrifices, needs, and contributions of Kentucky's veterans.

(2) Money appropriated from the fund shall not be expended for:

(a) Construction, renovation, or maintenance of a meeting hall, clubhouse, or similar facility for use by a veterans' organization;

(b) Entertainment costs;

(c) A benevolent or charitable endeavor that does not primarily benefit veterans;

(d) Support of a federally administered facility if the support is

prohibited by law; or

(e) A program that is already funded by the state or federal government.

(3)[~~Criteria for Programs. (1) Money derived from the fund may be expended for an approved program that:~~

~~(a) Provides an item for recreation use, services a center, or is for an organization that provides a service to a veteran if the item is not provided by a program, center, or organization established by federal or state law or appropriation;~~

~~(b) Organizes and fosters a program that assists a veteran, including assistance in the use of existing resources, that do not duplicate assistance available from a program established by federal or state law or appropriation;~~

~~(c) Encourages and assists a veteran to volunteer for a program dealing with a problem encountered by the veteran;~~

~~(d) Works with the public and private sectors to honor and recognize the service and sacrifice of veterans;~~

~~(e) Provides a service, supply, program, equipment or other expenditure essential to the operation of the Kentucky Veterans Center other Kentucky veterans nursing homes that would otherwise not be available; or~~

~~(f) Provides financial support to the construction or operation of state veterans cemeteries if the support would not otherwise be available.~~

~~(2)~~] Fundraising. If fundraising on behalf of the fund,[~~(a)~~] the fund may accept a gift, donation, or grant from an individual, a corporation, or government entity.[~~(b) Solicitation of funds or fundraising on behalf of the fund shall be made unless approved by the commissioner in accordance with KRS 11A.055.~~]

Section 3. Board of Directors. (1) The board of directors shall consist of eleven (11) members, including:

(a) The commissioner;

(b) The commissioner's designee from Kentucky Department of Veterans'[~~Veterans~~] Affairs;

(c) A member of the:

1. Joint Executive Council of Veterans Organizations of Kentucky; and

2. Governor's Advisory Board for Veterans'[~~Veterans~~] Affairs;

(d) A representative of the following organizations appointed by the Governor pursuant to subsection (3) of this section:

1. The American Legion, Department of Kentucky;

2. The Veterans of Foreign Wars, Department of Kentucky;

3. The Disabled American Veterans, Department of Kentucky; [~~and~~]

4. AMVETS, Department of Kentucky; and

5. The Kentucky National Guard; and

(e) Two (2)[~~Three (3)~~] at-large members appointed by the Governor.

(2)(a) The commissioner shall serve as chair[~~chairman~~] of the board of directors.

(b) The board of directors shall hold an election to fill the position of vice-chair[~~vice-chairman~~].

(3)(a) An organization specified in subsection (1)(d) of this section shall recommend two (2) members of that organization for appointment to the board of directors.

(b) The governor shall appoint one (1) member of each organization from the names submitted by the organization.

(4) At least one (1)[~~A~~] member of the board of directors shall be an honorably separated veteran.

(5) Terms of members.

(a) ***Except in cases of retirement from the board, resignation, or other inability or unwillingness to serve,*** the initial appointments to the board of directors shall be as established in subparagraphs 1. through 3. of this paragraph.[~~follows:~~]

1. A member appointed pursuant to subsection (1)(c) of this section shall serve for a period of three (3) years.

2. A member appointed pursuant to subsection (1)[~~(2)~~](d) of this section shall serve for a period of two (2) years.

3. A member appointed pursuant to subsection (1)[~~(2)~~](e) of this section shall serve for a period of one (1) year.

(b) ***Except in cases of retirement from the board, resignation, or other inability or unwillingness to serve,*** after the initial appointments established pursuant to[~~under~~] paragraph (a) of this section, a member***, if reappointed,*** shall serve for a period of three (3) years.

(c) A member shall serve until the member's[~~his~~] successor is appointed.

(6) The board of directors shall:

(a) Meet at the call of the commissioner[~~chairman~~];

(b) Inform organizations represented on the board of each action considered or taken by the board;

(c) Review projects and recommend approval or disapproval;

(d) Prioritize projects;

(e) Investigate the need for a specific project or program;

(f) Establish guidelines for a project;

(g) Make a recommendation to the commissioner for the utilization and control of funds in the[~~Veterans' Program Trust~~] fund; and

(h) Prepare an annual report providing an accounting of the [~~Veterans' Program Trust~~] fund assets and financial activity for each fiscal year.

(7) The commissioner[~~chairman~~] of the fund shall assign duties as appropriate to department[~~his~~] staff or members of the board for the conduct of business by the board including maintaining the records of the fund that are required for the administration of the Veterans' Program Trust Fund and approved projects.

Section 4. Board Procedures. (1) Board meetings shall be conducted in a civil and cordial manner.

(a) A quorum for voting purposes shall be reached upon six (6) directors being present.

(b) A request may be approved if a simple majority of those present vote in favor of the request.

(c) Abstentions, votes indicating "present", and any other form of vote other than "yes" or "no" shall not be permitted.

(d) In the case of a tie vote, the chair may call for more discussion and a second vote. If a tie results on the second vote, the request shall be tabled and only brought before the board by a new request at a future meeting.

(e) Each director may discuss procedural matters with an applicant prior to a board meeting, but shall not attempt to influence other directors on how to vote until the chair convenes the board meeting, the applicant makes a presentation, and discussion takes place.

(f) Votes on every issue shall be recorded in the minutes indicating the nature of the request, the final vote, the name of each voting member who voted, and how that member voted.

(2)(a) For alternatives to in-person voting, the chair shall authorize meetings via telephone conference call as well as proxy voting if the chair concludes special circumstances warrant an alternative such as the requester is outside the country or is disabled.

(b) Any person, agency, or organization requesting funds from the fund shall make a request in person to the Board of Directors at a scheduled board meeting unless the chair authorizes presentation by electronic means.

(3)(a) Once funds are authorized, the requesting person, agency, or organization shall file a written report detailing how the money requested fulfilled the purpose of the request within thirty (30) days of fulfilling the purpose of the request.

(b) Funds shall not be transferred to the person, agency, or organization until the funds are immediately needed to satisfy the purpose of the request.

(c) Funds obligated but not used within one (1) year of approval shall be returned to the Trust Fund and a new request shall be submitted to the Board of Directors if the requesting party still seeks to undertake the project.

HEATHER FRENCH HENRY, Commissioner

APPROVED BY AGENCY: August 11, 2014

FILED WITH LRC: August 12, 2014 at 11 a.m.

CONTACT PERSON: Dennis W. Shepherd, Staff Attorney, Office of the Commissioner, Department of Veterans Affairs, 1111B Louisville Road. Frankfort, Kentucky 40601, phone (502)

564-9203, fax (502) 564-9240.

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, October 14, 2014)

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

RELATES TO: KRS 150.010, 150.170, 150.175, 150.235, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state. This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods including underwater spearing, scuba diving, sport fishing trotlines, jugging, setlines, gigging, snagging, grabbing, bow fishing, and the taking of rough fish from backwaters.

Section 1. Definitions. (1) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(2) "Asian carp" means bighead carp, silver carp, black carp, and grass carp.

(3) "Bow fishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment or a crossbow.

(4) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without the aid from an archer.

(5) "Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.

(6) "Sport fisherman" means a person holding a valid resident or nonresident fishing license and includes those persons who are license exempt pursuant to KRS 150.170.

(7) "Temporary aquatic area" means an area temporarily inundated from, but still connected to, a stream, river, or reservoir and that persists only for the duration of the elevated water levels.

(8) "Temporary pool" means an area temporarily inundated from, but not connected to, a stream, river, or reservoir.

Section 2. Skin Diving, Scuba Diving, and Underwater Spear Fishing. (1) Skin diving or scuba diving shall be prohibited in all lakes owned by the department, except as established in subsections (2), (3), and (4) of this section.

(2) Skin diving and scuba diving shall be allowed in salvage operations if the diver receives prior written permission from:

(a) The department's Division of Law Enforcement; or

(b) The local conservation officer who is assigned to the particular department-owned lake.

(3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a drowning victim.

(4) Skin diving and scuba diving shall be allowed in Greenbo Lake:

(a) In a designated cove marked with signage and buoys;

(b) From April 1 through October 31; and

(c) From 10:00 a.m. to 6:00 p.m. daily.

(5) A person who is skin diving or scuba diving in a designated cove pursuant to subsection (4) of this subsection shall display an international diving flag pursuant to[~~the requirements established in~~] 301 KAR 6:030.

(6) Recreational boating and angling shall be prohibited in the designated cove marked with signage and buoys during the times open to skin diving and scuba diving as established in subsection (4) of this section if an international diving flag is present in the cove.

(7) Underwater spearing of fish with a hand held spear or mechanically-propelled spear shall be legal throughout the year in lakes 1,000 acres in size or larger as measured at the normal summer pool level as established in paragraphs (a) and (b) of this subsection.[~~, with the following provisions:~~]

(a) A participant who is spearing fish shall:

1. Be completely submerged in the water where spearing takes place;

2. Possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170; and

3. Only spear rough fish.[~~; and~~]

(b) The daily limit shall be fifteen (15) rough fish, no more than five (5) of which shall be catfish.

Section 3. Sport Fishing Trotlines, Jugging, and Setlines. (1) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the name and address of the person using it.

(2) Each trotline, jug line, and setline shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:

(a) Bait all hooks; and

(b) Remove all caught fish.

(3) A trotline, setline, or jug line shall be confiscated if ***it is not***:

(a) ***[It is not]***Properly labeled or tagged; or

(b) ***[It is not]***Checked or baited at least once every twenty-four (24) hours.

(4) A sport fisherman shall not use more than:

(a) Two (2) sport fishing trotlines;

(b) Twenty-five (25) setlines; or

(c) Fifty (50) jug lines.

(5) Multiple sport fishermen in one (1) boat shall not use more than fifty (50) jug lines per boat.

(6) A person using a sport fishing trotline shall:

(a) Set the trotline at least three (3) feet below the water's surface;

(b) Not have more than fifty (50) single or multi-barbed hooks; and

(c) Have all hooks at least eighteen (18) inches apart on the trotline.

(7) A person shall not use a jug line or setline with more than one (1) single or multi-barbed hook.

(8) Sport fishing trotlines, jugs, or setlines shall not be used in the[~~following~~] waters established in paragraphs (a) through (d) of this subsection:

(a) In the Tennessee River within 700 yards of Kentucky Dam;

(b) In the Cumberland River below Barkley Dam to the Highway 62 bridge;

(c) In any lake less than 500 surface acres owned or managed by the department, except:

1. Ballard Wildlife Management Area lakes, Ballard County;

2. Peal Wildlife Management Area lakes, Ballard County; and

3. Swan Lake Wildlife Management Area lakes, Ballard County; or

(d) In the[~~following~~] areas of the Ohio River established in subparagraphs 1. through 8. of this paragraph:[~~;~~]

1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;

2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;

3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;

5. McAlpine Dam downstream to the K & I railroad bridge;

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(9)(a) The Taylorsville Lake blue and channel catfish limits shall be an aggregate daily creel limit of fifteen (15).

(b) Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

Section 4. Temporary Aquatic Areas and Temporary Pools. (1) The department, with consent of the landowner, may delineate temporary aquatic areas and temporary pools where rough fish may be taken by any method except:

(a) Poison;

(b) Electrical devices;

(c) Firearms; or[~~and~~]

(d) Explosives.

(2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary aquatic areas and temporary pools.

(3) A person shall be required to possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170.

(4) A person with a valid commercial fishing license may use nets and seines ***if***[~~***as long as***~~] the nets and seines are appropriately tagged, pursuant to 301 KAR 1:146.

(5) A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.

Section 5. Gigging and Snagging. (1) Gigging and snagging season shall be February 1 through May 10, except as established[~~provided~~] in subsections (7) and (9) of this section.

(2) A person shall not:

(a) Gig or snag a sport fish, pursuant to 301 KAR 1:060, except as established[~~provided~~] in subsections (7) and (9) of this section;

(b) Gig or snag from a platform;

(c) Gig from a boat in a lake with a surface area of less than 500 acres;

(d) Gig at night from a boat; or

(e) Snag from a boat.

(3) A snagging rod shall be equipped with:

(a) Line;

(b) Guides;

(c) A reel; and

(d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used ***while***[~~***when***~~] snagging in:

1. The Green River and its tributaries; or

2. The Rolling Fork River and its tributaries.

(4) A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as established[~~provided~~] in subsections (7) and (9) of this section.

(5) A person shall not gig or snag in the[~~following~~] areas or bodies of water established in paragraphs (a) through (f) of this subsection:

(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;

(b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;

(c) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;

(d) The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and Grayson Counties;

(e) Cave Run Lake; or

(f) Within 200 yards of any dam on a river or stream, except as ***established***[~~***specified***~~] in subsection (7) of this section.

(6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.

(7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the U.S. 62 bridge:

(a) For twenty-four (24) hours a day from January 1 through May 31; and

(b) From sunset to sunrise from June 1 through December 31.

(8) A person shall not snag in that section of the Tennessee River from the U.S. 62 bridge to the Interstate 24 bridge.

(9) A person may snag sport fish or rough fish year round in the[~~that~~] section of the Tennessee River from the Interstate 24 bridge to the Ohio River.

(10) A person shall not snag on the Tennessee River:

(a) Under the U.S. 62 bridge;

(b) Under the P & L Railroad bridge; or[~~and~~]

(c) From the fishing piers located below the U.S. 62 bridge.

(11) There shall not be a daily creel limit for rough fish except:

(a) The daily creel limit for rough fish in the Cumberland River below Barkley Lake Dam shall be eight (8) except there shall not be a creel limit on Asian Carp;

(b) The daily aggregate creel limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam shall be eight (8) except there shall not be a creel limit on Asian Carp; and

(c)1. The statewide daily creel limit for paddlefish shall be two (2), in all areas outside those established[~~described~~] in paragraphs (a) and (b) of this subsection; and

2. In an area established[~~described~~] in paragraph (a) or (b) of this subsection, up to eight (8) paddlefish may be taken.

(12) A person shall immediately retain, and not release or cull, any gigged or snagged paddlefish.

(13) All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(14) All gigged or snagged rough fish in the Cumberland River below Barkley Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(15) A person shall immediately cease snagging if:

(a) A daily limit of paddlefish is reached; or

(b) A daily limit of sport fish has been caught in the Tennessee River below Kentucky Lake Dam, even if the creel limit for that sport fish is less than eight (8).

Section 6. Grabbing[~~(Tickling and Noodling)~~]. (1) The grabbing season for rough fish[~~, also known as tickling and noodling,~~] shall be June 1 to August 31 during daylight hours.

(2) Grabbing[~~Tickling and noodling~~] shall be permitted in all waters.

(3) The daily creel limit for grabbing[~~tickling and noodling~~] shall be fifteen (15) fish, no more than five (5) of which may be catfish.

Section 7. Bow Fishing. (1) A person using archery equipment or a crossbow shall not take:

(a) Sport fish;

(b) Alligator gar;

(c) More than five (5) catfish daily; or

(d)[~~(c)~~] More than two (2) paddlefish daily.

(2) Any paddlefish or catfish shot with archery equipment or a crossbow shall:

(a) Be immediately retained, and not released or culled; and

(b) Shall count toward a person's daily limit.

(3) Bow fishing shall be open statewide, except:

(a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;

(b) In any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream; or[~~and~~]

(c) From a boat in restricted areas below navigation, power generating, or flood control dams.

GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary
APPROVED BY AGENCY: August 8, 2014

FILED WITH LRC: August 13, 2014 at noon

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department of Environmental Protection
Division of Water
(As Amended at ARRS, October 14, 2014)

401 KAR 8:200. Microbiological monitoring.

RELATES TO: KRS 224.10-110, 40 C.F.R. 141.21, 141.52, 141.63, **141.851 - 861**[~~, EO 2009-538~~]

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.21, 42 U.S.C. 300f-300j-26[~~, EO 2009-538~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110(2) requires the cabinet to enforce administrative regulations promulgated by the secretary for the regulation and control of the purification of water for public and semipublic use.[~~EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet.~~] This administrative regulation establishes a schedule and method for sampling drinking water to test for bacteriological contaminants,[~~and~~] establishes maximum contaminant levels for bacteria, and establishes[~~. This administrative regulation also specifies~~] requirements if tests show maximum contaminant levels have been exceeded.[~~This administrative regulation is more stringent than the corresponding federal regulation in that a minimum of two (2) monitoring samples for total coliforms shall be taken each month.~~]

Section 1. A "public water system" as defined by 40 C.F.R. 141.2", shall meet the requirements established in 40 C.F.R. 141.21, 141.52, and 141.63[~~except that a public water system shall take a minimum of two (2) coliform bacteria samples each month the system is in operation~~].

Section 2. Beginning January 1, 2016, a public water system shall comply with the requirements established in 40 C.F.R. 141.851 through 141.861, **except that a sample site plan required by 40 C.F.R. 141.853 shall be submitted to the cabinet no later than December 31, 2015. A semipublic water system shall take a minimum of one (1) total coliform bacteria sample each month the system is in operation**[~~A semipublic water system shall take a minimum of two (2) total coliform bacteria samples each month the system is in operation~~].

Section 3. Population served shall be determined by the appropriate method established in this section. (1) A **"community water system", as defined by 40 C.F.R. 141.2, and a "semipublic water system", as defined by 401 KAR 8:010,**[~~**supplier of water serving an area defined by an official census count or population projection**~~**]** shall:

(a) Use the most recent **decennial** census count **conducted by the United States Census Bureau;**[~~**or serviceable population determined by the cabinet; and**~~**]**

(b) **Use the serviceable population established by the Water Resources *Information*[~~*Infrastructure*~~*]* System database located at *http://wris.ky.gov/portal/sysdata*[~~*http://kia.ky.gov/wris/*~~]**;**

(c) Multiply the number of service connections by 2.69; or

(d) Utilize a method mutually agreed upon by a community or semipublic water system and the cabinet[~~**Provide the figure and its source in its Monthly Operating Report established in 401 KAR 8:020, Section 2(7) by the tenth day of the month following the determination**~~**]**[~~official population projection~~].

(2)[~~If~~] A **"non-transient non-community public water system", as defined by 40 C.F.R. 141.2, shall use the actual population served.**

(3) A "transient non-community public water system", as defined by 40 C.F.R. 141.2, shall use the actual population served.

(4) A public water system shall provide the figure to the cabinet in its December Monthly Operating Report established in 401 KAR 8:020, Section 2(7), by the tenth day of the month following the determination.

(5) A semipublic water system shall immediately notify the cabinet in writing if the population served calculation changes its classification from a semipublic water system to another classification[~~**supplier of water serving**~~**]**[serves]**[**~~**an area without available or applicable official figures for population of the area served shall:**~~

~~**(a) Use the serviceable population determined by the cabinet; or**~~

~~**(b) Calculate**~~[~~,~~]**[**~~**the population served according to the appropriate method established in this subsection.**~~

~~**1. A "community water system", as defined by 40 C.F.R. 141.2 shall calculate population served by multiplying the number of service connections by 2.78.**~~

~~**2. A "non-transient non-community water public water system", as defined by 40 C.F.R. 141.2 shall use the actual population served.**~~

~~**3. A "semipublic water system", as defined by 401 KAR 8:010 shall use the actual population served.**~~

~~**4. A "transient non-community public water system", as defined by 40 C.F.R. 141.2 shall use the greater of:**~~

~~**a. The number of service connections multiplied by 2.78; or**~~

~~**b. The actual population served**~~**]**[~~shall be considered to be the greater of:~~

~~(a) A factor of not less than 2.97 times the number of residential meters; or~~

~~(b) A factor of not less than 2.47 times the total number of residential, commercial, and industrial service connections~~].

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 11, 2014

FILED WITH LRC: September 12, 2014 at noon

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, Division of Water, 200 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003.

ENERGY AND ENVIRONMENTAL CABINET
Department of Environmental Protection
Division of Water
(As Amended at ARRS, October 14, 2014)

401 KAR 8:300. Lead and copper.

RELATES TO: 40 C.F.R. 141.42, 141.43, 141.80-141.91, 141.154, 42 U.S.C. 300f-300j-26[~~, EO 2009-538~~]

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.43, 141.80-141.91, 42 U.S.C. 300f-300j-26[~~, EO2009-538~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) and 224.10-110(2) require the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use.[~~EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet.~~] This administrative regulation limits[~~bans~~] lead in drinking water facilities and establishes[~~provides~~] standards for lead and copper in drinking water.

Section 1. A public water system shall meet the requirements for control of lead corrosivity and copper as established in:

(1) 40 C.F.R. 141.42, 141.43, ***141.80 through 141.91, and 141.154; and***

(2)[~~***141.82, and 141.91;***~~***]***[~~and~~]

~~***(2) 40 C.F.R. 141.80, 141.81, 141.83 through 141.90, and 141.154; and***~~

~~***(3)***~~***]*** 42 U.S.C. 300g-6.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 9, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, Division of Water, 200 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003.

ENERGY AND ENVIRONMENTAL CABINET
Department of Environmental Protection
Division of Water
(As Amended at ARRS, October 14, 2014)

401 KAR 8:700. Bottled water.

RELATES TO: KRS 224.10-100, 224.10-110, 21 C.F.R. 129.35, 165.110

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110[~~, 21 C.F.R. 165.110~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 requires[~~directs~~] the cabinet to enforce the administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. This administrative regulation establishes[~~The purpose of this administrative regulation is to set out~~] provisions to assure the purity of water[~~,~~] placed in bottles[~~,~~] that will be resold as a food for human consumption or other consumer use. U.S. EPA does not have a[~~The U.S. Environmental Protection Agency has no~~] federal regulation relating to bottled water. Certain provisions of this administrative regulation are more stringent than the FDA requirements. The cabinet requires that plans, reports, and monitoring results be submitted to the cabinet to ensure that compliance with all public health standards is achieved without more frequent, costly on-site inspections, and that systems monitor for chlorite more frequently to ensure that public health standards are met for any disinfectant residuals.

Section 1. Applicability. ***(1)*** A bottled water system that bottles water within the Commonwealth shall comply with the provisions of 401 KAR Chapter 8 except:

[(1)](a) Distribution system monitoring and compliance applicable to public water systems, including provisions for chlorine residual and disinfection by-products; and

(b) The public notification requirements of 401 KAR 8:070 and the reporting requirements of 401 KAR 8:075; and

(2) Water bottled outside the Commonwealth shall not be subject to this administrative regulation**,** regardless of its source.

Section 2. Disinfection and Treatment. (1) Disinfection shall be by chlorination, ultraviolet light, ozonation, or chlorine dioxide.

(2) "Filtration", as defined by 40 C.F.R. 141.2, shall be used for all sources identified as "surface water" or "groundwater under the direct influence of surface water", as defined by 40 C.F.R. 141.2.

(3) A bottled water system that uses a surface water source may use treatment techniques that are different from other surface water users if equivalent treatment is provided.

(4) Water located in the line after bottling operations cease shall be flushed before bottling is resumed.

Section 3. Sampling, Monitoring, and Reporting. (1) Analysis shall be performed with a method established in 401 KAR Chapter 8 in a laboratory that shall be certified to conduct testing pursuant to 401 KAR 8:040.

(2) Monitoring results, including the Monthly Operating Report, shall be received by the cabinet no later than the tenth day of the month following the end of the reporting period.

(3) If no treatment or bottling of water occurred during the reporting month, the bottled water system shall notify the cabinet in its Monthly Operating Report established in 401 KAR 8:020, Section 2(7), no later than the tenth day of the following month.

(4) Microbiological Sampling and Monitoring. A bottled water system shall conduct microbiological sampling and testing as established in 401 KAR 8:200.

(a) Each sample shall be taken after water disinfection and prior to the water being placed in a bottle, with no intervening stagnant storage; or

(b) A sample may be taken from a bottle immediately after bottling and before the bottle leaves the plant.

(5) Turbidity Sampling and Monitoring.

(a) A bottled water system shall conduct turbidity sampling once every four (4) hours the system is in operation, regardless of source. The system may substitute continuous monitoring for grab sampling as established in 401 KAR 8:150, Section 3(2), and may use the average turbidity value for each four (4) hour increment to determine compliance with turbidity performance criterion in paragraph (b) of this subsection.

(b) The turbidity level of the system's product water shall be less than or equal to three-tenths (0.3) nephelometric turbidity units (NTU) in not less than ninety-five (95) percent of the measurements taken each month, and shall never exceed one (1) NTU.

(6) Disinfectant Sampling and Monitoring. Monitoring for disinfectants shall occur after disinfection but prior to bottling, with no intervening stagnant storage.

(a) Chlorine dioxide. A bottled water system that uses chlorine dioxide shall monitor daily for chlorine dioxide.

1. The Maximum Residual Disinfection Level (MRDL) for chlorine dioxide shall not exceed 0.8 mg/L.

2. No two (2) consecutive daily samples shall exceed the MRDL for chlorine dioxide.

3. A bottled water system shall immediately take steps to lower the level of chlorine dioxide in finished water if the MRDL for chlorine dioxide is exceeded.

(b) Chlorite. A bottled water system that uses chlorine dioxide as a disinfectant shall monitor for chlorite annually. The Maximum Residual Disinfection Level (MRDL) for chlorite shall not exceed 1.0 mg/L.

(c)1. Ozone. A bottled water system that uses ozone shall monitor:

a. Monthly for bromate; or

b. Annually for bromate if the system demonstrates that the average bromate concentration is less than 0.0025 mg/L calculated as a running annual average of monthly bromate samples.

2. The Maximum Contaminant Level (MCL) for bromate shall not exceed 0.010 mg/L.

(7) Chemical contaminants.

(a) A bottled water system shall monitor for chemical contaminants after treatment but before bottling, with no intervening stagnant storage.

(b) A sample may be taken from a bottle immediately after bottling and before the bottle leaves the plant.

(c) A bottled water system shall monitor for chemical contaminants:

1. Annually for inorganic and organic contaminants established in 401 KAR 8:250, including sodium;

2. Annually for secondary contaminants established in 401 KAR 8:600, except that a bottled water system may exceed maximum secondary contaminant levels for purposes of bottling mineral water or other water if:

a. Each consumer is informed by labeling as established in 902 KAR 45:050; and

b. The system obtains written cabinet approval after:

(i) Submitting secondary contaminant results before and after treatment; and

(ii) Providing justification for any exceedances;

3. Annually for lead and copper as established in 401 KAR 8:300;

4. Annually for total trihalomethanes and haloacetic acids established in 401 KAR 8:510; and

5. Every four (4) years for radiological contaminants established in 401 KAR 8:550.

(d) Exception. A bottled water system that uses as its source a public water system as defined in 40 C.F.R. 141.2 and is subject to 401 KAR Chapter 8 may substitute the monitoring results of the public water system to satisfy the requirements of this subsection if

the bottled water system submits a letter to the cabinet postmarked no later than January 30 of each year stating that it shall:

1. Use the annual results of their public water system source for that calendar year; and

2. Conduct monitoring established in this subsection that has not been conducted by the public water system source.

Section 4. Failure to Comply. (1) A bottled water system that exceeds a MCL or MRDL or otherwise fails to comply with this administrative regulation shall:

(a) Immediately cease operations;

(b) Notify the cabinet as established by 401 KAR 8:020, Section 2(7)(c), and the Cabinet for Health and Family Services, Department for Public Health; and

(c) Not resume operations without the written approval of the cabinet and the Cabinet for Health and Family Services, Department for Public Health.

(2) Enforcement of this administrative regulation shall be pursued for bottled water systems in the same manner as other public water systems[~~A bottled water system shall comply with the provisions of 401 KAR Chapter 8 with the following exceptions and provisions:~~

~~(1) Distribution systems and free chlorine.~~

~~(a) Administrative regulations pertaining to distribution systems of a public water system, including provisions for a free chlorine residual, shall not apply.~~

~~(b) The requirements of 401 KAR 8:160 and 401 KAR 8:510 shall not apply to a bottled water system, unless specifically included in subsections 5 and 6 of this section~~

~~(2) Microbiological sampling. A bottled water system shall conduct microbiological sampling and testing at least once a week. Tests shall otherwise conform to 401 KAR 8:200.~~

~~(3) Samples location.~~

~~(a) Except as provided in paragraph (b) of this subsection, samples shall be taken after the disinfection of the water and prior to the water being placed in the bottle, with no intervening stagnant storage.~~

~~(b) A sample may be taken from a bottle immediately after bottling and before the bottle leaves the plant, if all other sampling procedures are met.~~

~~(c) Water located in the line after bottling operations cease shall be flushed before bottling is resumed.~~

~~(4) Turbidity sampling. For a bottled water system, regardless of source, turbidity sampling shall be conducted once every four (4) hours the system is in operation. The system may substitute continuous monitoring for grab sampling, with cabinet approval, and may use the turbidity value for every four (4) hours to determine compliance with the turbidity performance criterion. The turbidity level of the system's product water shall be less than or equal to three-tenths (0.3) nephelometric turbidity units NTU, in at least ninety-five (95) percent of the measurements taken each month, and shall never exceed one (1) NTU.~~

~~(5) Sampling, MCL, and MRDL for other contaminants.~~

~~(a) MCLs.~~

~~1. Except for lead and copper, the MCL for a contaminant for which testing is required in this subsection shall be as specified in 401 KAR 8:250, 401 KAR 8:400, 401 KAR 8:420, and 401 KAR 8:510.~~

~~2. Lead and copper. The MCL shall be:~~

~~a. Lead: 0.005 mg/L; and~~

~~b. Copper: one and zero-tenths (1.0) mg/L.~~

~~3. Within twenty-four (24) hours of receiving the test results, a bottled water system shall report to the cabinet violations of the MCL for chlorite and bromate and shall immediately stop bottling operations if violations exist.~~

~~(b) MRDLs.~~

~~1. Except as provided in subparagraph 2 of this paragraph, the MRDL for disinfectants shall be as specified in 401 KAR 8:510.~~

~~2. The MRDL for chlorine dioxide shall be as specified in 401 KAR 8:510, Section 3. No two (2) consecutive daily samples shall exceed the MRDL, monitored at the treatment plant after treatment.~~

~~3. A bottled water system shall report to the cabinet a violation of the MRDL for chlorine dioxide as soon as possible after learning of the exceedance, and shall immediately take steps to lower the level of chlorine dioxide in the system.~~

~~(c) Sampling.~~

~~1. A bottled water system shall monitor annually for the following:~~

~~a.(i) Contaminants specified in 401 KAR 8:250, 401 KAR 8:400, and 401 KAR 8:420, except as provided in subclause (ii) of this clause.~~

~~(ii) A bottled water system that uses as its source a public water system subject to 401 KAR Chapter 8 may, with written approval from the cabinet, substitute the monitoring results of the public water system for the monitoring required by clause a of this subparagraph. The bottled water system shall submit a letter by January 30 of each year, stating that it shall use the annual results of their purchasing system. The system shall include the PWSID of the purchasing system.~~

~~b. Lead;~~

~~c. Copper;~~

~~d. Total trihalomethanes, or TTHMs; and~~

~~e. Haloacetic acids, or HAAs;~~

~~2. A bottled water system shall monitor for radionuclides annually, according to the procedures in 401 KAR 8:550.~~

~~(6) Disinfection.~~

~~(a) Disinfection shall be by chlorination, ultraviolet light, ozonation, chlorine dioxide, or other method approved by the cabinet that provides equivalent treatment.~~

~~(b) A bottled water system that uses:~~

~~1. Chlorine dioxide shall monitor for chlorite daily in the treatment plant; or~~

~~2. a. Ozone shall monitor monthly for bromate in the treatment plant; or~~

~~b. Alternatively, a system that uses ozone shall monitor annually for bromate in the treatment plant, if the system demonstrates that the average bromide concentration is less than 0.05 mg/L, calculated as a running annual average of monthly bromide samples.~~

~~(7) Surface water treatment. Bottled water systems using surface water sources may, with cabinet approval, use treatment techniques that are different from other surface water users, if equivalent treatment is provided.~~

~~(8) Maximum contaminant level exception labeling. With approval of the cabinet, bottled water systems may exceed maximum contaminant levels for secondary contaminants for purposes of bottling "mineral water" or other water, if consumers are informed by proper labeling.~~

~~(9) Water bottled outside Commonwealth. Water bottled outside Kentucky shall not be subject to this administrative regulation, regardless of its source.~~

~~(10)(a) Analyses shall be performed in accordance with methods approved by 401 KAR Chapter 8 or 21 C.F.R. 165.110, in laboratories that are certified to conduct testing pursuant to 401 KAR 8:040.~~

~~(b) Monitoring results shall be received by the cabinet no later than the tenth day of the month following the end of the reporting period.~~

~~(11) The public notification requirements of 401 KAR 8:070 and the reporting requirements of 401 KAR 8:075 shall not apply to a bottled water system.~~

~~Section 2. Failure to Comply. A bottled water system that exceeds a maximum contaminant level or MCL, or a maximum residual disinfectant level or MRDL, or otherwise fails to comply with 401 KAR Chapter 8 shall:~~

~~(1) Immediately cease operations;~~

~~(2) Notify the cabinet and the Cabinet for Health and Family Services, Department for Public Health; and~~

~~(3) Not resume operation without the written approval of the cabinet~~].

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 9, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, Division of Water, 200 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Office of the Reclamation Guaranty Fund
(As Amended at ARRS, October 14, 2014)

405 KAR 10:025. Extension of performance bond subsidization.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465, 350.500 – 350.521

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, 350.518(5)

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 information related to the operation of the Kentucky Reclamation Guaranty Fund.

Section 1. Applicability. This administrative regulation shall apply only to ***an entity[~~entities~~]*** seeking to obtain by transfer the permit of a current member of the KRGF who was a member of the former Kentucky Voluntary Bond Pool.

Section 2. Performance Bond Subsidization. (1) Performance bond subsidization ***shall[~~may~~]*** be extended to an applicant who was not a member of the former voluntary bond pool fund prior to its dissolution if the:

(a) Applicant intends to obtain its permit by transfer from a member of the former Kentucky Voluntary Bond Pool;

(b) Permit to which the applicant intends to succeed meets one (1) or more of the criteria for the cabinet to seek bond forfeiture under 405 KAR 10:050, Section 3;

(c) Applicant meets the requirements of this administrative regulation; and

(d) Commission determines it is in the best interest of the KRGF pursuant to KRS 350.509(1).

(2) If the commission determines the criteria for performance bond subsidization extension have been met, the bonds previously issued by the KRGF to the member of the former voluntary bond pool fund shall be substituted for bonds newly issued by the KRGF in accordance with the provisions of 405 KAR 10:015, Section 5.

(3) Subsequent to the extension of performance bond subsidization for the issuance of a successor permit pursuant to subsection (2) of this section, the KRGF may extend additional subsidization to the permittee for the permit to enable the permittee to complete mining and reclamation operations, if the commission determines it is in the best interest of the KRGF. The commission shall review an applicant's ability to meet the approval requirements of this administrative regulation ***upon[~~when an~~]*** application for additional subsidization***[~~has been submitted~~]***.

(4) Only ***a permit with a bond[~~permits with bonds~~]*** previously covered by the former voluntary bond pool fund shall be eligible for performance bond subsidization. Other permits held by the applicant shall not be subsidized by the KRGF.

Section 3. Applicant Criteria. (1) Applicants for extension of performance bond subsidization shall submit an application on the Application for Performance Bond Subsidization for Permit Succession, RGF-4 form, which shall include:

(a) Identification of the permittee which the applicant wishes to succeed;

(b) Identification of permits the applicant intends to obtain by transfer;

(c) Information regarding the financial standing and compliance record of the applicant; and

(d) Any other information the commission needs to make a determination.

(2)(a) The commission shall consider applications on a case-by-case basis and meeting the criteria under this section shall not be grounds for automatic performance bond subsidization. An applicant shall be allowed thirty (30) calendar days after receipt of the commission's determination to contest the determination in writing.

(b) The written notice shall include:

1. An explanation of the nature of the contest; and

2. The documentation relied upon by the applicant.

(3) The applicant for extended performance bond subsidization shall be in good financial standing. The financial standing of the applicant shall be determined based upon the financial information required in the application and other information available to the KRGF and the cabinet. The commission shall consider the ***[~~following~~]***financial ratios ***of[~~and related financial information~~]***:

(a) ***[~~The ratio of~~]***Current assets to current liabilities;

(b) ***[~~The ratio of~~]***Net income to net sales;

(c) ***[~~The ratio of~~]***Total liabilities to stockholders' equity;

(d) ***[~~The ratio of~~]***Net income to owners' equity;

(e) ***[~~The ratio of~~]***Owners' equity to total assets; and

(f) ***[~~The ratio of~~]***The sum of cash, marketable securities, and net receivables, to current liabilities.

(4) The applicant for extended performance bond subsidization shall have held, under the same name or other name as provided in subsection (5) of this section, a permit issued by the cabinet to conduct surface mining operations in Kentucky or by an authorized agency governing surface mining operations in another state or territory, for a period of at least five (5) of the seven (7) years immediately preceding the application for extended performance bond subsidization, and have exhibited an approved compliance record as detailed by Section 4 of this administrative regulation.

(5) If the applicant cannot satisfy the requirements of subsection (4) of this section, then the following types of permits held by persons other than the applicant may be used to satisfy those requirements:

(a) ***A permit[~~Permits~~]*** issued to a person who owns fifty (50) percent or more of the applicant;

(b) ***A permit[~~Permits~~]*** issued to a person who is owned fifty (50) percent or more by a person meeting the requirements of subsection (4) of this section; or

(c) ***A permit[~~Permits~~]*** issued to ***a person[~~persons~~]*** whose combined ownership of the applicant is fifty (50) percent or more, provided each person meets the requirements set forth in subsection (4) of this section.

Section 4. Determination of Compliance Record. (1) An applicant shall be deemed to have an approved compliance record if the applicant, each person who owns or controls the applicant, each person who is owned or controlled by the applicant, and each person who is under common ownership and control with the applicant meet all ***of the criteria established in paragraphs (a) through (i) of this subsection. Each party established in this subsection shall have[~~the following criteria~~]***:

(a) ***[~~Has~~]***Never committed a violation for mining without having first obtained the required permit;

(b) ***[~~Has~~]***Never forfeited a bond or had a permit revoked;

(c) ***[~~Has~~]***Never avoided forfeiture of a bond because a surety performed reclamation work in order to avoid forfeiture;

(d) ***[~~Has~~]***Never been determined to have demonstrated a pattern of violations;

(e) ***[~~Has~~]***Not been issued more than one (1) order for cessation and immediate compliance for failure to complete required remedial measures in the most recent thirty-six (36) months of operation and the order was abated as ordered in a timely manner and was not for a violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 18:020 or other applicable state or federal statute or regulation;

(f) ***[~~Has~~]***Not been issued more than one (1) order for cessation and immediate compliance for creating an imminent danger to the health and safety of the public or causing significant, imminent environmental harm in the most recent thirty-six (36) months of

operation and the order was abated as ordered in a timely manner;

(g) ***[~~Has~~]***Not committed more than one (1) violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 18:020 or other applicable state or federal statute or regulation in the most recent thirty-six (36) months of operation and the violation was abated in a timely manner, except the commission may ***[~~for good cause and~~]***by unanimous vote exclude violations that have been terminated with no civil penalty;

(h) ***[~~Has~~]***Not committed more than three (3) violations of KRS Chapter 350 or 405 KAR Chapters 7 through 24 or other applicable state or federal statute or regulation on any one (1) permit in any twelve (12) month period of the most recent thirty-six (36) months of operation, except the commission may ***[~~for good cause and~~]***by unanimous vote exclude the twelve (12) month period on one (1) permit during which the largest number of violations occurred and may ***[~~for good cause and~~]***by unanimous vote exclude violations that were timely abated and terminated with no civil penalty; and

(i) ***[~~Has~~]***Not had civil penalties remaining unpaid more than thirty (30) days after they were due and payable, within the most recent thirty-six (36) months of operation.

(2) To the extent the information is available, the commission ***shall[~~may~~]*** take into account the performance of the applicant and each person who owns or controls, is owned or controlled by, or is under common ownership or control with the applicant, in other states and on federal lands and Indian lands under criteria similar or equivalent to those in this section.

Section 5. Compliance Review for Continued Subsidization. ***(1)*** The commission shall review the compliance record of former applicants for extended bond subsidization.

(2) If the commission determines that the permittee no longer satisfies any of the criteria in Section 4(1) of this administrative regulation, it ***shall[~~may~~]*** advise the cabinet that the permittee is no longer eligible for performance bond subsidization.

(3) Upon receipt of this notice, the cabinet shall immediately order the permittee to cease surface coal mining operations on that permit until it has obtained alternate bond coverage.

(4) During the period of cessation, the permittee shall maintain the permit in compliance with the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 6. Permit Specific Bond. (1) For each permit obtained by transfer from a member of the former voluntary bond pool fund, a permit-specific bond at a rate ***of[~~determined by the commission but no less than~~]*** $2,000 per acre shall be posted.

(2) Permit specific bonds posted pursuant to this section shall be released in accordance with the provisions of 405 KAR 10:015, Section 2.

Section 7. Incorporation by Reference. (1) "Application for Performance Bond Subsidization for Permit Succession", ***RGF-4,*** April 2014, is incorporated by reference.

(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: June 30, 2014

FILED WITH LRC: June 30, 2014 at 2 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 14, 2014)

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439

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

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

Section 1. Incorporation by Reference. (1) Northpoint Training Center policies and procedures, ***October[~~July~~]*** 14, 2014[~~September 13, 2011~~], are incorporated by reference. Northpoint Training Center policies and procedures include:

NTC 01-17-01 Relationships with Public, Media and Other Agencies (Amended 7/14/14[~~7/13/11~~])
NTC 02-07-02 Institutional Religious Center Fund (Amended 7/13/11)
NTC 02-08-01 Inmate Canteen (Amended 9/13/11)
NTC 02-12-01 Inmate Accounts (Amended 7/14/14[~~9/13/11~~])
NTC 06-01-01 Offender Information Services (Amended 7/14/14[~~9/13/11~~])
NTC 06-01-02 Offender Information Services - Release of Information (Amended 9/13/11)
NTC 09-06-01 Searches and Contraband Procedures; Disposition of Contraband (Amended 9/13/11)
NTC 09-14-01 Inmate Death (Amended 7/13/11)
NTC 09-16-01 Restricted Areas (Amended 7/14/14[~~01/07/08~~])
NTC 10-01-01 Special Management Unit (Amended ***10/14/14[~~7/14/14~~]***[~~9/13/11~~])
NTC 11-04-02 Menu, Nutrition, Special, and Individual Diets (Amended 7/13/11)
NTC 11-05-02 Food Service Staff Health Standards[~~and Regulations for Food Service Employees~~] (Amended ***10/14/14[~~7/14/14~~]***[~~11/15/07~~])
NTC 12-02-01 Personal Hygiene for Inmates; Clothing and Linens (Amended 7/13/11)
NTC 12-02-02 Issuance of Personal Hygiene Products (Amended 7/13/11)
NTC 12-06-01 Housekeeping Procedures (Amended 7/13/11)
NTC 12-07-01 Grooming and Hair Care Standards (Amended 7/14/14[~~9/13/11~~])
NTC 13-01-01 Emergency Medical Care Plan (Amended 7/14/14[~~11/15/07~~])
[~~NTC 13-01-02 Emergency and Specialized Health Services (Amended 7/13/11)~~]
NTC 13-02-01 Provisions and Authority for Health Services (Amended 7/14/14[~~Added 9/13/11~~])
NTC 13-03-01 Sick Call and Pill Call (Amended 7/13/11)
NTC 13-04-01 Utilization of Pharmaceutical Products (Amended 9/13/11)
NTC 13-05-01 Dental Services (Amended 7/13/11)
NTC 13-08-01 Medical and Dental Records (Amended 7/14/14[~~11/15/07~~])
NTC 13-10-01 Notification of Inmate's Family or Designation Individual of Serious Illness or Injury, Surgery, or Inmate Death (Added 11/15/07)
NTC 13-11-01 Inmate Health Screening and Evaluation (Amended 7/14/14[~~7/13/11~~])
NTC 13-12-01 Special Health Care Programs (Amended 7/13/11)
NTC 13-13-01 Inmate Self-administration of Medication (Amended 7/13/11)
NTC 13-19-01 Mental Health Care Program (Amended 7/14/14[~~7/13/11~~])

NTC 13-19-03 Suicide Prevention and Intervention Program (Amended 7/13/11)
NTC 13-20-02 Infectious Disease[~~Infection~~] Control (Amended 7/14/14[~~9/13/11~~])
NTC 13-22-01 Informed Consent (Amended 7/13/11)
NTC 13-26-01 Public Advocacy Access to Psychological and Psychiatric Reports (Amended 12/13/05)
NTC 14-01-01 Legal Services Program (Amended ***10/14/14[~~7/14/14~~]***[~~7/13/11~~])
NTC 14-02-01 Inmate Grievance Procedure (Amended 5/12/06)
NTC 14-03-02 Board of Claims (Amended 9/13/11)
NTC 15-02-01 Due Process and Disciplinary Procedures (Amended 7/14/14[~~7/13/11~~])
NTC 15-02-02 Extra Duty Assignments
NTC 15-03-01 Rules for Inmates Assigned to Outside Detail (Amended 7/14/14[~~9/13/11~~])
NTC 15-03-02 Rules and Regulations for General Population Dormitories (Amended ***10/14/14[~~7/14/14~~]***[~~9/13/11~~])
NTC 15-03-03 Nonsmoking Dormitory
NTC 15-04-01 Inmate Identification (Amended 7/14/14[~~9/13/11~~])
NTC 15-05-01 Drug Abuse and Intoxicants Testing (Amended 7/14/14[~~7/13/11~~])
NTC 16-01-01 Inmate Mail[~~Regulations~~] (Amended 7/14/14[~~9/13/11~~])
NTC 16-02-01 Visiting (Amended ***10/14/14[~~7/14/14~~]***[~~7/13/11~~])
NTC 16-03-01 Inmate Furloughs (Added 7/14/14)
NTC 16-05-01 Telephone Use and Control (Amended 7/13/11)
NTC 17-01-01 Personal Property Control (Amended ***10/14/14[~~7/14/14~~]***[~~9/13/11~~])
NTC 17-01-04 Disposition of Unauthorized Property (Amended 7/14/14[~~9/13/11~~])
NTC 17-03-01 Assessment and Orientation (Amended 7/14/14[~~7/13/11~~])
NTC 18-01-01 Preparole Progress Report (Amended 7/13/11)
NTC 18-02-01 Classification (Amended 9/13/11)
NTC 18-02-02 Classification - 48 Hour Notification (Amended 5/12/06)
NTC 18-03-01 Conflict Notification Form (Amended 9/13/11)
NTC 18-05-01 Transfer[~~Transfers~~] of Inmates (Amended 7/14/14[~~7/13/11~~])
NTC 19-01-01 Inmate Work Programs[~~Program~~] (Amended 7/14/14[~~7/13/11~~])
NTC 20-01-01 Educational Programs (Amended 7/14/14[~~7/13/11~~])
NTC 20-02-02 Live Work Projects in Technical School Classes (Amended 7/13/11)
NTC 21-01-01 Library Services (Amended 7/14/14[~~5/12/06~~])
NTC 22-03-01 Conducting Inmate Organizational Meetings and Programs (Amended 9/13/11)
NTC 23-01-01 Religious Services (Amended 7/14/14[~~9/13/11~~])
NTC 23-03-01 Marriage of Inmates (Amended 7/13/11)
NTC 24-04-01 Honor Housing (Amended 7/13/11)
NTC 25-01-01 Release Preparation Program (Amended 7/14/14)
NTC 25-01-02 Temporary and Community Center Release
NTC 25-02-01 Funeral Trips and Bedside Visits (Amended 7/14/14)
NTC 25-03-01 Inmate Release Procedure (Amended ***10/14/14[~~7/14/14~~]***[~~7/13/11~~])
NTC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 7/13/11)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner
APPROVED BY AGENCY: June 26, 2014
FILED WITH LRC: July 14, 2014 at 4 p.m.
CONTACT PERSON**:** Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(As Amended at ARRS, October 14, 2014)

503 KAR 1:070. Training: qualifications; application.

RELATES TO: KRS 15.330(1)(c)***, 15.440***
STATUTORY AUTHORITY: KRS ***15.330(1)(c), (h)[~~15A.160~~]***
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(c) authorizes the Kentucky Law Enforcement Council to prescribe qualifications for attendance at schools certified by the council to conduct those law enforcement training courses required by KRS 15.440 for police officers in order for them to gain or retain eligibility to participate in the Law Enforcement Foundation Program Fund. This administrative regulation ***establishes[~~prescribes~~]*** qualifications for attending law enforcement courses at certified schools[~~and forms to be used~~] and procedures to be followed in applying for admission to a course[~~such courses~~].

Section 1. Admission Qualifications. A certified school ***may[~~, as allowed by law, shall have the authority to~~]*** decide what persons are qualified to enroll in its courses. [~~(But~~]Only a police officer, as defined in KRS 15.420(2), shall gain or retain eligibility to participate in the fund by completing a course at a certified or recognized school.[~~)~~]

Section 2. [~~Application for Basic Training. (1) Each applicant for a basic training course at a school certified by the council must submit a completed KLEC Form 29, "Application for Basic Training," and a completed KLEC Form 30, "Medical Examination Form" to the school no less than thirty (30) days prior to the first day of the course. (These forms are available from the school - for example, the Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102.) Failure to submit the forms in the prescribed manner or within the prescribed time shall be justification for denying admission to the course. The director of the school or his designee, if he deems it justified by unusual circumstances, may waive the thirty (30) day requirement.~~

~~(2) Medical examination form requirements. The KLEC Form 30, "Medical Examination Form," shall be completed no sooner than 120 days before the date on which the basic training course begins. The KLEC Form 30, "Medical Examination Form," shall contain the opinion of a licensed physician as to the applicant's ability to participate in the physical activities of basic training as described in the form. No applicant shall be admitted to a basic training course without a completed KLEC Form 30.~~

~~Section 3. Application for In-service Training. Each applicant for an in-service training course at a school certified by the council must submit a completed KLEC Form 28, "Application for In-service Training," to the school not less than thirty (30) days prior to the first day of the course. (This form is available from the school - for example, the Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102.) Failure to submit the form in the prescribed manner or within the prescribed time shall be justification for denying admission to the course. The director of the school or his designee, if he deems it justified by unusual circumstances, may waive the thirty (30) day requirement and admit an applicant on shorter notice.~~

~~Section 4.~~] Falsification of Application. Knowing or willful falsification of an application to a council-approved course shall be justification for denying admission to the course.

KEITH CAIN, Chair
APPROVED BY AGENCY: August 12, 2014
FILED WITH LRC: August 14, 2014 at 3 p.m.
CONTACT PERSON: Dana M. Todd, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(As Amended at ARRS, October 14, 2014)

503 KAR 1:080. Certification of schools.

RELATES TO: KRS 15.330(1)(a), ***(e), (g)[~~(d)~~]***
STATUTORY AUTHORITY: KRS 15.330(1)***(a), (e),*** (g), ***(h)[~~15A.160~~]***
NECESSITY, FUNCTION AND CONFORMITY: KRS 15.330(1)(a) authorizes the Kentucky Law Enforcement Council to prescribe standards for approval and continuation of approval of schools which conduct law enforcement training courses required under KRS 15.310 to 15.510 and 15.990 to 15.992. KRS 15.330(1)***(e)[~~(d)~~]*** authorizes the council to issue certificates to a law enforcement training school. This administrative regulation ***establishes[~~prescribes~~]*** standards and procedures for approval and certification.

Section 1. Application Procedures. (1) Any[~~An~~] agency, group, or individual may apply to the council to establish:
(a) A certified basic training school;
(b) A certified in-service training school; or
(c) Both.
(2) The application shall:
(a) Be in writing on a KLEC Form 3, ["]School Certification Application["]; and
(b) Include information***[~~prescribed by the council~~]*** regarding the:
1. Curriculum;
2. Instructors;
3. Facilities; and
4. Equipment.

Section 2. Review of Application. (1) Upon receiving a properly completed application for certification of a school, the council shall:
(a) Conduct an on-site inspection of the facility and equipment; and
(b) Thoroughly examine the curriculum and instructors of the applying school.
(2) In the course of its inspection, the council shall determine whether the applying school offers training at least equal to the equivalent training provided by the department based upon the following criteria:
(a) Staff:
1. Adequate administrative and support[~~supportive~~] staffing;
2. Number of full-time instructors;
3. Number of part-time instructors; and
4. Certification of all instructors, including guest instructors;[~~.~~]
(b) Curriculum:
1. Type of training to be offered; and
2. Certification of all curricula;[~~.~~]
(c) Training aids:
1. Use of an outline, study guide, handouts, and similar class material; and
2. Availability of training aids including:
a. Chalk or white board;
b. Flip chart and easel;
c. Charts;
d. Enlarged photographs;
e. Scale models;
f. Thirty-five (35) millimeter slide projector;
g. Screen;
h. Video projector;
i. Monitors;
j. Satellite dish capability; and
k. Distance learning capability; and[~~.~~]
(d) Hours and capacity:
1. Number of students that can be trained annually;
2. Number of times annually that a course is offered;
3. Maximum number of students per class; and
4. Hours of operation.
(3) The council shall determine whether the applying school's personnel, facilities, and procedures meet minimum standards for safety and quality based upon the following criteria:
(a) Physical facilities:
1. Type and age of buildings;
2. Number of classrooms;
3. Adequate heating, air conditioning, and ventilation;
4. Adequate lighting;
5. Adequate furniture;
6. Available library with adequate number of copies of standard reference material necessary for subject matter taught; and
7. Available physical training facilities; and[~~.~~]
(b) Firearms range:
1. Location;
2. Distance from classroom;
3. Travel time from classroom to range;
4. Available transportation to range;
5. Types of courses available (bullseye, silhouette, combat, or other practical shooting course);
6. Range rules posted and enforced;
7. Certified firearms instructor present at all training sessions;
8. Established and enforced safety precautions for loading and storing of ammunition; and
9. Backstop which will contain slugs and prevent ricochets.
(4) An applying school shall not be certified if found to be deficient in any of the[~~above~~] areas established in subsections (2) and (3) of this section.

Section 3. Approval Procedure. The council, at its first regular meeting after the evaluation has been completed, shall vote whether to approve the applying school.

Section 4. Notification of Council Action; Certification. (1) The council shall notify the applying school and fund administrator within thirty (30) days of the council's action whether the school is approved.
(2) If an applying school is approved, the council shall issue a certificate stating:
(a) That the school has been certified; and
(b) That the school offers:
1. Basic training;
2. In-service training; or
3. Both.

Section 5. Inspections. A school certified by the council shall be subject to inspection by the council to determine if the school is maintaining the standards required for certification.

Section 6. Revocation of Certification. (1) A school's certification shall be revoked by the council if a school has been found not to have maintained the standards required for certification. (2) If certification is revoked, the school and the fund administrator shall be notified of the revocation by the council within fifteen (15) days. The council shall not recertify a school until the deficiency has been corrected.

Section 7. Incorporation by Reference. (1) KLEC Form 3 "School Certification Application", June 2014 edition[~~(eff. 8/12/98), Kentucky Law Enforcement Council~~], is incorporated by reference.
(2) This material[~~It~~] may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Law Enforcement Council, Funderburk Building, Eastern Kentucky University, 521 Lancaster Avenue[~~Road~~], Richmond, Kentucky 40475-3102[~~40475-3137~~], Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH CAIN, Chair
APPROVED BY AGENCY: August 14, 2014
FILED WITH LRC: August 14, 2014 at 3 p.m.
CONTACT PERSON: Dana M. Todd, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(As Amended at ARRS, October 14, 2014)

503 KAR 1:100. Certification of instructors.

RELATES TO: KRS 15.330(1)(a), (b), ***(e)[(d)]***
STATUTORY AUTHORITY: KRS ***15.330(1)(a), (b), (e), (h)[15A.160]***
NECESSITY, FUNCTION AND CONFORMITY: KRS 15.330(1)(a), (b), and ***(e)[(d)]*** authorize the Kentucky Law Enforcement Council to certify instructors at certified schools. This administrative regulation ***establishes[prescribes]*** standards and procedures for[such] certification.

Section 1.***[Council Authority. The council shall have the authority to certify all persons instructing in law enforcement training courses at certified schools.***

Section 2.] Application for Certification. (1) Applications for certification, additional certification, and for certification renewal shall be made to the council.
(2) [(]The application for instructor certification form, KLEC Form 1; the application for additional certification, KLEC Form 6; and the application for certification renewal, KLEC Form 5, shall[is available from, and should] be submitted to[,] the Kentucky Law Enforcement Council, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102.
(3)[)] To become certified, an applicant shall[must] meet the following requirements:
(a)[(1)]Have three (3) years of law enforcement experience or experience in the specific field, subject matter, or academic discipline to be taught;
(b)[and (2)] Have earned a high school diploma or its equivalent as determined by the council; and
(c)[. (3)] Have successfully completed an instructors' course approved by the council.

Section ***2.[3.]*** The council may waive any training requirements for instructors who are licensed as professionals, including[but not limited to:] attorneys, physicians, or nurses[, etc]. The council may also waive any training requirements for other experts if[provided; however,] the reasons for waiver and the individual's qualifications are[shall be] stated in the council's minutes. The application for waiver, KLEC form 8, shall be submitted to the Kentucky Law Enforcement Council, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102.

Section ***3.[4.]*** Application Process. Applications for instructor certification, additional certification, application for waiver, and renewal of certification shall be reviewed by the council. The council, at its first regular meeting after the review has been completed, shall vote whether to approve the application[applicant].

Section ***4.[5.]*** Granting of Certification. If the council grants certification to an applicant, the council shall notify the applicant in writing within fifteen (15) days of the council's action.

Section ***5.[6.]*** Instructor Certificate. The council shall issue a certificate stating that the person has been approved to instruct.

Section ***6.[7.]*** Denial, Revocation, and Reinstatement of Certification. The council shall deny certification to an applicant who fails to meet the requirements and shall revoke certification for demonstrated incompetence, immoral conduct, or other good cause. Any instructor who fails to instruct during the ***five (5)[one (1)]*** year period of certification shall be required to request[apply for] reinstatement of certification in writing[and to meet such requirements as are deemed necessary by the council]. When the council denies certification to an applicant or revokes certification or denies recertification or reinstatement of certification to an instructor, the council shall notify the person of the council's action in writing within fifteen (15) days.

Section ***7.[8.]*** Length of Certification. Certification shall be for a period of five (5) years[one (1) year]. At the end of the five (5)[one (1)] year period, certification may be renewed by the council if the instructor has instructed for a minimum of five (5) hours in an approved course provided by a certified school during that five (5) year period and if the instructor[, if he instructed at a certified school,] has been recommended by the director of the certified school.[After five (5) years of continuous certification, the council may certify an instructor for a five (5) year period.]

Section ***8.[9.]*** Monitoring of Instructors. The council may[shall when practical,] monitor each instructor during the first[one (1)] year[period] of certification and biennially thereafter to determine if the instructor is teaching to the stated goals and objectives of the course and is meeting generally accepted standards of the teaching profession.

Section ***9.[10].*** Instructor Directory. Each certified instructor shall be listed in an official directory of the council which shall identify each subject that the instructor has been certified to instruct. The directory shall be published in the form of a notebook, allowing for changes through the use of supplements. The council shall publish annual supplements to the directory by December 31 of each year and the supplements shall include all certification changes, including additions, deletions, and renewals, for the year. The council shall provide each certified school and the fund administrator with a copy of the directory.

Section ***10.[11.]*** Incorporation by Reference. (1) The following material is incorporated by reference:
(a) KLEC Form 1, "Application for Instructor Certification", June 2014;
(b) KLEC Form 5, "Instructor – Continued Certification", June 2014;
(c) KLEC Form 6, "Request for Additional Certification", June 2014; and
(d) KLEC Form 8, "Request for Waiver", June 2014.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Law Enforcement Council, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH CAIN, Chair
APPROVED BY AGENCY: August 14, 2014
FILED WITH LRC: August 14, 2014 at 3 p.m.
CONTACT PERSON: Dana M. Todd, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(As Amended at ARRS, October 14, 2014)

505 KAR 1:110. Department of Juvenile Justice Policies and Procedures[Manual]: Program Services.

RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645
STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 635.500, 635.505(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 Policies[~~Policy~~] and Procedures[~~Manual~~]: Program Services", ***October 14[~~August 12~~]*[~~May 14~~]**, 2014[~~November 15, 2005~~], is incorporated by reference and includes the following:

300 Definitions[~~Programs and Services~~] (Amended ***10/14/14[~~08/12/14~~]*[~~05/14/14~~]**[~~7/15/05~~]);

300.1 Programs and Services[~~Communication and Correspondence~~] (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

300.2 Correspondence to the Court System ***(Amended 10/14/14[~~(Added 05/14/14~~])***;

301 Intake[~~Reception~~] and Orientation (Amended ***10/14/14[~~05/14/14~~]***[~~11/15/05~~]);

301.1 Youth's Personal Property,[~~Belongings and~~] Dress Code, and Facility Issued Property (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

301.2 Hair and Grooming ***(Amended 10/14/14[~~(Added 05/14/14~~])***;

302 Individual Treatment Plan and Aftercare Plan[~~Individualized Treatment/Aftercare Planning~~] (Amended ***10/14/14[~~05/14/14~~]***[~~11/15/05~~]);

303 Treatment Team Composition, Function,[~~Functioning~~] and Responsibility (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

306 Phase System (Amended 05/14/14[~~7/15/05~~]);

307 Counseling Services (Amended ***10/14/14[~~08/12/14~~]*[~~05/14/14~~]**[~~11/15/05~~]);

308 Advanced Care Unit ***(Amended 10/14/14[~~(Added 05/14/14~~])***;

309 Family Engagement[~~Involvement in Treatment Process~~] (Amended 05/14/14[~~7/15/05~~]);

310 Family and Community Contacts: Mail, Telephone, and Visitation[~~, Off-Grounds Activities, Day Release and Furlough~~] (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

314 Youth Council (Amended 05/14/14[~~7/15/05~~]);

315 Use of Non-Governmental[~~Nongovernmental~~] Funds and Youth Activity Funds ***Account*** (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

316 Youth ***Allowances and Work Details[~~Work Programs~~]*** (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

317 Recreation (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

318 Behavior Management (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

318.1 Discipline (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

318.2 Disciplinary Review (Amended ***10/14/14[~~05/14/14~~]***[~~11/15/05~~]);

318.3 Discipline: Level V Youth Development Center[~~5 Facilities~~] (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

319 Staff Requirements for the[~~Required Staffing for~~] Supervision of Youth (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

319.1 Facility Capacities[~~and Staffing Requirements~~] (Amended 05/14/14[~~7/15/05~~]);

320 Transportation of Youth (Amended 05/14/14[~~7/15/05~~]);

321 [~~Critical~~] Incident Reporting[~~Reports~~] (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

322 Drug Screening and Testing ([~~Added and~~] Amended ***10/14/14[~~05/14/14~~]***[~~11/15/05~~]);

323 Isolation (Amended ***10/14/14[~~08/12/14~~]*[~~05/14/14~~]**[~~11/15/05~~]);

324 [~~Mechanical~~] Restraints (Amended ***10/14/14[~~05/14/14~~]***[~~11/15/05~~]);

325 Searches ***(Amended 10/14/14[~~(Added 05/14/14~~])***;

[~~325.1 Searches (Amended 7/15/05)~~]

326 Contraband, Seizure, and Chain of Custody[~~Evidence~~] ([~~Added and~~] Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

327 Escape and Absent Without Leave[~~/AWOL~~] (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

328 Individual Client Records[~~Record~~] (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

329 Progress Notes[~~Notation~~] (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

330 Log and Shift Reports (Amended 05/14/14[~~7/15/05~~]);

331 Grievance Procedure (Amended ***10/14/14[~~05/14/14~~]*** [~~7/15/05~~]);

332 Authorized Leave: Off-grounds Activities, Day Releases, and Furloughs***; Supervised Off-grounds Activities (Amended 10/14/14[~~(Added 05/14/14~~])***;

333 Day Treatment Admissions (Added 05/14/14);

334 Youth Development ***Centers[~~Center~~]***[~~YDC~~] Educational and Vocational Programming, Assessment, and Transition (Amended 05/14/14[~~7/15/05~~]);

334.1 Day Treatments[~~Treatment~~]: Educational Programming, Assessment, and Transition (Amended 05/14/14[~~7/15/05~~]);

334.2 Group Homes: Educational Services (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

335 Youth Development Center[~~YDC~~] Educational and[~~/~~] Vocational Records; Day Treatment Educational Records (Amended 05/14/14[~~7/15/05~~]);[~~335.1 Day Treatment: Education; Records (Amended 7/15/05)~~]

339 Youth Development Center and Day Treatment[~~YDC~~] Instructional Staffing (Amended 05/14/14[~~7/15/05~~]);

341 Youth Development Center and Day Treatment Evaluation of Integrated Educational and Vocational Plan (Added 05/14/14); [~~339.1 Day Treatment: Instructional Staffing (Amended 7/15/05)~~

~~342 YDC Evaluation of Integrated Educational/Vocational Plan (Amended 7/15/05)~~

~~342.1 Day Treatment: Evaluation of Educational Programming (Amended 7/15/05)~~]

343 Technical[~~YDC Vocational~~] Education Safety (Amended 05/14/14[~~7/15/05~~]);

344 Library Services (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

345 Religious Programs (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]);

346.1 Youthful Offenders (Added 05/14/14);

347.1 Educational and Meritorious Good Time ***Credit for Youthful Offenders (Amended 10/14/14[~~(Added 05/14/14~~])***;[~~346 Educational Good Time (Amended 7/15/05)~~

~~347 Meritorious Good Time (Amended 7/15/05)~~

~~348 Sex Offender Treatment (Amended 7/15/05)~~]

351 Youthful Offender Parole (Amended ***10/14/14[~~05/14/14~~]***[~~7/15/05~~]); and

352 Youthful Offender Transfer (Amended 05/14/14[~~7/15/05~~]).[~~353 Extended Jurisdiction for Youthful Offenders (Amended 7/15/05)~~]

(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.

BOB D. HAYTER, Acting Commissioner

APPROVED BY AGENCY: August 11, 2014

FILED WITH LRC: August 12, 2014 at 9 a.m.

CONTACT PERSON: LaDonna Koebel, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax, (502) 573-0836.

PUBLIC PROTECTION CABINET
Kentucky Department of Insurance
Financial Standards and Examination Division
(As Amended at ARRS, October 14, 2014)

806 KAR 37:010. Insurance holding company systems.

RELATES TO: KRS ***304.1-050, 304.6[~~304.06~~],*** 304.24-390, ***304.24-400, 304.24-415[~~304.24-410~~]***, 304.33, ***304.37-010,*** 304.37-020, 304.37-030, 304.37-110, 304.37-120, 304.37-130

STATUTORY AUTHORITY: KRS 304.2-110***, 304.37-060***

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner[~~Executive Director~~] of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code***, KRS Chapter 304. KRS 304.37-060 authorizes the commissioner to promulgate administrative regulations as may be necessary to carry out KRS Chapter 304.37***. This administrative regulation ***establishes[~~sets forth~~]*** procedural requirements[~~which the Executive Director of Insurance deems~~] necessary to carry out the provisions of KRS ***Chapter*** 304.37, insurance holding company systems, and statutes relating to the merger and acquisition of domestic insurers[~~, this information being necessary and appropriate for the public interest and for the protection of policyholders in Kentucky~~].

Section 1. Definitions.[~~The following definitions apply to this administrative regulation:~~]

(1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "Department" is defined by KRS 304.1-050(2).

(3)***["Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.***

(4)][(2)]***["Foreign insurer" shall include an alien insurer except if]***[where]***[clearly noted otherwise.***

(5)][(3)] "Ultimate controlling person" means that person which is not controlled by any other person.

Section 2. Forms - General Requirements. (1)(a) Forms A, B, C,[~~and~~] D, ***E,*** and F shall[~~are intended to~~] specify the information required to be provided in the preparation of the statements required by KRS 304.37-120, 304.37-020 and 304.37-030. In addition, Form A shall be used as to mergers and acquisitions of domestic insurers referred to in KRS 304.24-390***[and 304.24-410]***. They are not intended to be blank forms which are to be filled in.

(b) Filed[~~These~~] statements[~~filed~~] shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers[~~thereto~~] are prepared in a manner as to indicate clearly the scope and coverage of the items.

(c) All instructions, whether appearing under the items of the form or elsewhere[~~therein~~], shall be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer[~~thereto~~] is in the negative, ***a[an appropriate]*** statement to that effect shall be made.

(2)(a) Duplicate originals of each statement including exhibits and all other papers and documents filed as a part of the statement[~~thereof,~~] shall be filed with the commissioner[~~executive director~~] by personal delivery or mail addressed to: Financial Standards and Examination Division, Kentucky Department[~~Office~~] of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

(b) A copy of Form C shall be filed in each state in which an insurer ***may[is authorized to]*** do business, if the insurance regulatory official of that state has notified the insurer of its request in writing, in which case the insurer has fifteen (15) days from receipt of the notice to file the form.

(c) The duplicate original shall be manually signed in the manner prescribed on the form.

(d) Unsigned copies shall be conformed.

(e) If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the statement.

(3) If an applicant requests a hearing under KRS 304.37-120(4)(b), in addition to filing the Form A with the commissioner, the applicant shall file a copy of Form A with the National Association of Insurance Commissioners in electronic form.

(4) Statements shall be prepared electronically[~~on paper eight and one-half (8 1/2) inch by eleven (11) inch in size and bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size~~]. All copies of any ***statements[statement]***, financial statements, or exhibits shall be[~~clear,~~] easily readable[~~,~~] and suitable for review and reproduction[~~photocopying~~]. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

Section 3. Forms - Incorporation by Reference, Summaries and Omissions. (1)(a) Information required by any item ***on[of]*** Forms A, B,[~~or~~] D, E, or F may be incorporated by reference in answer or partial answer to any other item.

(b) Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item ***on[of]*** Forms A, B,[~~or~~] D, E, or F if[~~provided~~] the document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive.

(c) Documents currently on file with the commissioner[~~executive director~~] which were filed within three (3) years shall[~~need~~] not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that the material is to be incorporated by reference in ***an*** answer to the item.

(d) Material[~~Matter~~] shall not be incorporated by reference if[~~in any case where~~] the incorporation ***may[would]*** render the statement incomplete, unclear, or confusing.

(2)(a) If[~~Where~~] an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document.

(b) In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the commissioner[~~executive director~~] which was filed within three (3) years and may be qualified in its entirety by the reference.

(c) ***If[In any case where]*** two (2) or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties[~~thereto~~], the dates of execution, or other details, a copy of only one (1) of the[~~such~~] documents shall[~~need~~] be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the filed documents[~~a copy of which is filed~~].

Section 4. Forms - Information Unknown or Unavailable and Extension of Time to Furnish. (1)[~~Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because obtaining it would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions:~~

~~(a) The person filing shall give the information on the subject it possesses or can acquire without unreasonable effort or expense, together with the sources thereof; and~~

~~(b) The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose~~

~~knowledge the information rests and stating the result of a request made to the person for the information.~~

~~(2)~~] If it is impractical to furnish any required information, document, or report when[~~at the time~~] it is required to be filed, there shall[~~may~~] be filed with the commissioner[~~executive director~~]***[as]*** a separate document ***that***:

(a) ***Identifies[~~Identifying~~]*** the information, document, or report in question;

(b) ***States[~~Stating~~]*** why its filing when[~~at the time~~] required is impractical; and

(c) ***Requests[~~Requesting~~]*** an extension of time for filing the information, document, or report to a specified date.

(2) The request for extension shall be[~~deemed~~] granted unless the commissioner[~~executive director~~] within sixty (60) days after receipt[~~thereof~~] enters an order denying the request.

Section 5. Forms - Additional Information and Exhibits. (1) In addition to the information expressly required to be included in Forms A, B, C,[~~and~~] D, E, and F, the commissioner may request further material information***[~~, if any~~]*** as may be necessary to make the information contained in the filing not misleading ***and which may include supplemental financial information, supporting contracts and agreements, and filings with other regulatory bodies***[~~there shall be added any further material information necessary to make the information contained therein not misleading~~].

(2) The person filing may also file[~~such~~] exhibits[~~as it may desire~~] in addition to those expressly required by the statement. These exhibits shall[~~be so marked as to indicate~~] clearly indicate the subject matters to which they refer.

(3) Changes to Forms A, B, C,[~~or~~] D, E, or F shall include on the top of the cover page the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the date of the original filing.

Section 6. Subsidiaries of Domestic Insurers. The authority to invest in subsidiaries under KRS 304.37-110 shall be[~~is~~] in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code, KRS Chapter 304, and corresponding administrative regulations.

Section 7. Acquisition of Control - Statement Filing. A person required to file a statement pursuant to KRS 304.24-390,***[304.24-410,]*** or 304.37-120[~~,~~] shall furnish the required information on Form A, and on Form E, in accordance with Section 10 of this administrative regulation.

Section 8. Amendments to Form A. The applicant shall promptly advise the commissioner[~~executive director~~] of any changes in the information[~~so~~] furnished on Form A arising subsequent to the date upon which the information was furnished, but prior to the commissioner's[~~executive director's~~] disposition of the application.

Section 9. Acquisition of Certain Insurers. (1) If the person being acquired is[~~deemed to be~~] a "domestic insurer" solely because of the provisions of KRS ***304.37-120(1)(a)[~~304.37-010~~]***[~~304.37-(1)(a)~~], the name of the domestic insurer on the cover page shall be indicated as follows: "ABC Insurance Company, a subsidiary of XYZ Holding Company".

(2) If[~~Where~~] an insurer referred to in subsection (1) of this section is being acquired, references to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

Section 10. Pre-Acquisition Notification. (1) If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to KRS 304.37-120, that person shall file a pre-acquisition notification form, Form E.

(2) If a non-domiciliary insurer licensed to do business in the Commonwealth is proposing a merger or acquisition pursuant to KRS 304.37-130, that insurer shall file a pre-acquisition notification form, Form E. A pre-acquisition notification form shall not be filed if the acquisition meets the requirements of KRS 304.37-130(2)(b).

(3) In addition to the information required by Form E, the commissioner may require an expert opinion as to the competitive impact of the proposed acquisition.

Section 11. Annual Registration of Insurers - Statement Filing. An insurer required to file an annual registration statement pursuant to KRS 304.37-020 shall furnish the required information on Form B.

Section 12.[~~11.~~] Summary of Registration - Statement Filing. An insurer required to file an annual registration statement pursuant to KRS 304.37-020 shall also furnish information required on Form C. An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the insurance regulatory official of that state.

Section 13.[~~12.~~] Alternative and Consolidated Registrations. (1) Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under KRS 304.37-020. A registration statement may include information not required by KRS Chapter 304.37 regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in Kentucky. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile if:

(a) The statement or report contains substantially similar information required to be furnished on Form B; and

(b) The filing insurer is the principal insurance company in the insurance holding company system.

(2) The question of whether the filing insurer shall be[~~is~~] the principal insurance company in the insurance holding company system shall be[~~is~~] a question of fact.***[~~and~~]*** An insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer shall set forth a brief statement of facts which ***substantiates[~~will substantiate~~]*** the filing insurer's claim that it is the principal insurer in the insurance holding company system.

(3) With the prior approval of the commissioner[~~executive director~~], an unauthorized insurer may follow any of the procedures which may[~~could~~] be done by an authorized insurer under subsection (1) of this section.

(4) Any insurer may take advantage of the provisions of KRS 304.37-020(9) or (10) without obtaining the prior approval of the commissioner[~~executive director~~]. However, the commissioner may[~~executive director reserves the right to~~] require individual filings if consolidation renders the material incomplete, unclear, or confusing[~~he deems them necessary in the interest of clarity, ease of administration, or the public good~~].

Section 14.[~~13.~~] Disclaimers and Termination of Registration. (1) A disclaimer of affiliation or a request for termination of registration claiming that a person ***shall[~~does~~]*** not, or will not upon the taking of some proposed action, control another person, referred to as the subject,[~~(the "subject")~~] shall contain the following information:

(a) The number of authorized, issued, and outstanding voting securities of the subject;

(b) With respect to the person whose control is denied and all affiliates of this person, the number and percentage of shares of the subject's voting securities which are held of record or known to be owned beneficially, and the number of these shares concerning which there is a right to acquire, directly or indirectly;

(c) All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of this person; ***and***

(d) A statement explaining why the person shall[~~should~~] not be considered to control the subject.

(2) A request for termination of registration shall be[~~deemed to have been~~] granted unless the commissioner[~~executive director~~], within thirty (30) days after he ***or she*** receives the request, notifies the registrant otherwise.

Section 15.[~~14.~~] Transactions Subject to Prior Notice - Notice Filing. (1) An insurer required to give notice of a proposed transaction pursuant to KRS 304.37-030 shall furnish the required information on Form D.

(2) Agreements for cost sharing services and management services shall at a minimum and as applicable:

(a) Identify the person providing services and the nature of the services;

(b) Set forth the methods to allocate costs;

(c) Require timely settlement ***at least[~~, not less frequently than~~]*** on a quarterly basis***[~~,~~]*** and ***in*** compliance with KRS ***Chapter 304.6[~~304 Subtitle 6~~]***;

(d) Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(e) State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(f) Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

(g) Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;

(h) State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer, and are subject to the control of the insurer;

(i) Include standards for termination of the agreement with and without cause;

(j) Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;

(k) Specify that, if the insurer is placed in receivership or seized by the commissioner under KRS ***Chapter*** 304.33:

1. All of the rights of the insurer under the agreement extend to the receiver or commissioner; and

2. All books and records will immediately be made available to the receiver or the commissioner, and shall be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request;

(l) Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to KRS ***Chapter*** 304.33; and

(m) Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commissioner under KRS ***Chapter*** 304.33, and will make ***these[~~them~~]*** available to the receiver for as long as the affiliate continues to receive timely payment for services rendered.

Section 16. Enterprise Risk Report. The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to KRS 304.37-020(13) shall furnish the required information on Form F.

Section 17.[~~15.~~] Extraordinary Dividends and Other Distributions. (1) Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

(a) The amount of the proposed dividend;

(b) The date established for payment of the dividend;

(c) A statement as to whether the dividend is to be in cash or other property and, if in property, a description of the property[~~thereof~~], its cost, and its fair market value together with an explanation of the basis for valuation;

(d) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:

1. The amounts, dates, and form of payment of all dividends or distributions, [~~(~~including regular dividends but excluding distributions of the insurers own securities,[~~)~~] paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year.

2. Surplus as regards policyholders, [~~(~~total capital and surplus,[~~)~~] as of the 31st day of December next preceding;

3. If the insurer is a life insurer, the net gain from operations for the twelve (12) month period ending the 31st day of December next preceding;

4. If the insurer is not a life insurer, the net income less realized capital gains for the twelve (12) month period ending the 31st day of December next preceding and the two (2) preceding twelve (12) month periods; and

5. If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two (2) calendar years.

(e) A balance sheet and statement of income for the period intervening from the last annual statement filed with the commissioner[~~executive director~~] and the end of the month preceding the month in which the request for dividend approval is submitted; and

(f) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

(2) Subject to KRS 304.37-030(2), each registered insurer shall report to the commissioner[~~executive director~~] all dividends and other distributions to shareholders within fifteen (15) business days following the declaration [~~thereof~~], including the same information required by subsection (1)(d) of this section.

Section 18.[~~16.~~] Adequacy of Surplus. (1)[~~The factors set forth in KRS 304.37-030(4) are not intended to be an exhaustive list.~~] In determining the adequacy and reasonableness of an insurer's surplus ***pursuant to KRS 304.37-030(4),*** no single factor shall be[~~is necessarily~~] controlling. The commissioner[~~executive director~~] shall consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer.

(2) In comparing the surplus maintained by other insurers, the commissioner[~~executive director~~] shall consider the extent to which each of these factors varies from insurer to insurer and in determining the quality and liquidity of investments in subsidiaries, the commissioner[~~executive director~~] shall consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

Section 19. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Form A Statement Regarding the Acquisition of Control of or Merger With a Domestic Insurer," ***October[~~August~~]*** 2014;

(b) "Form B Insurance Holding Company System Annual Registration Statement," August 2014;

(c) "Form C Summary of Changes to Registration Statement," August 2014;

(d) "Form D Prior Notice of a Transaction," August 2014;

(e) "Form E Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in this State or by a Domestic Insurer," August 2014; and

(f) "Form F Enterprise Risk Report," August 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Department of Insurance Internet Web site, http://insurance.ky.gov.[~~APPENDIX A~~

~~FORM A~~

~~STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER~~

~~Name of Domestic Insurer:~~

~~BY~~

~~Name of Acquiring Person (Applicant):~~

~~Filed with the Kentucky Office of Insurance~~

~~State of domicile of insurer being acquired:~~

~~Dated:_____, 19_____~~

~~Name, Title, address, and telephone number of Individual to Whom Notices and Correspondence Concerning this Statement Shall be Addressed:~~

~~ITEM 1. INSURER AND METHOD OF ACQUISITION~~

~~State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.~~

~~ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT~~

~~(1) State the name and address of the applicant seeking to acquire control over the insurer.~~

~~(2) If the applicant is not an individual, state the nature of its business operations for the past five (5) years or for any lesser period as the person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.~~

~~(3) Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. No affiliate need be identified if its total assets are equal to less than one-half of one (0.5) percent of the total assets of the ultimate controlling person affiliated with the applicant. Indicate in the chart or listing the percentage of voting securities of each person which is owned or controlled by the applicant or by any other person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any person, indicate which person, and set forth the title of the court, nature of proceedings, and the date when commenced.~~

~~ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT~~

~~State the following with respect to the applicant if he is an individual or all persons who are directors, executive officers, or owners of ten (10) percent or more of the voting securities of the applicant if the applicant is not an individual.~~

~~(1) Name and business address;~~

~~(2) Present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on;~~

~~(3) Material occupations, positions, offices, or employment during the last five (5) years, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each occupation, position, office, or employment was carried on; if any occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency, indicate this fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension, or disciplinary proceedings in connection therewith.~~

~~(4) Whether or not the person has ever been convicted in a criminal proceeding (excluding minor traffic violations) and, if so, give the date, nature of conviction, name, and location of court, and penalty imposed or other disposition of the case.~~

~~ITEM 4. NATURE, SOURCE, AND AMOUNT OF CONSIDERATION~~

~~(1) Describe the nature, source, and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship (if any) between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes, and security arrangements relating thereto.~~

~~(2) Explain the criteria used in determining the nature and amount of such consideration.~~

~~(3) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he must specifically request that the identity be kept confidential.~~

~~ITEM 5. FUTURE PLANS OF INSURER~~

~~Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate the insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.~~

~~ITEM 6. VOTING SECURITIES TO BE ACQUIRED~~

~~State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was determined.~~

~~ITEM 7. OWNERSHIP OF VOTING SECURITIES~~

~~State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates, or any person listed in Item 3.~~

~~ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER~~

~~Give a full description of any contracts, arrangements, or understandings with respect to any voting security of the insurer in which the applicant, its affiliates, or any person listed in Item 3 is involved, such as transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom these contracts, arrangements, or understandings have been entered into.~~

~~ITEM 9. RECENT PURCHASES OF VOTING SECURITIES~~

~~Describe any purchases of any voting securities of the insurer by the applicant, its affiliates, or any person listed in Item 3 during the twelve (12) calendar months preceding the filing of this statement. Include in the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid. State whether any shares so purchased are hypothecated.~~

~~ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE~~

~~Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates, any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates, or any person listed in Item 3 during the twelve (12) calendar months preceding the filing of this statement.~~

~~ITEM 11. AGREEMENTS WITH BROKER-DEALERS~~

~~Describe the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.~~

~~ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS~~

~~(1) Financial statements and exhibits shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits attached.~~

~~(2) The financial statements shall include the annual financial statements of the persons identified in Item 2(3) for the preceding five (5) fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of the person's last fiscal year, if the information is available. Statements may be prepared on either an individual basis, or, unless the executive director otherwise requires, on a consolidated basis if the consolidated statements are prepared in the usual course of business.~~

~~(3) The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted~~

~~accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the annual statement of the person filed with the insurance regulatory official of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and administrative regulations of the state.~~

~~(4) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer, and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two (2) fiscal years, and any additional documents or papers required by Form A or Sections 2 and 4 of this administrative regulation.~~

~~ITEM 13. SIGNATURE AND CERTIFICATION~~

~~Signature and certification required as follows:~~

~~SIGNATURE~~

~~Pursuant to the requirements of KRS 304.24-390, 304.24-410, or 199 and KRS 304.37-120, as applicable, _____ has caused this application to be duly signed on its behalf in the City of _____ and State of _____on the ____ day of ____, 19 ____.~~

~~(SEAL)~~

~~Name of Applicant:~~
~~BY~~

~~(Name), (Title):~~
~~Attest:~~

~~Signature of Officer:~~
~~Title:~~
~~CERTIFICATION~~

~~The undersigned deposes and says that he has duly executed the attached application dated ____, 19____, for and on behalf of _____ (Name of Applicant); that he is the _____ (Title of Officer) of the company and that he is authorized to execute and file the instrument. Deponent further says that he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.~~

~~Signature:~~
~~(Type or print name beneath)~~

~~APPENDIX B~~
~~FORM B~~
~~INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT~~

~~Filed with the Kentucky Office of Insurance~~
~~BY~~

~~Name of Registrant:~~

~~On Behalf of Following Insurance Companies~~

~~Name:~~
~~Address:~~

~~Date: ____, 19_____~~
~~Name, Title, Address, and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Shall Be Addressed:~~

~~ITEM 1. IDENTITY AND CONTROL OF REGISTRANT~~

~~Furnish the exact name of each insurer registering or being registered ("the registrant"), the home office address and principal executive offices of each, the date on which each registrant became part of the insurance holding company system, and the method(s) by which control of each registrant was acquired and is maintained.~~

~~ITEM 2. ORGANIZATIONAL CHART~~

~~Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. No affiliate need be shown if its total assets are equal to less than one-half of one (0.5) percent of the total assets of the ultimate controlling person within the insurance holding company system unless it has assets valued at or exceeding $1,000,000.00. The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in such chart or listing indicate the type of organization (e.g., - corporation, trust, partnership) and the state or other jurisdiction of domicile.~~

~~ITEM 3. THE ULTIMATE CONTROLLING PERSON~~

~~As to the ultimate controlling person in the insurance holding company system furnish the following information:~~

~~(1) Name;~~

~~(2) Home office address;~~

~~(3) Principal executive office address;~~

~~(4) The organizational structure of the person (i.e., corporation, partnership, individual, trust, etc.);~~

~~(5) The principal business of the person;~~

~~(6) The name and address of any person who holds or owns ten (10) percent or more of any class of voting security, the class of the security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and~~

~~(7) If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings, and the date commenced.~~

~~ITEM 4. BIOGRAPHICAL INFORMATION~~

~~Furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations.~~

~~ITEM 5. TRANSACTIONS AND AGREEMENTS~~

~~(1) Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the registrant and its affiliates:~~

~~(a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the registrant or of the registrant by its affiliates;~~

~~(b) Purchases, sales or exchanges of assets;~~

~~(c) Transactions not in the ordinary course of business;~~

~~(d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the registrant's business;~~

~~(e) All management agreements, service contracts, and all cost-sharing arrangements;~~

~~(f) Reinsurance agreements;~~

~~(g) Dividends and other distributions to shareholders;~~

~~(h) Consolidated tax allocation agreements; and~~

~~(i) Any pledge of the registrant's stock or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.~~

~~(2) No information need be disclosed if it is not material for purposes of KRS 304.37-020.~~

~~(3) Sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one (0.5) percent or less of the registrant's admitted assets as of the 31st day of December next preceding shall not be deemed material.~~

~~(4) The description shall be in a manner as to permit the proper evaluation thereof by the executive director, and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets~~

~~between the parties, the identity of all parties to the transaction, and relationship of the affiliated parties to the registrant.~~

~~ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS~~

~~A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any persons is or was the subject. Give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:~~

~~(1) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and~~

~~(2) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company such as bankruptcy, receivership, or other corporate reorganizations.~~

~~ITEM 7. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS~~

~~The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.~~

~~ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS~~

~~(1) Financial statements and exhibits shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits attached.~~

~~(2) The financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.~~

~~(3) If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent the information is available. The financial statements may be prepared on either an individual basis, or unless the executive director otherwise requires, on a consolidated basis if the consolidated statements are prepared in the usual course of business.~~

~~(4) Unless the executive director otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the annual statement of the insurer filed with the insurance regulatory official of the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and administrative regulations of such state.~~

~~(5) Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person, and any additional documents or papers required by Form B or Sections 2 and 4 of this administrative regulation.~~

~~ITEM 9. FORM C REQUIRED~~

~~A Form C, Summary of Registration Statement, shall be prepared and filed with this Form B.~~

~~ITEM 10. SIGNATURE AND CERTIFICATION~~

~~Signature and certification required as follows:~~

~~SIGNATURE~~

~~Pursuant to the requirements of KRS 304.37-020, the Registrant has caused this annual registration statement to be duly signed on its behalf in the City of _____ and State of _____ on the ____ day of ____, 19____.~~

~~(SEAL)_____~~
~~Name of Applicant~~

~~BY_____~~
~~(Name) (Title)~~

~~Attest:~~
~~_____~~
~~(Signature of Officer)~~
~~_____~~
~~(Title)~~

~~CERTIFICATION~~

~~The undersigned deposes and says that he has duly executed the attached annual registration statement dated_____, 19___, for and on behalf of _____ (Name of Company); that he is the _____ (Title of Officer) of the company and that he is authorized to execute and file such instrument. Deponent further says that he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.~~

~~Signature:~~

~~Type or print name beneath:~~

~~APPENDIX C~~

~~FORM C~~

~~SUMMARY OF REGISTRATION STATEMENT~~

~~Filed with the Kentucky Office of Insurance~~

~~By~~

~~Name of Registrant:~~

~~On Behalf of Following Insurance Companies~~

~~Name:~~

~~Address:~~

~~Date: _____, 19_____~~

~~Name, Title, Address, and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Shall Be Addressed:~~

~~Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the executive director, and shall include specific references to item numbers in the annual registration statement and to the terms contained therein.~~

~~Changes occurring under Item 2 of Form B, insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where the changes are ones which result in ownership or holdings of ten (10) percent or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.~~

~~Changes occurring under Item 4 of Form B need only be included where an individual is, for the first time, made a director or executive officer of the ultimate controlling person, a director or executive officer terminates his responsibilities with the ultimate controlling person, or in the event an individual is named president of the ultimate controlling person.~~

~~If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of such change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion, and any flow of funds between affiliates resulting from the transaction.~~

~~The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.~~

~~SIGNATURE AND CERTIFICATION~~
~~Signature and certification required as follows:~~
~~SIGNATURE~~

~~Pursuant to the requirements of KRS 304.37-020, the Registrant has caused this summary of registration statement to be duly signed on its behalf in the City of _____ and State of _____on the _____day of_____, 19_____.~~
~~(SEAL)~~

~~Name of Applicant:~~
~~BY~~

~~(Name), (Title):~~

~~Attest:~~
~~_____~~
~~(Signature of Officer)~~
~~_____~~
~~(Title)~~
~~CERTIFICATION~~

~~The undersigned deposes and says that he has duly executed the attached summary of registration statement dated _____, 19_____, for and on behalf of _____ (Name of Company); that he is the _____ (Title of Officer) of the company and that he is authorized to execute and file the instrument. Deponent further says that he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information, and belief.~~

~~Signature:~~
~~Type or print name beneath:~~

~~APPENDIX D~~
~~FORM D~~
~~PRIOR NOTICE OF A TRANSACTION~~

~~Filed with the Kentucky Office of Insurance~~
~~By~~

~~Name of Registrant:~~

~~On Behalf of Following Insurance Companies~~

~~Name:~~
~~Address:~~

~~Date:_____, 19_____~~
~~Name, Title, Address, and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Shall Be Addressed:~~

~~ITEM 1. IDENTITY OF PARTIES TO TRANSACTION~~
~~Furnish the following information for each of the parties to the transaction:~~

~~(1) Name;~~
~~(2) Home office address;~~
~~(3) Principal executive office address;~~
~~(4) The organizational structure (i.e., corporation, partnership, individual, trust, etc.);~~
~~(5) A description of the nature of the parties' business operations;~~
~~(6) Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties; and~~
~~(7) Where the transaction is with a nonaffiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.~~

~~ITEM 2. DESCRIPTION OF THE TRANSACTION~~
~~Furnish the following information for each transaction for which notice is being given:~~

~~(1) A statement as to whether notice is being given under KRS 304.37-030(2)(a)1, 2, 3, 4, or 5;~~
~~(2) A statement of the nature of the transaction; and~~
~~(3) The proposed effective date of the transaction.~~

~~ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES OR INVESTMENTS~~

~~(1) Furnish a brief description of the amount and source of funds, securities, property, or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.~~

~~(2) If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under the loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.~~

~~(3) If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.~~

~~(4) No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit, or guarantee is less than:~~

~~(a) In the case of nonlife insurers, the lesser of three (3) percent of the insurer's admitted assets or twenty-five (25) percent of surplus as regards policyholders; or~~

~~(b) In the case of life insurers, three (3) percent of the insurer's admitted assets, each as of the 31st day of December next preceding.~~

~~ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NONAFFILIATE~~

~~(1) If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of, or make investments in any affiliate. Describe the amount and source of duns, securities, property, or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.~~

~~(2) No notice need be given if the loan or extension of credit is one which equals less than, in the case of nonlife insurers, the lesser of three (3) percent of the insurer's admitted assets or twenty-five (25) percent of surplus as regards policyholders or, with respect to life insurers, three (3) percent of the insurer's admitted assets, each as of the 31st day of December next preceding.~~

~~ITEM 5. REINSURANCE~~

~~(1) If the transaction is a reinsurance agreement or modification thereto, as described by KRS 304.37-030(2)(a)3, furnish a description of the known or estimated amount of liability to be ceded or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer~~

~~and nonaffiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one (1) or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.~~

~~(2) No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities in connection with the reinsurance agreement or modification thereto is less than five (5) percent of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding.~~

~~ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS AND COST-SHARING ARRANGEMENTS.~~

~~(1) For management and service agreements, furnish:~~

~~(a) A brief description of the managerial responsibilities, or services to be performed; and~~

~~(b) A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.~~

~~(2) For cost-sharing arrangements, furnish:~~

~~(a) A brief description of the purpose of the agreement;~~

~~(b) A description of the period of time during which the agreement is to be in effect;~~

~~(c) A brief description of each party's expenses or costs covered by the agreement; and~~

~~(d) A brief description of the accounting basis to be used in calculating each party's costs under the agreement.~~

~~ITEM 7. SIGNATURE AND CERTIFICATION~~

~~Signature and certification required as follows:~~

~~SIGNATURE~~

~~Pursuant to the requirements of KRS 304.37-030, _____ has caused this notice to be duly signed on its behalf in the City of _____ and State of _____ on the ____ day of ____, 19____.~~

~~(SEAL)~~

~~Name of Applicant:~~

~~BY~~

~~(Name), (Title):~~

~~Attest:~~

~~_____~~

~~(Signature of Officer)~~

~~_____~~

~~(Title)~~

~~CERTIFICATION~~

~~The undersigned deposes and says that he has duly executed the attached notice dated _____, 19___, for and on behalf of _____ (Name of Applicant); that he is the _____ (Title of Officer) of the company and that he is authorized to execute and file the instrument. Deponent further says that he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information, and belief.~~

~~Signature:~~

~~Type or print name beneath:~~]

SHARON P. CLARK, Commissioner

LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: August 11, 2014

FILED WITH LRC: August 15, 2014 at 10 a.m.

CONTACT PERSON: DJ Wasson, Administrative Coordinator, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-088, fax (502) 564-1453.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, October 14, 2014)

810 KAR 1:027. Entries, subscriptions, and declarations.

RELATES TO: KRS 230.215, 230.240, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 authorizes the commission to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. KRS 230.260 grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. This administrative regulation establishes requirements for entry, subscription, and declaration of thoroughbred horses in order to race.

Section 1. Definition. "Subscriber" means an owner who enters a horse into a stakes race and pays the requisite entry fee.

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been, and continues to be, entered in the race. Entries or subscriptions for any horse, or the transfer of entries or subscriptions for any horse, may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries. (1) An entry, subscription, declaration, or scratch shall be filed with the racing secretary and shall not be effective until received by the racing secretary. The racing secretary shall maintain a record of the time of receipt of an entry, subscription, declaration, or scratch for a period of one (1) year.

(2) An entry shall be made by the owner, the trainer, or an authorized agent of the owner or trainer. An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary pursuant to 810 KAR 1:007[~~Chapter 1~~].

(3) An entry shall be submitted in writing or by telephone to the racing secretary. A telephone entry shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered. When entered for the first time during a meeting, a horse shall be designated by name, age, color, sex, sire, and dam as reflected by its registration certificate, racing permit, or entry in a software application available online and approved by the commission that allows an association's racing secretary, or his designee, or horse identifier, or his designee, full access to horse and trainer records from all tracks in North America, including current owner information.

(a) A horse shall not race unless registered pursuant to 810 KAR 1:012 or otherwise correctly identified to the satisfaction of the stewards.

(b) Establishing the identity of a horse shall be the responsibility of its owner and of any other person required to certify the identity of the horse. A person shall be subject to appropriate disciplinary action under 810 KAR 1:028 for incorrect identification.

(5)[~~A horse that bleeds shall be registered with the commission veterinarian prior to entry pursuant to 810 KAR Chapter 1.~~

~~(6)~~] The racing program shall indicate usage of furosemide pursuant to 810 KAR 1:018[~~or an adjunct bleeder medication~~].

(6)[~~(7)~~] An entry shall not be altered after the closing of entries, except to correct an error with permission of the stewards.

(7)[~~(8)~~] A horse shall not be entered in two (2) races to be run on the same day.

(8)(a)[~~(9)(a)~~] A horse that has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards. If a horse has performed the requisite workout, but the workout does not appear in the past performances, the horse shall be permitted to start if the stewards

determine that the workout failed to be published through no fault of the trainer.

(b) A horse starting for the first time shall not be permitted to start unless it has three (3)[~~published~~] workouts, one (1) of which is from the starting gate,[~~and~~] one (1) of which is within twenty (20) days of entry, and at least one (1) of which is published.

(c) A workout not appearing in the racing publication[~~If a horse has performed the requisite workout, but the workout does not appear in the past performances through no fault of the trainer, the horse shall be permitted to start. The correct workout~~] shall be publicly displayed on television monitors, the tote board, and, if available, the bulletin boards where photo finishes are shown at the time when mutuel[~~mutual~~] windows are opened and shall be displayed until the conclusion of the race in which the horse is entered.

(d) A horse that has never started shall not be entered until the trainer has produced a document or card issued by the starter indicating that the horse has been adequately trained to race from the starting gate.

(9)[~~(10)~~] If the published conditions of the race permit, an association may accept in a turf race an entry designated "main track only." Preference shall apply to all horses drawn into a race, except that horses entered as "main track only" shall be listed as also-eligible and be considered only if the race is taken off the turf.

Section 4. Limitation as to Spouses. (1) An entry in a race shall not be accepted for a horse owned wholly or in part or trained by a person whose spouse is under license suspension, revocation, or is otherwise ineligible to be licensed, at the time of the entry except as provided in subsection (2) of this section.

(2) If the license of a jockey has been suspended for a routine riding offense, depending on the severity of the offense, the stewards may waive the application of this section as to the licensed spouse of the suspended jockey.

Section 5. Mutuel Entries. (1) More than two (2) horses having common ties through training shall not be[~~not~~] entered in a purse race.

(2) Horses entered in the same race and owned wholly or in part by the same owner or spouse, shall be joined as a mutuel[~~mutual~~] entry and single betting interest, except as provided in subsection (5) of this section.

(3) More than two (2) horses having common ties through ownership shall not be joined as a mutuel[~~mutual~~] entry in a purse race. If making a double entry of horses owned wholly or in part by the same owner or spouse**,** a preference for one (1) of the horses shall be made.

(4)(a) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single entry, unless the horses have been uncoupled pursuant to subsection (5) of this section.

(b) In a purse race, the racing secretary may uncouple entries having common ties through training to make two (2) separate betting interests.

(5) In any thoroughbred stakes race with added money of $50,000 or more, the racing secretary may uncouple mutuel[~~mutual~~] entries of horses sharing common ties through training or ownership or both.

Section 6. Subscriptions. (1) A subscriber to a stakes race may transfer or declare a subscription prior to the closing of entries for the race.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse or a mistake in its entry if the horse is eligible shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as otherwise stated in the conditions of the[~~a~~] stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended, revoked, or is otherwise ineligible to be licensed[~~or otherwise unqualified to race or enter~~], the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

Section 7. Closings. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time.

(b) If a purse race fails to fill, or in***[~~case of~~]*** an emergency, the racing secretary may extend the closing time, if the approval of a steward has been obtained.

(2) Entries that have closed shall be compiled without delay by the racing secretary and shall be posted along with declarations.

Section 8. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and any extensions approved by the commission as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses that, in the opinion of the stewards after considering the safety of the horses and riders and the distance from the start to the first turn, may be afforded a fair and equal start.

(2)(a) A maiden, starter, or claiming race shall be run if:

1. Eight (8) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(b) Except as provided in paragraph (c) of this subsection, any other purse race shall be run if:

1. Six (6) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(c) If a purse race under paragraph (b) of this subsection includes two (2) horses having common ties through training, the race shall be run if eight (8) or more horses are entered.

(3) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2) of this section, the association may cancel or declare the race off. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary on the date of entry.

Section 9. Split or Divided Races. (1) If a race is cancelled or declared off, the association may split any race programmed for the same day that may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) If a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before the races are closed in order to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made and the***[~~following~~]*** conditions ***established in this subsection.[~~:~~]***

(a) Horses originally joined as a mutuel[~~mutual~~] entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates the coupling of horses is not to be uncoupled if the race is split***.[~~;~~]***

(b) Division of entries in any split stakes race may be made according to age, sex, or both***.[~~; and~~]***

(c) Entries for any split race not divided by any method provided for in this administrative regulation shall be divided by lot so as to provide a number of betting interests as nearly equal as

possible for each division of the split race.

Section 10. Post Positions. (1) Post positions for all races shall be determined by lot, except as described in Section 11(5) of this administrative regulation. Owners, trainers, and their representatives shall have the opportunity to be present at the drawing.

(2)[~~Post positions in split races shall be redetermined by lot. Owners, trainers, and their representatives shall have the opportunity to be present at the redetermination.~~

~~(3)~~] The racing secretary shall assign program[~~pari-mutuel~~] numbers for each starter to conform with the post position drawn, except if a race includes two (2) or more horses joined as a single betting interest.

Section 11. Also-Eligible List. (1) If the number of entries for a race exceeds the number of horses permitted to start, as provided by Section 8 of this administrative regulation, the names of no more than eight (8) horses entered but not drawn into the race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, also-eligible horses shall be drawn into the body of the race based on preference. If preference is equal, horses shall be drawn by lot, unless otherwise stipulated in the conditions of the race.

(3)(a) An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(b) If there are no scratches in the body of a race, a horse on the also-eligible list not drawn into the race shall retain its previously established preference.

(4) A horse on the also-eligible list for a race on the present day that has been drawn into the body of a race[~~as a starter~~] on the[~~a~~] succeeding race day, shall not be permitted to run in the race on the present day for which it had been listed as also-eligible. This shall not include stakes and handicaps.

(5) A horse on the also-eligible list shall be assigned a post position by preference. If preference is equal, post positions shall be drawn by lot, unless otherwise stipulated in the published conditions of the race.

Section 12. Preferred List. (1) The racing secretary shall maintain a list of horses that were entered but denied an opportunity to race because they were eliminated from a race included in the printed condition book either by overfilling or failure to fill.

(2) The racing secretary shall submit, for approval of the commission at least thirty (30) days prior to the opening date of a race meeting***,*** a detailed description of the manner in which preference will be allocated.

(3) Preferences shall not be given to a horse otherwise eligible for a race if it is also entered for a race on the succeeding race day. This shall not include stakes and handicaps.

Section 13. Arrears. Unless approved by the racing secretary, a horse shall not be entered or raced unless its owner has paid all stakes fees owed.

Section 14. Declarations. (1) Declarations shall be made in the same form, time, and procedure as required for the making of entries.

(2) Declarations shall be irrevocable.

(3) A declaration fee shall not be required by any licensed association.

Section 15. Scratches. (1) Scratches shall be irrevocable and shall be permitted under the***[following]*** conditions ***established in this section.[~~:~~]***

[~~(1)~~](a) Except as provided in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time until four ***(4)*** hours prior to post time for the race by obtaining[~~written~~] approval from the stewards. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of the scratch to be made.

(b) If a list of also-eligible horses has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Thereafter, a horse shall not be scratched unless:

1. A valid physical reason exists; or

2. The scratch is related to adverse track conditions or change of racing surface.

(c)[~~(2)~~] A horse shall not be scratched from a purse race unless:

1.[~~(a)~~] The approval of the stewards has been obtained; and

2.[~~(b)~~] Intention to scratch has been filed in writing with the racing secretary or his assistant at or before scratch time.

(2)[~~the time conspicuously posted as "scratch time."~~

~~(3)~~] A scratch of one (1) horse coupled in a mutuel[~~mutual~~] entry in a purse race shall be made at or before[~~the posted~~] scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(3)[~~(4)~~] In a purse race, a horse that is physically disabled or sick shall be permitted to be scratched first. If horses representing more than eight (8)[~~ten (10)~~] betting interests remain in after horses with physical excuses have been scratched, an owner or trainer may be permitted to scratch horses without physical excuses at scratch time, down to a minimum of eight (8)[~~ten (10)~~] betting interests. This privilege shall be determined by lot if an excessive number of owners or trainers wish[~~wishes~~] to scratch their horses.

(4)[~~(5)~~] A horse that has been scratched or excused from starting by the stewards because of a physical disability or sickness shall be placed on the commission's veterinarian list for six (6) calendar days beginning the day after the horse was scratched or excused.

(5)[~~(6)~~] Each[~~licensed racing~~] association[~~offering thoroughbred racing~~] shall keep records and statistics documenting the effect upon field sizes of the six (6) day veterinarian list requirement in subsection (4)[~~(5)~~] of this section. Records and statistics kept pursuant to this section shall be retained by the licensed racing association for one (1) year.

Section 16. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form[~~, Racing Times~~] or similar publication as the commission considers appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign country[~~county~~], shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

ROBERT M. BECK, JR., Chairman
LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: August 8, 2014

FILED WITH LRC: August 12, 2014 at 2 p.m.

CONTACT PERSON: Katherine M. Paisley, Deputy General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, October 14, 2014)

811 KAR 2:070. Entries, subscriptions and declarations.

RELATES TO: KRS 230.215, 230.240, 230.290, 230.310, 230.320[~~230.610-230.770~~]

STATUTORY AUTHORITY: KRS 230.215, 230.260[~~13A.010 et seq.~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 authorizes the commission to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. KRS 230.260 grants the commission the authority to regulate conditions under which Quarter Horse,

Appaloosa, and Arabian racing shall be conducted in Kentucky. This administrative regulation establishes requirements for entry, subscription, and declaration of Quarter Horse, Appaloosa, and Arabian horses[~~To regulate conditions under which quarter horse, appaloosa and Arabian racing shall be conducted in Kentucky. The function of this administrative regulation is to outline requirements for entry, subscription and declaration of horses~~] in order to race.

Section 1. ***Definition.*** "Subscriber" means an owner who enters a horse into a stakes race and pays the requisite entry fee.

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been, and continues to be, entered in the race. Entries or subscriptions for any horse, or the transfer of entries or subscriptions for any horse, may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries. (1) An entry, subscription, declaration, or scratch shall be filed with the racing secretary and shall not be effective until received by the racing secretary. The racing secretary shall maintain a record of time of receipt of an entry, subscription, declaration, or scratch for a period of one (1) year.

(2) An entry shall be made by the owner, the trainer, or an authorized agent of the owner or trainer. An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary pursuant to 811 KAR 2:040.

(3) An entry shall be submitted in writing or by telephone to the racing secretary. A telephone entry shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered. When entered for the first time during a meeting, a horse shall be designated by name, age, color, sex, sire, and dam, as reflected by its registration certificate, racing permit, or entry in a software application available online and approved by the commission that allows an association's racing secretary, or his designee, or horse identifier, or his designee, full access to horse and trainer records from all tracks in North America, including current owner information.

(a) A horse shall not race unless registered pursuant to 811 KAR 2:065 or otherwise correctly identified to the satisfaction of the stewards.

(b) Establishing the identity of a horse shall be the responsibility of its owner and of any other person required to certify the identity of the horse. A person shall be subject to appropriate disciplinary action under 811 KAR 2:100 for incorrect identification.

(5)[(6)] The racing program shall indicate usage of furosemide pursuant to 811 KAR 2:096.

(6)[(7)] An entry shall not be altered after the closing of entries, except to correct an error with permission of the stewards.

(7)[(8)] A horse shall not be entered in two (2) races to be run on the same day.

(8)[(9)](a) A horse that has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards. If a horse has performed the requisite workout, but the workout does not appear in the past performances, the horse shall be permitted to start if the stewards determine that the workout failed to be published through no fault of the trainer.

(b) A horse starting for the first time shall not be permitted to start unless it has three (3) workouts, one (1) of which is from the starting gate, one (1) of which is within twenty (20) days of entry, and at least one (1) of which is published.

(c) A workout not appearing in the racing publication shall be publicly displayed on television monitors, the tote board, and, if available, the bulletin boards where photo finishes are shown at the time when mutuel windows are opened and shall be displayed until the conclusion of the race in which the horse is entered.

(d) A horse that has never started shall not be entered until the trainer has produced a document or card issued by the starter indicating that the horse has been adequately trained to race from the starting gate.

Section 4. Limitation as to Spouses. An entry in a race shall not be accepted for a horse owned wholly or in part or trained by a person whose spouse is under license suspension, revocation, or is otherwise ineligible to be licensed, at time of the entry except as provided in subsection (2) of this section.

(2) If the license of a jockey has been suspended for a routine riding offense, depending on the severity of the offense, the stewards may waive the application of this section as to the licensed spouse of the suspended jockey.

Section 5. Mutuel Entries. (1) More than two (2) horses having common ties through training shall not be entered in a purse race.

(2) Horses entered in the same race and owned wholly or in part by the same owner or spouse shall be joined as a mutuel entry and single betting interest, except as provided in subsection (5) of this section.

(3) More than two (2) horses having common ties through ownership shall not be joined as a mutuel entry in a purse race. If making a double entry of horses owned wholly or in part by the same owner or spouse, a preference for one (1) of the horses shall be made.

(4)(a) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single entry, unless the horses have been uncoupled pursuant to subsection (5) of this section.

(b) In a purse race, the racing secretary may uncouple entries having common ties through training to make two (2) separate betting interests.

(5) In any Quarter Horse, Appaloosa, or Arabian stakes race with added money of $50,000 or more, the racing secretary may uncouple mutuel entries of horses sharing common ties through training or ownership or both.

Section 6. Subscriptions. (1) A subscriber to a stakes race may transfer or declare a subscription prior to the closing of entries for the race.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse, or a mistake in its entry ***if[~~when~~]*** the horse is eligible shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall be refunded, except as otherwise stated in the conditions of the stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended, revoked, or is otherwise ineligible to be licensed, the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If the stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

Section 7. Closings. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after the closing time.

(b) If a purse race fails to fill, or in***[~~case of~~]*** an emergency, the racing secretary may extend the closing time, if the approval of a steward has been obtained.

(2) Entries which have closed shall be compiled without delay by the racing secretary and shall be posted along with declarations.

Section 8. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and any extensions approved by the commission as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses that, in the opinion of the stewards after considering the safety of the horses and riders and the distance from the start to the first turn, may be afforded a fair and equal start.

(2)(a) A maiden, starter, or claiming race shall be run if:

1. Eight (8) or more horses are entered;

2. The horses entered represent different betting interests; and

3. The race is listed in the printed condition book.

(b) Except as provided in paragraph (c) of this subsection, any other purse race shall be run if:

1. Six (6) or more horses are entered;

2. The horses entered represent different betting interests; and

3. The race is listed in the printed condition book.

(c) If a purse race under paragraph (b) of this subsection includes two (2) horses having common ties through training, the race shall be run if eight (8) or more horses are entered.

(3) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2) of this section, the association may cancel or declare the race off. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary on the date of entry.

Section 9. Split or Divided Races. (1) If a race is cancelled or declared off, the association may split any race programmed for the same day that may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) If a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before the races are closed to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made and the***[following]*** conditions ***established in this subsection.[;]***

(a) Horses originally joined as a mutuel entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates the coupling of horses is not to be uncoupled if the race is split***.[;]***

(b) Division of entries in any split stakes race may be made according to age, sex, or both***.[; and]***

(c) Entries for any split race not divided by any method provided for in this administrative regulation shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of the split race.

Section 10. Post Positions. (1) Post positions for all races shall be determined by lot, except as described in Section 11(5) of this administrative regulation. Owners, trainers, and their representatives shall have the opportunity to be present at the drawing.

(2) The racing secretary shall assign program numbers for each starter to conform with the post position drawn, except if a race includes two (2) or more horses joined as a single betting interest.

Section 11. Also Eligible List. (1) If the number of entries for a race exceeds the number of horses permitted to start, as provided by Section 8 of this administrative regulation, the names of no more than eight (8) horses entered but not drawn into the race as starters shall be posted on the entry sheet as "also eligible" to start.

(2) After a horse has been excused from a race at scratch time, also-eligible horses shall be drawn into the body of the race based on preference. If preference is equal, horses shall be drawn by lot, unless otherwise stipulated in the conditions of the race.

(3)(a) An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(b) If there are no scratches in the body of a race, a horse on the also-eligible list not drawn into the race shall retain its previously established preference.

(4) A horse on the also-eligible list for a race on the present day that has been drawn into the body of a race on the succeeding race day shall not be permitted to run in the race on the present day for which it had been listed as also-eligible. This shall not include stakes and handicaps.

(5) A horse on the also-eligible list shall be assigned a post position by preference. If preference is equal, post positions shall be drawn by lot, unless otherwise stipulated in the published conditions of the race.

Section 12. Preferred List. (1) The racing secretary shall maintain a list of horses that were entered but denied an opportunity to race because they were eliminated from a race included in the printed condition book either by overfilling or failure to fill.

(2) The racing secretary shall submit, for approval of the commission at least thirty (30) days prior to the opening date of a race meeting, a detailed description of the manner in which preference will be allocated.

(3) Preferences shall not be given to a horse otherwise eligible for a race if it is also entered for a race on the succeeding race day. This shall not include stakes and handicaps.

Section 13. Arrears. Unless approved by the racing secretary, a horse shall not be entered or raced unless its owner has paid all stakes fees owed.

Section 14. Declarations. (1) Declarations shall be made in the same form, time, and procedure as required for the making of entries.

(2) Declarations shall be irrevocable.

(3) A declaration fee shall not be required by any licensed association.

Section 15. Scratches. (1) Scratches shall be irrevocable and shall be permitted only under the conditions established in this section.

(a) Except as provided in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time up until four (4) hours prior to post time for the race by obtaining approval from the stewards. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of the scratch to be made.

(b) If a list of also-eligible horses has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Thereafter, a horse shall not be scratched unless:

1. A valid physical reason exists; or

2. The scratch is related to adverse track conditions or change of racing surface.

(c) A horse shall not be scratched from a purse race unless:

1. The approval of the stewards has been obtained; and

2. Intention to scratch has been filed in writing with the racing secretary or his assistant at or before scratch time.

(2) A scratch of one (1) horse coupled in a mutuel entry in a purse race shall be made at or before scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(3) In ***a*** purse ***race[races]***, a horse that is physically disabled or sick shall be permitted to be scratched first. If horses representing more than eight (8) betting interests remain in after horses with physical excuses have been scratched, an owner or trainer may be permitted to scratch horses without physical excuses at scratch time, down to a minimum of eight (8) betting interests. This privilege shall be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) A horse that has been scratched or excused from starting by the stewards because of a physical disability or sickness shall be placed on the commission veterinarian's list for six (6) calendar

days beginning the day after the horse was scratched or excused.

(5) Each association shall keep records and statistics documenting the effect upon field sizes of the six (6) day veterinarian list requirement in subsection (4) of this section. Records and statistics kept pursuant to this section shall be retained by the licensed racing association for one (1) year.

Section 16. Official Publication Statistics. In determining eligibility, allowances, and penalties, the reports, records, and statistics as published in the Daily Racing Form or similar publication as the commission considers appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign country, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race[~~Entering Required. No horse shall be qualified to start in any race unless such horse has been and continues to be duly entered therein. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the association without notice or reason given therefor.~~

~~Section 2. Procedure for Making Entries. (1) All entries, subscriptions, declarations, and scratches shall be lodged with the racing secretary and shall not be considered as having been made until received by the racing secretary who shall maintain a record of time of receipt of same.~~

~~(2) Every entry must be in the name of such horse's licensed owner, as completely disclosed and registered with the racing secretary under these rules, and made by the owner, or trainer, or a person deputized by such owner or trainer, and signed by the person responsible for the entry.~~

~~(3) Every entry must be in writing, or by telegraph promptly confirmed in writing; except that an entry may be made by telephone to the racing secretary, but must be confirmed promptly in writing should the stewards, the racing secretary, or an assistant to the racing secretary so request.~~

~~(4) Every entry shall clearly designate the horse so entered. When entered for the first time during a meeting, every horse shall be designated by name, age, color, sex, sire, dam, and broodmare sire, as reflected by such horse's registration certification.~~

~~(a) No horse may race unless correctly identified to the satisfaction of the stewards as being a horse duly entered.~~

~~(b) In establishing identity of a horse, responsibility shall be borne by any person attempting to identify such horse as well as the owner of such horse, all such persons being subject to appropriate disciplinary action for incorrect identification.~~

~~(5) No alteration may be made in any entry after the closing of entries, but an error may be corrected.~~

~~(6) No horse may be entered in two (2) races to be run on the same day.~~

~~(7) First time starters and horses without a past performance record at a pari-mutuel race track must complete two (2) official timed workouts, one (1) from the gate, and be approved to start by the stewards and starter before entering any race. Horses entered to race around a turn must have officially started in a race around a turn or will be required to have an official work around the turn where they are racing and must be approved by the stewards.~~

~~Section 3. Stabling Requirement. No entry shall be accepted for any horse not stabled on association grounds where such race is to be run, unless its stabling elsewhere has been approved by the racing secretary as provided by 811 KAR 2:035.~~

~~Section 4. Limitation as to Spouses. An entry in any race may not be accepted for a horse owned wholly or in part by, or trained by, a person whose husband or wife is under license suspension at time of such entry; except that if the license of a jockey has been suspended for a routine riding offense, then the stewards may waive this rule as to the duly licensed husband or wife of such suspended jockey.~~

~~Section 5. Mutuel Entries. (1) All horses entered in the same race and trained by the same trainer shall be joined as a mutuel entry and single betting interest except that in order to make up to eight (8) separate betting interests, the horses may be allowed to run as separate betting interests where a trainer enters more than one (1) horse, each having bona fide separate owners, at the discretion of the stewards. All horses entered in the same race and owned wholly, or in part by the same owner or spouse thereof, shall be joined as a mutuel entry and single betting interest.~~

~~(2) No more than two (2) horses having common ties through ownership or training as to be joined as a mutuel entry may be entered in a purse race. When making such double entry, a preference for one (1) of the horses must be made.~~

~~(3) In no case may two (2) horses having common ties through ownership start in a race to the exclusion of a single interest. In races in which the number of starters if limited to ten (10) or less, no two (2) horses having common ties through training may start to the exclusion of a single entry.~~

~~Section 6. Subscriptions. (1) Nominations to or entry of a horse in a stakes race is a subscription. Any subscriber to a stakes race may transfer or declare such subscription prior to closing.~~

~~(2) Joint subscriptions and entries may be made by any one of joint owners of a horse, and each such owner shall be jointly and severally liable for all payments due thereon.~~

~~(3) Death of a horse, or a mistake in its entry when such horse is eligible, does not release the subscriber or transferee from liability for all stakes fees due thereon. No fees paid in connection with a subscription to a stakes race that is run shall be refunded, "except as otherwise stated in the conditions of a stake race."~~

~~(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry thereunder. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.~~

~~(5) When a horse is sold privately, or sold at public auction, or claimed, stakes engagements for such horse shall be transferred automatically with such horse to its new owner; except that, if such horse is transferred to a person whose license is suspended or otherwise unqualified to race or enter such horse, then such subscriptions shall be void as of the date of such transfer.~~

~~(6) All stakes fees paid toward a stakes race shall be allocated to the winner thereof unless otherwise provided by the condition for such stakes race. In the event a stakes race is not run for any reason, all such subscription fees paid shall be refunded.~~

~~Section 7. Closings. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for such races. (If a race is not split, no entry, subscription, or declaration shall be accepted after such closing time; except that in event of an emergency, or if a purse race fails to fill them the racing secretary may, with the approval of the steward, extend such closing time.~~

~~(2) If the hour of closing is not specified for stakes races, then subscriptions and declarations therefor may be accepted until midnight of the day of closing; provided, they are received in time for compliance with every other condition of such race.~~

~~(3) Entries which have closed shall be compiled without delay by the racing secretary along with declarations, be posted.~~

~~Section 8. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate approved by the commission as can be positioned across the width of the track at the starting point for such race; and such maximum number of starters further shall be limited by the number of horses which, in the opinion of the stewards, considering the safety of the horses and riders, and the distance from the start to the first turn, can be afforded a fair and equal start.~~

~~(2) Any claiming race in the printed condition book for which eight (8) or more horses representing different betting interests are entered must be run. All other purse races in the printed condition book for which six (6) or more horses representing different betting interests are entered must be run.~~

~~(3) If any purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2) of~~

~~this section to be run, then the association may cancel or declare off such race. The names of all horses entered therein shall be publicly posted in the office of the racing secretary not later than 1 p.m. the same day.~~

~~Section 9. Split or Divided Races. (1) In the event a race is cancelled or declared off, the association may split any race programmed for the same day and which may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.~~

~~(2) When a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice thereof not less than fifteen (15) minutes before such races are closed so as to grant time for the making of additional entries to such split races.~~

~~(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions therefor were made, and in the absence of specific prohibition by such conditions:~~

~~(a) Horses originally joined as a mutuel entry may be placed in different divisions of a split race unless the person making such multiple entry, at the time of such entry, indicates such coupling of horses is not to be uncoupled when such race is split.~~

~~(b) Division of entries in any split stakes race may be made according to age, or sex, or both.~~

~~(c) Entries for any split race not divided by any method provided above by this rule, shall be divided by lot so as to provide a number of betting interests as near equal as possible for each division of such split race.~~

~~Section 10. Post Positions. Post positions for all races shall be determined by lot, drawn in the presence of those making the entries for such race. Post positions in split races also shall be redetermined by lot in the presence of those making the entries for such split race. The racing secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except when a race includes two (2) or more horses joined as a single betting interest.~~

~~Section 11. Also Eligible List. (1) If the number of entries for a purse race exceed the number of horses permitted to start in such race as provided by Section 8 of this administrative regulation, then the names of as many as eight (8) horses entered but not drawn into such race as starters shall be posted on the entry sheet as "also eligible" to start.~~

~~(2) After any horses have been excused from a purse race at scratch time, the starting and post position of the also-eligible list shall be determined by the best preference date. Horses having equal preference dates shall be drawn by lot.~~

~~(3) Any owner or trainer of any horse on the also-eligible list who does not wish to start such horse in such race shall so notify the racing secretary prior to scratch time for such race and such horse shall forfeit any preference to which it may have been entitled.~~

~~(4) Where entries are closed two (2) racing days prior to the running of a race, any horse on an also-eligible list, and which also has been drawn into a race as a starter for the succeeding day, shall not be given an opportunity to be drawn into the earlier race for which he had been listed as also-eligible.~~

~~Section 12. Preferred List; Stars. (1) The racing secretary shall maintain a list of horses which were entered but denied an opportunity to race because eliminated from a race programmed in the printed condition book either by overfilling or failure to fill. Horses so eliminated shall be awarded a preference "star" for each such elimination, and as to drawing in from the also-eligible list to subsequent races of similar distance and similar conditions, such horses shall be given preference over horses with fewer number or no preference stars.~~

~~(2) No preference shall be given a horse otherwise entitled thereto for a race if such horse also is entered for a race on the succeeding day.~~

~~(3) No preference shall be given a horse otherwise entitled thereto for a race unless preference is claimed at the time of entry by indicating same on the entry with the word "preferred."~~

~~Section 13. Arrears. No horse may be entered or raced if the owner thereof is in arrears as to any stakes fees due by such owner; except with the approval of the racing secretary.~~

~~Section 14. Declaration. Withdrawal of a horse from a race before closing thereof by the owner or trainer or person deputized by either, such being known as a "declaration," shall be made in the same manner as to form, time, and procedure as provided for the making of entries. Declarations and scratches are irrevocable. No declaration fee shall be required by any licensed association.~~

~~Section 15. Scratches. Withdrawal of a horse from a race after closing thereof by the owner or trainer or person deputized by either, such being known as a "scratch," shall be permitted only under the following conditions:~~

~~(1) A horse may be scratched from a stakes race for any reason at any time up until fifteen (15) minutes prior to post time for the racing preceding such stakes race by the filing in writing of such intention with the racing secretary. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of same to be made.~~

~~(2) No horse may be scratched from a purse race without approval of the stewards and unless such intention to scratch has been filed in writing with the racing secretary or his assistant at or before the time conspicuously posted as "scratch time." Scratch of one (1) horse coupled in a mutuel entry in a purse race must be made at or before the posted scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time therefor.~~

~~(3) In purse races, horses that are physically disabled or sick shall be permitted to be scratched first. Should horses representing more than ten (10) betting interests in either of the two (2) daily double races, or horses representing more than eight (8) betting interests in any other purse race, remain in after horses with physical excuses have been scratched, then owners or trainers may be permitted at scratch time to scratch horses without physical excuses down to such respective minimum number for such races, this privilege to be determined by lot if an excessive number of owners or trainers wish to scratch their horses.~~

~~(4) Entry of any horse which has been scratched, or excused from starting by the stewards, because of a physical disability or sickness shall not be accepted until the expiration of three (3) calendar days after such horse was scratched or excused~~].

ROBERT M. BECK, JR., Chairman
LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: August 8, 2014

FILED WITH LRC: August 12, 2014 at 2 p.m.

CONTACT PERSON: Katherine M. Paisley, Deputy General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(As Amended at ARRS, October 14, 2014)

902 KAR 2:055. Immunization data reporting and exchange.

RELATES TO: KRS 158.035, 211.090, 211.180, 214.032-214.036, 45 C.F.R.[~~164.510,~~] 164.512(b)

STATUTORY AUTHORITY: KRS 158.035, 158.037, 194A.050, 211.090(3), 211.180, 214.034, 214.036, 45 C.F.R. 164.512***(b)***

NECESSITY, FUNCTION, AND CONFORMITY:***[EO 2003-64, effective December 16, 2003, reorganized the Cabinet for Health Services and placed the Department for Public Health and the Division of Epidemiology and Health Planning under***

the Health and Family Services Cabinet.] KRS 211.180 requires the Cabinet for Health and Family Services to implement a statewide program for the detection, prevention and control of communicable diseases. KRS 214.034 requires public or private primary or secondary schools, day-care centers, certified family child-care homes, or any other licensed facility which cares for children to maintain a current immunization certificate on file for each child in attendance. KRS 158.035 prohibits a child from enrolling as a student in a public or private elementary or secondary school unless the child presents with a current immunization certificate issued by a licensed medical or osteopathic physician ***or[,]*** an advanced practice registered nurse***[, a physician's assistant, a pharmacist, local health department administrator or a registered nurse designee of a physician, local health department administrator or other licensed healthcare facility]***. KRS 158.037 requires the Cabinet for Health and Family Services to promulgate administrative regulations for public or private schools to report immunization results to local health departments. 45 C.F.R. 164.512(b), ***an*** implementing ***regulation[regulations]*** for the[Federal] Health Insurance Portability and Accountability Act (HIPAA), ***Pub. L. 104-191, permits[permit]*** a covered entity to disclose[permits disclosure of] protected health information (PHI)[to local and state public agencies] for public health activities and purposes to a public authority that is authorized by law to collect or receive that information for prevention or controlling disease or surveillance[without written authorization of the individual]. Vaccinations[to] prevent disease and are a core public health function. Reporting vaccination status constitutes infectious disease control and surveillance. This administrative regulation establishes requirements for reporting immunization results in schools by the public health immunization reporting entity[, preschools, and day care facilities] and permits recording and exchange of immunization data.

Section 1. Definitions. (1) "Public health immunization reporting entity" means a:

(a) Health care provider;

(b) Health insurer;

(c) Public ***or[and]*** private elementary ***or[and]*** secondary school;

(d) Childcare facility;

(e) Preschool;

(f) Public or private postsecondary educational institution; ***or[and]***

(g) State ***or[and]*** local health ***department[departments]***[health care providers, health insurers, public and private elementary and secondary schools, childcare facilities, preschools, public or private postsecondary educational institutions, and state and local health departments who are involved in the collection, recording, and exchange of immunization information for public health purposes].

(2) "Public health interest" means participation in core public health functions such as:

(a) Surveillance;

(b)[,] Data collection;

(c)[,] Vaccination;

(d)[,] Vaccination certification;[,] or

(e) Prevention of communicable diseases for the protection of the public's health and safety.

Section 2. Immunization Reporting. (1)[Day care centers, head start programs,] Kindergartens and public and private elementary and secondary schools shall submit to the local health department in their area immunization results ***for kindergartens and sixth grades*** on the***:***

(a) Commonwealth of Kentucky School/Facility Annual Immunization Survey***: Kindergarten; and***

(b) Commonwealth of Kentucky School/Facility Annual Immunization Survey: Sixth Grade.

(2) The annual survey shall include the number of:

(a) Students in the grade surveyed;

(b) Missing immunization records;

(c) Religious exemptions;

(d) Medical exemptions; and

(e) Children who have received age-appropriate immunizations.

Section 3. Immunization Data Exchange. (1) A public health immunization reporting entity may record and exchange immunization data[, without authorization from the patient or the patient's parent or guardian, if the patient is a minor,] if the person requesting the data provides health related or educational services on behalf of the patient or has a public health interest in compliance with the***[Federal]*** Health Insurance Portability and Accountability Act (HIPAA)***, Pub. L. 104-191***.

(2) Immunization data may be recorded and exchanged electronically via an immunization registry.

(3) Immunization data that may be recorded and exchanged may[shall] include:

(a) Patient's name;

(b) Patient's address;

(c) Date of birth;

(d) Gender;

(e) Social Security number;

(f) Medicaid number;

(g) Birth state;

(h) Birth County;

(i) Mother's name;

(j) Mother's maiden name;

(k) Mother's date of birth;

(l) Mother's Social Security number;

(m) Father's name;

(n) Father's date of birth;

(o) Father's Social Security number;

(p) Guardian's name;

(q) Date vaccines were administered;

(r) Vaccine type;

(s) Vaccine lot number;

(t) Vaccine manufacturer; and

(u) Vaccine contraindications or adverse reaction indications.

(4) This section shall apply to immunization data regardless of when the immunizations occurred or the medium used to collect and exchange the data.

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

(a) "Commonwealth of Kentucky School/Facility Annual Immunization Survey: Kindergarten", 7/2011; and

(b) "Commonwealth of Kentucky School/Facility Annual Immunization Survey: Sixth Grade", 7/2011["Commonwealth of Kentucky School/Facility Annual Immunization Survey", 3/2004]["]***[is incorporated by reference]***.

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

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 14, 2014 at 1 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, (502) 564-7573 fax, tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, October 14, 2014)

921 KAR 3:035. Certification process.

RELATES TO: 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 42 U.S.C. 5122, 5179

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

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the certification process used by the cabinet in the administration of SNAP.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a household's circumstance for the entire period for which each household is certified.

(2) Certification criteria shall be applicable to all households.

(3) Certain households shall require special or additional certification procedures as specified in Section 5 of this administrative regulation.

Section 2. Certification Periods. (1) In accordance with 7 C.F.R. 273.10(f), the cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided in subsection (3) of this section, a household shall be certified for at least:

(a) Six (6) months; or

(b) Twelve (12) months if all members:

1. Are elderly or have a disability as defined in 921 KAR 3:010; and

2. Have no earned income.

(3)(a) A household shall be certified for one (1) or two (2) months if the household meets criteria to:

1. Expedite benefits in accordance with 7 C.F.R. 273.2(i)(1); and

2. Postpone verification.

(b) At the end of a one (1) or two (2) month certification, a household may be recertified for a six (6) month or twelve (12) month certification as specified in subsection (2) of this section.

(4)(a) In accordance with 7 C.F.R. 273.12, a household, in which all members are elderly or have a disability as defined in 921 KAR 3:010 and have no earned income, shall complete an interim report using Form FS-2, SNAP 6-Month Review[~~Report~~], during the[~~sixth (6) month of the~~] household's certification period if the household reports[~~unless all household members~~]:

1. A new household member who is non-elderly or non-disabled; or[~~Are elderly or have a disability as defined in 921 KAR 3:010; and~~]

2. A gain of[~~Have no~~] earned income.

(b) If a household fails to return a completed FS-2[~~, SNAP 6-Month Report,~~] or the required income verification, the cabinet shall take action in accordance with 7 C.F.R. 273.12(a)(5).

Section 3. Certification Notices to Households. In accordance with 7 C.F.R. 273.10(g), the cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

(1) Notice of eligibility;

(2) Notice of denial; or

(3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as specified in 921 KAR 3:030, Section 1, as follows:

(1) If a household files the application:

(a) By the 15th day of the last month of the certification, the cabinet shall:

1. Allow the household to return verification or complete a required action through the last calendar day of the application month; and

2. Provide uninterrupted benefits, if the household is otherwise eligible; or

(b) After the 15th day, but prior to the last day of the last month of the certification, the cabinet shall allow the household thirty (30) days to return verification or complete a required action; or

(2) If the household fails to provide information required for the cabinet to process the application for recertification within a time period established in subsection (1) of this section, the cabinet shall take action in accordance with 7 C.F.R. 273.14(e)(2).

Section 5. Certification Process for Specific Households. Pursuant to 7 C.F.R. 273.11, certain households have circumstances that are substantially different from other households and therefore shall require special or additional certification procedures.

(1) A household with a self-employed member shall have its case processed as ***established in this subsection.***[~~***follows:***~~]

(a) Income ***shall be***[~~***is***~~] annualized over a twelve (12) month period, if self-employment income:

1. Represents a household's annual income; or

2. Is received on a monthly basis which represents a household's annual support.

(b) Self-employment income, which is intended to meet the household's needs for only part of the year, shall be averaged over the period of time the income is intended to cover.

(c) Income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year.

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the:

1. Averaged annualized amount does not accurately reflect the household's actual circumstances; and

2. Household has experienced a substantial increase or decrease in business.

(2) A household with a boarder shall have its case processed as ***established in this subsection.***[~~***follows:***~~]

(a) Income from the boarder shall:

1. Be treated as self-employment income; and

2. Include all direct payments to the household for:

a. Room;

b. Meals; and

c. Shelter expenses.

(b) Deductible expenses shall include:

1. Cost of doing business;

2. Twenty (20) percent of the earned income; and

3. Shelter costs.

(3) A household with a member ineligible due to an intentional program violation, or failure to comply with the work requirements or work registration requirements, shall be processed as ***established in this subsection.***[~~***follows:***~~]

(a) Income and resources of the ineligible member shall be counted in their entirety as income available to the remaining household members.

(b) Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions.

(c) The ineligible member shall not be included if:

1. Assigning benefit levels;

2. Comparing monthly income with income eligibility standards; and

3. Comparing household resources with resource eligibility standards.

(4) A household with a member ineligible due to failure to

provide a Social Security number, or ineligible alien status, shall be processed as ***established in this subsection.[~~follows:~~]***

(a) All resources of an ineligible member shall be considered available to the remaining household members.

(b) A pro rata share, as described in 7 C.F.R. 273.11(c)(2)(ii), of the ineligible member's income shall be attributed to remaining household members.

(c) The twenty (20) percent earned income deduction shall be applied to the pro rata share of earnings.

(d) The ineligible member's share of dependent care and shelter expenses shall not be counted.

(e) The ineligible member shall not be included as specified in subsection (3)(c) of this section.

(5) A household with a nonhousehold member shall be processed as ***established in this subsection.[~~follows:~~]***

(a) With the exception of an ineligible member, the income and resources of a nonhousehold member shall not be considered available to the household with whom they reside.

(b) If the earned income of a household member and a nonhousehold member are combined into one (1) wage, the cabinet shall:

1. Count that portion due to the household as earned income, if identifiable; or

2. Count a pro rata share of earned income, if the nonhousehold member's share cannot be identified.

(c) A nonhousehold member shall not be included in the household size, if determining the eligibility and benefits for the household.

(6) The cabinet shall process the case of a drug or alcoholic treatment program resident, as described in 7 C.F.R. 271.2, as ***established in this subsection.[~~follows:~~]***

(a) An eligible household shall include:

1.a. A narcotic addict; or

b. An alcoholic; and

2. A child of the narcotic addict or alcoholic.

(b) Certification shall be accomplished through use of the treatment program's authorized representative.

(c) SNAP processing standards and notice provisions shall apply to a resident recipient.

(d) A treatment program shall notify the cabinet of a change in a resident's circumstance.

(e) Upon departure of the treatment program, the resident shall be eligible to receive remaining benefits, if otherwise eligible.

(f) The treatment program shall be responsible for knowingly misrepresenting a household circumstance.

(7) The***[~~following~~]*** case processing procedures ***established in this subsection*** shall apply to residents of a group living arrangement, as defined in 7 C.F.R. 271.2***.[~~:~~]***

(a) Application shall be made by a resident or through use of the group living arrangement's authorized representative.

(b) Certification provisions applicable to all other households shall be applied.

(c) Responsibility for reporting changes shall depend upon who files the application:

1. If a resident applies, the household shall report a change in household circumstance to the cabinet; or

2. If the group living arrangement acts as authorized representative, the group living arrangement shall report a change in household circumstance.

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible.

(e) Unless the household applied on its own behalf, the group living arrangement shall be responsible for knowingly misrepresenting a household circumstance.

(8) A case of a resident in a shelter for battered women and children shall be processed as ***established in this subsection.[~~follows:~~]***

(a) The shelter shall:

1. Have FNS authorization to redeem SNAP benefits at wholesalers; or

2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2.

(b) A shelter resident shall be certified for benefits as established in 7 C.F.R. 273.11(g).

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(9) The case of an SSI recipient shall be processed as ***established in this subsection.[~~follows:~~]***

(a) An Application may be filed at the:

1. Social Security Administration (SSA) Office; or

2. Local Department for Community Based Services office.

(b) The cabinet shall not require an additional interview for applications filed at the SSA.

(c) The cabinet shall obtain all necessary verification prior to approving benefits.

(d) Certification periods shall conform to Section 2 of this administrative regulation.

(e) A household change in circumstance shall conform to Section 7 of this administrative regulation.

(10) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike, to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

(11) Sponsored aliens.

(a) Income of a sponsored alien, as defined in 7 C.F.R. 273.4(c)(2), shall be:

1. Deemed income from a sponsor and sponsor's spouse which shall:

a. Include total monthly earned and unearned income; and

b. Be reduced by:

(i) The twenty (20) percent earned income disregard, if appropriate; and

(ii) The SNAP gross income eligibility limit for a household equal in size to the sponsor's household;

2. Subject to appropriate income exclusions as specified in 921 KAR 3:020, Section 3; and

3. Reduced by the twenty (20) percent earned income disregard, if appropriate.

(b) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income shall be prorated among each sponsored alien.

(c) A portion of income, as specified in paragraph (a) of this subsection, of the sponsor and of the sponsor's spouse shall be deemed unearned income until the sponsored alien:

1. Becomes a naturalized citizen;

2. Is credited with forty (40) qualifying quarters of work;

3. Meets criteria to be exempt from deeming, in accordance with 7 C.F.R. 273.4(c)(3);

4. Is no longer considered lawfully admitted for permanent residence and leaves the United States; or

5. Dies, or the sponsor dies.

(d) Effective October 1, 2003, deeming requirements shall no longer apply to sponsored alien children under eighteen (18) years of age, in accordance with 7 U.S.C. 2014.

Section 6. Disaster Certification. The cabinet shall distribute emergency SNAP benefits, pursuant to 42 U.S.C. 5122, to a household residing in a county determined to be a disaster area in accordance with 42 U.S.C. 5179 and 7 C.F.R. 280.1.

Section 7. Reporting Changes. (1) Within ten (10) days of the end of the month in which the change occurs, a household shall report a change which causes:

(a) The household's gross monthly income to exceed 130 percent of poverty level based on household size; or

(b) A household member, who does not have an exemption from work requirements, as specified in 921 KAR 3:025, Section 3(8)(b), to work less than twenty (20) hours per week.

(2) An applying household shall report a change related to its SNAP eligibility and benefits:

(a) At the certification interview; or

(b) Within ten (10) days of the date of the notice of eligibility, if the change occurs after the interview, but prior to receipt of the

notice.

Section 8. Incorporation by Reference. (1) The "FS-2, SNAP 6-Month Review", ***11/14[10/14]***[~~edition 7/12~~], is incorporated by reference.

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

TERESA C. JAMES, LCSW, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2014

FILED WITH LRC: June 13, 2014 at 9 a.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Professional Counselors
(Amended After Comments)

201 KAR 36:070. Education and examination requirements.

RELATES TO: KRS 335.525(1)(c), (d), (f), 335.527(1)(a)
STATUTORY AUTHORITY: KRS 335.515(1), (3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. KRS 335.525(1)(f) requires that applicants achieve passing scores on the examination required by the board. This administrative regulation establishes the educational and examination requirements for licensure.

Section 1. (1) Degree in counseling. To qualify as a degree in counseling under KRS 335.525(1)(c), a degree shall:
(a) Clearly indicate that it is a degree in counseling from a counseling program as evidenced by the description in the program's catalogues and brochures outlining the intent to educate and train the individual for the practice of professional counseling as defined in KRS 335.500(5);
(b) Include the word "counseling" in the name of the degree, the academic program of study, or the major field of study;
(c) Be from a counseling program that stands as a recognizable organizational entity within the institution and has a counseling faculty who identify with the professional counseling profession; and
(d) Include practicum or internship experience of at least 600 hours in a counseling program that stands as a recognizable organizational entity within the institution and which has a counseling faculty who identify with the professional counseling profession.
(2) Degree in a related field.
(a) To qualify as a degree in a related field under KRS 335.525(1)(c), a degree shall:
1. Be awarded from an academic program of study for the degree that follows an organized sequence of graduate coursework with at least one course in a minimum of seven (7) of the nine (9) content areas established in KRS 335.525(1)(d);
2. Include a three (3) semester hour course, at the minimum, on Professional Orientation and Ethics that has as its concentration the American Counseling Association Code of Ethics; and
3. Include practicum or internship experience of at least 600 hours in a counseling program that stands as a recognizable organizational entity within the institution and which has a counseling faculty who identify with the professional counseling profession.
(b) The degree shall be designed to educate and train the individual for the practice of professional counseling as defined by KRS 335.500(5).
(3) Examples of degrees that shall not be accepted as a degree in counseling or a degree in a related field for purposes of licensure include a degree in Clinical Psychology, Social Work, Criminal Justice, or Special Education.
(4) If an applicant proffers a degree in a related field, the applicant shall also provide evidence of additional graduate coursework in each area listed in KRS 335.525(1)(d)1-9 that is not included in the applicant's degree. The coursework in the degree program, in addition to the other coursework, shall demonstrate that the applicant has documented coursework in all nine (9) of the content areas listed in KRS 335.525(1)(d).

Section 2. Accreditation. (1) All coursework submitted for licensure shall be from a regionally accredited educational institution which is accredited by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, and Western Association of Schools and Colleges.
(2) **An applicant[~~Effective January 1, 2017, applicants~~]** shall have a degree from a program that is accredited by the Council on Accreditation of Counseling and Related Programs. **This requirement shall not apply to an applicant who:**
(a) Is enrolled in a counseling or a related field program on or before January 15, 2015;
(b) Maintains continuous enrollment; and
(c) Receives a degree in the counseling or a related field program no later than May 31, 2020.

Section 3. Examination. Applicants for licensure as a Licensed Professional Clinical Counselor shall obtain a passing score on the National Counselor Examination for Licensure and Certification (NCE) or the National Clinical Mental Health Counseling Examination (NCMHCE).

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Instructions for Completion of Application for a Licensed Professional Counselor Associate (LPCA)", November 2008;
(b) "Instructions for Completion of Application for Licensed Professional Counselor (LPCC)", November 2008;
(c) "Application for Licensed Professional Clinical Counselor and Licensing Via Endorsement for Reciprocity", October 2011; and
(d) "Application for Licensed Professional Counselor Associate", October 2011.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARTIN WESLEY, Chair
APPROVED BY AGENCY: October 15, 2014
FILED WITH LRC: October 15, 2014 at 10 a.m.
CONTACT PERSON: Diana Jarboe, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diana Jarboe
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the educational and examination requirements to qualify for licensure.
(b) The necessity of this administrative regulation: This administrative regulation enables the board to evaluate an applicant's qualifications by establishing the educational and examination requirements for licensure.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. KRS 335.525(1)(f) requires that applicants achieve passing scores on the examination required by the board. KRS 335.515(3) authorizes the board to promulgate administrative regulations necessary to carry out the provisions of KRS 335.500 to 335.599.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the types of education and examination that are acceptable for licensure.
(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation requires the counseling degree to be from a program accredited by the Council on Accreditation of Counseling and Related Programs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because it will ensure that counseling has been the core focus of the applicants' training and eliminate the need for the board to review various programs to determine the sufficiency of an individual applicant's education and degree.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. The profession recognizes The Council on Accreditation of Counseling and Related Programs as the entity most focused on the training of counseling, specifically.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will eliminate the need for the board to review specific coursework of applicants to determine its sufficiency. The board has previously determined the coursework in programs accredited by the Council on Accreditation of Counseling and Related Programs is sufficient, so the time to review applications will be significantly reduced.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board receives approximately 100 applications for licensure yearly.

(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 will need to be taken by applicants.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will be an automatic conclusion that the person applying for licensure will have acquired an education necessary to practice professional counseling in a competent manner to protect the public.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? No. This administrative regulation applies to all applicants for licensure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(1), (3)

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

(a) 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, this is not a revenue generating 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? 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:

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(Amended After Comments)

405 KAR 8:030. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 et seq., 30 U.S.C. 1253, 1255, 1257, 1258, 1267

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 et seq., 30 U.S.C. 1253, 1255, 1257, 1258, 1267

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.060(13), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for the grant of a surface coal mining permit. This administrative regulation differs from 30 C.F.R. 780.25. Section 34(3) and (5) of this administrative regulation require that the following be submitted to the cabinet after approval by the Mine Safety and Health Administration (MSHA):

(1) A copy of the final approved design plans for impounding structures;

(2) A copy of all correspondence with MSHA;

(3) A copy of technical support documents requested by MSHA;

(4) A notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. These requirements are necessary to minimize duplication of technical review by MSHA and the cabinet, and to minimize conflicts that may arise from duplication of review.

Section 1. General. (1) This administrative regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this administrative regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(3) This administrative regulation sets forth information required to be contained in applications for permits to conduct surface mining activities, including:

(a) Legal, financial, compliance, and related information;

(b) Environmental resources information; and
(c) Mining and reclamation plan information.

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security number and employer identification number of the:

(a) Applicant;

(b) Applicant's resident agent; and

(c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant:

(a) The person's name, address, Social Security number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant, the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) The names and addresses of:

(a) Every legal or equitable owner of record of the property to be mined;

(b) The holders of record of any leasehold interest in the property to be mined; and

(c) Any purchaser of record, under a real estate contract, of the property to be mined.

(6) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(7) The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval.

(8) Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(9) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

(10) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

Section 3. Violation Information. Each application shall contain the following information:

(1) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any suspension, revocation, or forfeiture as described in subsection (1) of this section has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

2. The current status of the proceedings and of the violation notice; and

3. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(4) After an applicant has been notified that his or her

application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

(5) Upon request by a small operator the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and administrative regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) If the private mineral estate to be mined has been severed from the private surface estate, the application shall contain:

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;[~~or~~]

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, **documentation that under applicable state law, the applicant has the legal authority to extract coal by those methods.**

(3) Nothing in this section shall be construed to authorize the cabinet to adjudicate property rights disputes[~~the surface-subsurface legal relationship shall be determined in accordance with applicable state law, provided that nothing in this administrative regulation shall be construed to authorize the regulatory authority to adjudicate property rights disputes~~][~~a copy of the original instrument of severance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods~~].

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under 405 KAR Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct surface mining activities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include descriptions of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23 of this administrative regulation. The descriptions required by this administrative regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit area and adjacent areas. The description shall be based on all available information, including information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this administrative regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this administrative regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this administrative regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this administrative regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) Water quality analysis and sampling required by this chapter shall be conducted according to:

(a) Standard Methods for the Examination of Water and Wastewater (14th Edition); or

(b) 40 C.F.R. Parts 136 and 434.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. Where aquifers which are located within the permit area underlie the lowest coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including the aquifers.

3. The area and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the area and vertical extent of aquifers which may be adversely affected.

4. If the vertical extent, and the area and vertical density of sampling specified in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b) Chemical analyses including maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata which have a potential to produce acid or toxic drainage.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this administrative regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and area extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to the aquifers.

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If the determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area which is used for domestic, agricultural, industrial, or other legitimate use, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this administrative regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this administrative regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with:

(a) The Corps of Engineers Wetlands Delineation Manual;

(b) U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7;

(c) National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary; and

(d) List of Hydric Soils of the United States, All Kentucky Counties.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5)(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis.

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 C.F.R. 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is being sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall request the SCS to conduct a soil survey.

(a) If a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If a soil survey for lands within the proposed permit area contains no soil map units which have been designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this administrative regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross sections, and

maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for this data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this administrative regulation, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facilities is to be approved as necessary for postmining land use as specified in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this administrative regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal waste, and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;

7. Each air pollution collection and control facility;

8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;

10. Each explosive storage and handling facility; and

11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this administrative regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this administrative regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 16:200, including descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150, and 405 KAR 16:190, Section 3, and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations which the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20 or, if the structure does not meet those performance standards, a showing whether the structure meets the performance standards of the interim performance standards of 405 KAR Chapter 1.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including identification of the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines shall require approval of the cabinet, MSHA, and the Office of Mine Safety and Licensing.

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(a) The character of bedrock and any adverse geologic conditions in the disposal area;

(b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(4), rock toe buttresses or key way cuts are required, the application shall include the following:

(a) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts which shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220.

(c) A description of measures to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by surface mining activities.

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, administrative regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 16:060, Section 2;

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;

5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 5; and

6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) The determination shall include a finding on whether the proposed surface mining activities may proximately result in contamination, diminution or interruption of an underground or surface source of water within the permit area or adjacent areas that is used for domestic, agricultural, industrial or other legitimate use at the time the application is submitted.

(f) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal mine waste bank, dam, or embankment within the proposed permit area. Each plan shall:

(a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 16; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3) of this administrative regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the

requirements of 405 KAR 16:090 and 16.100.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan for an impoundment meeting the size or other criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216-1 and 77.216-2. The plan required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

(4) Coal mine waste banks. Coal mine waste banks shall be designed to comply with the requirements of 405 KAR 16:140.

(5) Coal mine waste dams and embankments. Coal mine waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:100 and 16:160. The plan for an impounding structure that is required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. Each plan shall comply with the requirements of MSHA, 30 C.F.R. 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is Class B-moderate hazard or Class C-high hazard under 405 KAR 7:040, Section 5, and 401 KAR 4:030, or if the structure meets the size or other criteria of MSHA, 30 C.F.R. 77.216(a), each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of the structure. The stability analysis shall include strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this administrative regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4)(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether a protection and enhancement plan is necessary shall be made on a case-by-case basis.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land within the proposed permit area, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans;

(b) A discussion of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use, including management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If a land use different from the premining land use is proposed, all supporting documentation required for approval of the proposed alternative use under 405 KAR 16:210;

(d) A discussion of the consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and

(e) A copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve,

or authorize the proposed use of the land following reclamation.

(2) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

Section 38. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Methods for the Examination of Water and Wastewater", (14th Edition, 1975), American Public Health Association, American Water Works Association, and Water Pollution Control Federation;

(b) "Corps of Engineers Wetlands Delineation Manual", (January, 1987 Edition), U. S. Army Corps of Engineers;

(c) "U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7", (September 26, 1990), U. S. Army Corps of Engineers;

(d) "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", (May, 1988 Edition), Fish and Wildlife Service, U. S. Department of the Interior; and

(e) "List of Hydric Soils of the United States, All Kentucky Counties", (December, 1991 Edition), Soil Conservation Service, U. S. Department of Agriculture;

(2) This material may be inspected, copied, or obtained at the Department for Natural Resources, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 13, 2014

FILED WITH LRC: October 14, 2014 at noon

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the grant of a surface coal mining permit.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria to grant surface mining permit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028(1) authorizes the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. KRS 350.060 authorizes the cabinet to require a permit before coal mining can begin within the Commonwealth. This administrative regulation establishes the criteria for the issuance of a permit for surface mining operations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria for the issuance of an underground permit which is required by KRS 350.060.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the process by which an entity submits proof of right of entry procedures on proposed coal mines sites with severed minerals. The amendment made in response to comment was to add the corresponding federal regulatory language rather than the statutory language.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the agency's position on right of entry for proposed coal mines sites with severed minerals. The amendment made in response to comment was necessary to add the appropriate federal language.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 350.060 authorizes the cabinet to require a permit before coal mining can begin within the Commonwealth. This amendment is clarifies the agency's position on right of entry for proposed coal mines sites with severed minerals. The amendment made in response to comment was necessary to add the appropriate federal language.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is clarifies the agency's position on right of entry for proposed coal mines sites with severed minerals. The amendment made in response to comment was necessary to add the appropriate federal language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 332 permittees with active permits that this administrative regulation could impact. They would only be impacted if they requested a permit on properties where the private mineral estate is severed from the private surface estate.

(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 simply clarifies an applicant's right to enter a property and mine would be determined by applicable state law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cabinet is unable to determine the cost to each permit applicant. The nature of the dispute will ultimately determine the cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will help a permit applicant better understand the right of entry requirements for permits involving severed mineral estates.

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

(a) Initially: This new administrative regulation will not significantly increase the cost to the Division of Mine Permits.

(b) On a continuing basis: Future costs would remain essentially unchanged related to this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general funds and restricted funds will be used.

(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 not be a need to increase fees or funding related to this proposed 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 increase or establish any fees.

(9) TIERING: Is tiering applied? No. All entities that request a permit involving severed minerals will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, and 350.060.

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 new administrative regulation will not generate any new revenue for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent

years? This new administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730

2. State Compliance Standards. KRS 350.060(3)(d).

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. Part 778.15.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(Amended After Comments)

405 KAR 8:040. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 et seq., 30 U.S.C. 1253, 1255, 1257, 1258, 1266, 1267

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.151, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 et seq., 30 U.S.C. 1253, 1255, 1257, 1258, 1266, 1267

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for the grant of a permit for underground coal mining operations. This administrative regulation differs from the corresponding federal regulations as follows:

(1) Section 16 of this administrative regulation requires information on alternative sources of water supply if the applicant's determination of probable hydrologic consequences under Section 32 of this administrative regulation finds that water supplies may be adversely affected. There is no exact federal counterpart to this requirement for alternative water supply information for underground mines, although a close parallel is found in the subsidence control plan requirements at 30 C.F.R. 784.20(b)(8), which require a description of measures to be taken to replace adversely affected protected water supplies. This administrative regulation makes underground mines and surface mines subject to the same requirements regarding water supply replacement, consistent with KRS 350.421 as amended in 1994.

(2) Section 26(1) of this administrative regulation requires that the application contain an example of the letter by which the applicant proposes to notify the owners of structures for which a presubsidence condition survey is required under 405 KAR 18:210, Section 1(4). The corresponding federal regulation does not require a sample letter. The federal regulations are structured so that these presubsidence surveys must be included in the permit application prior to permit issuance. The cabinet's administrative regulations allow the detailed surveys of structures to be submitted after permit issuance. The example letter is needed in the permit application to ensure that the applicant is prepared to provide proper notice to owners of structures after permit issuance.

(3) Section 26 of this administrative regulation does not include the requirement at 30 C.F.R. 784.20(a)(3) for detailed surveys of the presubsidence condition of structures that may be damaged by subsidence. These surveys may be submitted after permit issuance, and therefore are required under 405 KAR 18:210 rather than this administrative regulation.

(4) Section 26 of this administrative regulation applies to water supplies for "domestic, agricultural, industrial, or other legitimate use", whereas the corresponding federal regulation is limited to "drinking, domestic, or residential" water supplies. This administrative regulation applies to water supplies protected under KRS 350.421, whereas the federal regulation applies to water supplies protected under 30 U.S.C. 1309a.

(5) Section 32(3)(e) of this administrative regulation requires that the applicant's determination of probable hydrologic consequences shall include a finding on whether the proposed underground mining activities conducted after July 16, 1994 may proximately result in contamination, diminution, or interruption of an underground or surface source of water for domestic, agricultural, industrial, or other legitimate use within the permit area or adjacent areas at the time the application is submitted. The corresponding federal requirement at 30 C.F.R. 784.14(e)(3)(iv) applies to underground mining activities conducted after October 24, 1992 and wells or springs used for domestic, drinking, or residential use. This administrative regulation addresses water supplies protected under KRS 350.421, as amended July 16, 1994. The federal regulation addresses water supplies protected under 30 U.S.C. 1309a, effective October 24, 1992.

(6) Section 34(3) and (5) of this administrative regulation require that the following be submitted to the cabinet after approval by the Mine Safety and Health Administration (MSHA):

(a) A copy of the final approved design plans for impounding structures;

(b) A copy of all correspondence with MSHA;

(c) A copy of technical support documents requested by MSHA;

(d) A notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. These requirements are necessary to minimize duplication of technical review by MSHA and the cabinet, and to minimize conflicts that may arise from duplication of review.

Section 1. General. (1) Applicability. (a) This administrative regulation applies to any person who applies for a permit to conduct underground mining activities.

(b) The requirements set forth in this administrative regulation specifically for applications for permits to conduct underground mining activities, are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(c) This administrative regulation sets forth information required to be contained in applications for permits to conduct underground mining activities, including:

1. Legal, financial, compliance, and related information;

2. Environmental resources information; and

3. Mining and reclamation plan information.

(2) The permit applicant shall provide to the cabinet in the application all the information required by this administrative regulation.

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security number and employer identification number of the:

(a) Applicant;

(b) Applicant's resident agent; and

(c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant:

(a) The person's name, address, Social Security number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant, the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) The names and addresses of:

(a) Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;

(b) The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and the holders of record of any leasehold interest in the coal to be mined; and

(c) Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined.

(6) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(7) The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval.

(8) Proof, such as a power of attorney or resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(9) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

(10) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

Section 3. Violation Information. Each application shall contain the following information:

(1) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any suspension, revocation, or forfeiture, as described in subsection (1) of this section, has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

2. The current status of the proceedings and of the violation notice; and

3. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

(5) Upon request by a small operator the cabinet shall provide

to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and administrative regulations promulgated thereunder.

Section 4. Right of Entry and Right to Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall contain, for lands to be affected by those operations within the permit area:

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;[~~or~~]

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, **documentation that under applicable state law, the applicant has the legal authority to extract coal by those methods.**

(3) Nothing in this section shall be construed to authorize the cabinet to adjudicate property rights disputes[~~the surface-subsurface legal relationship shall be determined in accordance with applicable state law, provided that nothing in this administrative regulation shall be construed to authorize the regulatory authority to adjudicate property rights disputes~~][~~a copy of the original instrument of severance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods~~].

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities under 405 KAR Chapter 24, or designated unsuitable for surface mining activities if the proposed underground mining activities also involve surface mining of coal, or under study for designation in an administrative proceeding initiated under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(3) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct or locate surface operations or facilities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings including the surface acreage overlying the underground workings, for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resource Information. (1) Each permit application shall include a description of the existing environmental resources either within the areas affected by proposed surface operations and facilities, or within the proposed permit area and adjacent areas, as required by Sections 11 through 23 of this administrative regulation. The descriptions required by this administrative regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit area and adjacent areas. The description shall be based on all available information, including information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this administrative regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this administrative regulation.

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this administrative regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the

probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this administrative regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 C.F.R. Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. For those areas where overburden will be removed, the vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. For those areas overlying underground workings where overburden will not be removed, the vertical extent of sampling shall include those strata above and below the coal seam to be mined which may be impacted by the mining operation.

3. Where aquifers within the permit area are located above or below the coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include the aquifer and those strata which lie between the coal seam and the aquifer.

4. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

5. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 4 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, to determine the potential for subsidence, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b)1. To identify strata which have a potential to produce acid or toxic drainage for areas where overburden will be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

2. To identify strata which have a potential to produce acid or toxic drainage for areas overlying underground workings where overburden will not be removed, chemical analyses including maximum potential acidity and neutralization potential of the strata immediately above and below the coal seam to be mined.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) For standard room and pillar mining operations, the engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(e) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this administrative regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; and the structural geology and lithology of strata which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; or the thickness and chemical characteristics of each stratum which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, whether located above or below the coal seam to be mined, which lie between the coal seam and the aquifers.

4. For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including leaching tests of material from strata which may be disturbed by the operation to determine the potential for the

operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this administrative regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If the determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area which is used for domestic, agricultural, industrial, or other legitimate use, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this administrative regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 405 KAR 18:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the area of surface operations and facilities and adjacent area, and areas subject to probable impacts from underground workings, including areas of probable subsidence. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this administrative

regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, are likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with:

(a) The Corps of Engineers Wetlands Delineation Manual;

(b) U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7;

(c) National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary; and

(d) List of Hydric Soils of the United States, All Kentucky Counties.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5)(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, include an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 18:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more;

5. Involve new areas of surface operations and facilities or adjacent areas, or areas subject to probable impacts from underground workings, including areas of probable subsidence, likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat; or

6. Propose extension of the coal extraction area associated with an underground mine that may by subsidence or other means impact a wetland, important stream, or stream that contains, or could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis.

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall conduct a preapplication investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) or more of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist which would preclude the soils from being defined as prime farmland according to 7 C.F.R. 657, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of the lands within the permit area there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is being sought meets one (1) or more of the criteria in subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the U.S. SCS to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If no soil survey has been made for these lands, the applicant shall request the SCS to conduct a soil survey.

(a) If a soil survey as required by this section contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If a soil survey as required by this section contains no soil map units which have been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this administrative regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the underground mining activities for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface waters within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that portion of the permit area which the applicant has the legal right to enter upon the surface to conduct surface operations.

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross-sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or which will be used for this data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas and dams, or other impoundments within the proposed permit area;

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 26, 27(1), 28, 31, 32, 33, 34, and 38 of this administrative regulation and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings and cross-sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify the true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 39 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facility is to be approved as necessary for postmining land use as specified in 405 KAR 18:220):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, mine development waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans, maps and drawings shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this administrative regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;

2. The area of land to be affected within the proposed permit

area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;

7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

8. Each facility to be used to protect and enhance fish and wildlife related environmental values;

9. Each explosive storage and handling facility;

10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this administrative regulation, and each disposal area for underground development waste and excess spoil, in accordance with Section 28 of this administrative regulation;

11. Cross-sections, at locations as required by the cabinet, of the anticipated final surface configuration to be achieved for the affected areas;

12. Location of each water and any subsidence monitoring point;

13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(c) Plans, maps and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 18:200, including descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease control measures, if any; measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 18:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150 and 405 KAR 18:190, Section 3 and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate drawings and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 405 KAR 18:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of the permits or approvals required by these laws and regulations which the applicant has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20, or if the structure does not meet those performance standards, a showing whether the structure meets the interim performance standards of 405 KAR Chapter 3.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Subsidence Control. (1)(a) The application shall include a map of the permit and adjacent areas at a scale of 1:12,000, or larger if determined necessary by the cabinet, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of water supplies for domestic, agricultural, industrial or other legitimate use that could be contaminated, diminished, or interrupted by subsidence.

(b) The application shall include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of structures identified in paragraph (a) of this subsection or renewable resource lands or could contaminate, diminish, or interrupt water supplies for domestic, agricultural, industrial or other legitimate use.

(c) The application shall include an example of the letter by which the applicant proposes to notify the owners of all structures identified under this subsection for which a presubsidence survey is required under 405 KAR 18:210 Section 1(4).

(d)1. The application shall include a survey of the quantity and quality of each water supply for domestic, agricultural, industrial or other legitimate use within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the application shall include documentation of the denial of access. The applicant shall pay for its technical assessment or engineering evaluation used to determine the quantity and quality of a water supply for domestic, agricultural, industrial or other legitimate use. The applicant shall provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the cabinet.

2. If the owner or his representative is present at the time a survey, technical assessment, or engineering evaluation is conducted under this paragraph, the report shall include the name of the person. If the owner disagrees with the results of the survey, technical assessment or engineering evaluation, he may submit in writing to the cabinet and to the permittee, a detailed description of

the specific areas of disagreement. The cabinet may require additional measures to ensure that adequate and accurate information is included in the survey, technical assessment or engineering evaluation and to ensure compliance with 405 KAR 18:210.

(2) If the information submitted under subsection (1) of this section shows that no structures, or water supplies for domestic, agricultural, industrial or other legitimate use, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of the structures or lands, and no contamination, diminution, or interruption of the water supplies would occur as a result of mine subsidence, and if the cabinet agrees with this conclusion, no further information need be provided under this section.

(3) If the information submitted under subsection (1) of this section shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or contamination, diminution, or interruption of protected water supplies, or if the cabinet determines that damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A description of the method of coal removal, such as longwall mining, room and pillar removal or hydraulic mining, including the size, sequence and timing of the development of underground workings.

(b) A map of the underground workings at a scale of 1:12,000, or larger if determined necessary by the cabinet, that describes the location and extent of the areas in which planned subsidence mining methods will be used and that identifies all areas where the measures described in paragraphs (d), (e), and (g) of this subsection will be taken to prevent or minimize subsidence and subsidence related damage; and, when applicable, to correct subsidence related material damage.

(c) A description of the physical conditions, such as depth of cover, seam thickness and lithology of overlying strata, that affect the likelihood or extent of subsidence and subsidence related damage.

(d) A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce or correct material damage in accordance with 405 KAR 18:210, Section 3.

(e) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence related damage including:

1. Backstowing or backfilling of voids;

2. Leaving support pillars of coal;

3. Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving the coal in place; and

4. Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface.

(f) A description of the anticipated effects of planned subsidence, if any.

(g) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to noncommercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair;

(h) A description of the measures to be taken in accordance with 405 KAR 18:060, Section 12, and 405 KAR 18:210, Section 3, to replace adversely affected protected water supplies or to mitigate or remedy any subsidence related material damage to the land and protected structures; and

(i) Other information specified by the cabinet as necessary to demonstrate that the operation will be conducted in accordance with 405 KAR 18:210.

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the cabinet and MSHA under 405 KAR 18:140, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the cabinet from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste and Excess Spoil. Each plan shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal methods and sites for placing underground development waste and excess spoil according to 405 KAR 18:130, 405 KAR 18:140, and 405 KAR 18:160 as applicable. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030, Section 27 and the applicable requirements of this administrative regulation.

Section 29. MRP; Transportation Facilities. (1) Each application shall contain a description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications or for steep cut slopes under 405 KAR 18:230.

(c) A description of each measure to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 18:230.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 18:230.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by underground mining activities.

Section 31. MRP; Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and drawings the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, administrative regulations, standards, and effluent limitations as required by 405 KAR 18:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 18:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 18:060, Section 2;

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 18:060, Sections 1(4), 3, 8 and 9, and 405 KAR 18:080; and

5. Protect or replace the water supply of present users as required by 405 KAR 18:060, Section 12.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 18:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) The determination shall include a finding on whether the proposed underground mining activities conducted after July 16, 1994 may proximately result in contamination, diminution or interruption of an underground or surface source of water within the permit area or adjacent areas that is used for domestic, agricultural, industrial or other legitimate use at the time the application is submitted.

(f) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 18:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal mine waste bank, dam, or embankment within the proposed permit area. Each design plan shall:

(a) Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 18; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section 32(3) of this administrative regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090 and 18:100.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100. Each plan for an impoundment meeting the size or other criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216-1 and 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

(4) Coal mine waste banks. Coal mine waste banks shall be designed to comply with the requirements of 405 KAR 18:140.

(5) Coal mine waste dams and embankments. Coal mine waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:100 and 18:160. The plan for an impounding structure that is required to be submitted to the District Manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. Each plan shall comply with the requirements of MSHA, 30 C.F.R. 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is Class B-moderate hazard or Class C-high hazard under 405 KAR 7:040, Section 5, and 401 KAR 4:030, or if the structure meets the size or other criteria of MSHA, 30 C.F.R. 77.216(a), each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of the structure. The stability analysis shall include strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this administrative regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4)(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, include an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 18:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more;

5. Involve new areas of surface operations and facilities or adjacent areas, or areas subject to probable impacts from underground workings, including areas of probable subsidence, likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat; or

6. Propose extension of the coal extraction area associated with an underground mine that may by subsidence or other means impact a wetland, important stream, or stream that contains, or could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether a protection and enhancement plan is necessary shall be made on a case-by-case basis.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land to be affected within the proposed permit area by surface operations and facilities, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans;

(b) A discussion of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use, including management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and

pastureland land uses;

(c) If a land use different from the premining land use is proposed, all supporting documentation required for approval of the proposed alternative use under 405 KAR 18:220;

(d) A discussion of The consideration which has been given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local land use plans and programs;

(e) A copy of the comments concerning the proposed use from the legal or equitable owner of record of the area to be affected by surface operations and facilities and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) Approval of the initial postmining land use plan pursuant to this section shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

Section 38. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 18:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Office of Mine Safety and Licensing.

Section 39. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Methods for the Examination of Water and Wastewater", (14th Edition, 1975), American Public Health Association, American Water Works Association, and Water Pollution Control Federation;

(b) "Corps of Engineers Wetlands Delineation Manual", (January, 1987 Edition), U. S. Army Corps of Engineers;

(c) "U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7", (September 26, 1990), U. S. Army Corps of Engineers;

(d) "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", (May, 1988 Edition), Fish and Wildlife Service, U. S. Department of the Interior; and

(e) "List of Hydric Soils of the United States, All Kentucky Counties", (December, 1991 Edition), Soil Conservation Service, U. S. Department of Agriculture;

(2) This material may be inspected, copied, or obtained at the Department for Natural Resources, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 13, 2014

FILED WITH LRC: October 14, 2014 at noon

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the grant of a permit for underground coal mining operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria to grant an underground mining permit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028(1) authorizes the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. KRS 350.060 authorizes the cabinet to require a permit before coal mining can begin within the Commonwealth. This administrative regulation establishes the criteria for the issuance of a permit for underground mining operations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria for the issuance of an underground permit which is required by KRS 350.060.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the process by which an entity submits proof of right of entry procedures on proposed coal mines sites with severed minerals. The amendment made in response to comment was to add the corresponding federal regulatory language rather than the statutory language.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the agency's position on right of entry for proposed coal mines sites with severed minerals. The amendment made in response to comment was necessary to add the appropriate federal language.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 350.060 authorizes the cabinet to require a permit before coal mining can begin within the Commonwealth. This amendment is clarifies the agency's position on right of entry for proposed coal mines sites with severed minerals. The amendment made in response to comment was necessary to add the appropriate federal language.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is clarifies the agency's position on right of entry for proposed coal mines sites with severed minerals. The amendment made in response to comment was necessary to add the appropriate federal language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 332 permittees with active permits that this administrative regulation could impact. They would only be impacted if they requested a permit on properties where the private mineral estate is severed from the private surface estate.

(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 simply clarifies an applicant's right to enter a property and mine would be determined by applicable state law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cabinet is unable to determine the cost to each permit applicant. The nature of the dispute will ultimately determine the cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will help a permit applicant better understand the right of entry requirements for permits involving severed mineral estates.

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

(a) Initially: This new administrative regulation will not significantly increase the cost to the Division of Mine Permits.

(b) On a continuing basis: Future costs would remain essentially unchanged related to this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general funds and restricted funds will be used.

(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 not be a need to increase fees or funding related to this proposed 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 increase or establish any fees.

(9) TIERING: Is tiering applied? No. All entities that request a permit involving severed minerals will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, and 350.060.

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 new administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730

2. State Compliance Standards. KRS 350.060(3)(d).

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. Part 778.15.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amended After Comments)

702 KAR 1:160. School health services.

RELATES TO: KRS 156.160(1)[~~(g),~~](h), (i), (j), 156.501, 156.502, 158.035, 158.160, 161.145, 214.034, 214.036, 29 C.F.R. 1910.1030

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160(1)(h)[~~156.160(1)(g)~~] requires the Kentucky Board of Education to promulgate administrative regulations governing medical inspection, physical and health education and recreation, and other administrative regulations deemed necessary or advisable for the protection of the physical welfare and safety of the public school children. KRS 156.160(1)(i) and (j)[~~156.160(1)(h) and (i)~~] require the board to promulgate an administrative regulation governing a required vision examination and a dental screening or examination. This administrative regulation establishes[~~standards and~~] criteria for **preventive[~~preventative~~]** student health care examinations at the local school district level.

Section 1. School Employee Medical Examinations. (1) Except as provided in subsection (2) of this section, a local board of education shall require a medical examination of each certified or classified employee, including each substitute teacher. The medical examination shall:

(a) Be conducted prior to initial employment; and

(b) Include a tuberculosis (TB) risk assessment.

1. If the individual is identified by that assessment as being at high risk for TB, the individual shall be required to undergo the administration of a tuberculin skin test (TST) or a blood test for Mycobacterium tuberculosis (BAMT).

2. The TB risk assessment shall be performed and reported by a physician, an advanced practice registered nurse, a physician's assistant, or a registered nurse.

(2) The medical examination requirement shall not apply to school bus drivers who are covered by 702 KAR 5:080.

(3) A local board of education may require by policy that a school employee physical examination be conducted no earlier than a ninety (90) day period prior to initial employment.

(4) A medical examination shall be reported on the form Medical Examination of School Employees, KDESHS001, or an electronic medical record that includes all of the data equivalent to that on the Medical Examination of School Employees form.

(5) A person who tests positive for TB shall be required to comply with the directives of the local board of health and the Kentucky Department for Public Health for further evaluation and treatment of the TB infection.

(6)(a) Following the required medical examination for initial employment and any subsequent examinations as may be required for positive tuberculin reactors, a school district employee other than a bus driver shall submit to the local school superintendent the completed Medical Examination of School Employees form or an electronic medical record that includes all of the data equivalent to that on the Medical Examination of School Employees form [~~from~~] required by subsection (4) of this section.

(b) The medical examination shall be performed and signed for by a physician, physician's assistant, or an advanced practice registered nurse. Transmission of an electronic medical record to the school district via email from the health care provider's office may be accepted as the official signature.

(7) Documentation of a TST, BAMT, and chest x-ray, if performed, shall include:

(a) The date given;

(b) Type of test;

(c) Millimeters of induration;

(d) Date read and by whom; and

(e) Date x-ray taken and results as related to TB status.

(8)(a)1. A local board of education shall require all school personnel exhibiting symptoms of chronic respiratory disease to undergo a TB risk assessment and examinations as indicated.

2. The evaluation and any recommended treatment for TB infection shall be based upon the directives of the local board of health and the Kentucky Department for Public Health.

(b) An employee exposed to infectious TB shall be tested and, if necessary, treated for TB infection according to the directives of the local board of health.

(c) In a county with an incidence of cases of active TB that is equal to or greater than the national average as established by the Department for Public Health, Division of Epidemiology and Health Planning, Tuberculosis Prevention and Control Program, the local board of health may, with the approval of the Kentucky Department

for Public Health, require more extensive testing of school district employees for TB.

Section 2. **Preventive[~~Preventative~~]** Student Health Care Examinations. (1)(a) A local board of education shall require a **preventive[~~preventative~~]** health care examination for students within one (1) year prior to initial entry to school.

(b) A second examination shall be required within one (1) year prior to entry into the sixth grade.

(c) A third examination may be required by policy of the local board of education within one (1) year prior to entry into the ninth grade.

(2) An out-of-state transfer student shall be required to submit documentation of a **preventive[~~preventative~~]** health care examination.

(3) A local [~~school~~] board of education may extend the deadline by which to obtain a **preventive[~~preventative~~]** student health care examination, not to exceed two (2) months.

(4) A **preventive[~~preventative~~]** student health care examination shall be performed and signed for by a physician, an advanced practice registered nurse, a physician's assistant, or by a health care provider in the early periodic screening diagnosis and treatment programs. Transmission of an electronic medical record to the school district via email from the health care provider's office may be accepted as the official signature.

(5) A **preventive[~~preventative~~]** student health care examination shall be reported on the **Preventive[~~Preventative~~]** Student Health Care Examination Form, KDESHS002, or an electronic medical record that includes all of the data equivalent to that on the **Preventive[~~Preventative~~]** Student Health Care Examination Form, and shall include:

(a) A medical history;

(b) An assessment of growth and development and general appearance;

(c) A physical assessment including hearing and vision screening; and

(d) Recommendations to the school regarding health problems that may require special attention in classroom or physical education activities.

(6)(a) A vision examination shall be reported on the form, Kentucky Eye Examination Form for School Entry, KDESHS004, or other electronic medical record that includes all of the data equivalent to that on the Kentucky Eye Examination Form for School Entry.

(b) A dental screening or examination shall be reported on the form, Kentucky Dental Screening/Examination Form for School Entry, KDESHS005, or other electronic medical record that includes all of the data equivalent to that on the Kentucky Dental Screening/Examination Form for School Entry.

(7)[~~A record of immunization shall be submitted on an Immunization Certificate, EPID-230.~~

~~(8)~~] A local school district shall establish a plan for implementation and compliance required for the sixth grade **preventive[~~preventative~~]** student health care examination.

(8)[~~(9)~~] A current Immunization Certificate, EPID-230, incorporated by reference into 902 KAR 2:060, or an immunization certificate meeting the requirements of 902 KAR 2:060 Section 4, shall be on file within two (2) weeks of the child's enrollment in school.

(9)[~~(10)~~] (a) A board of education shall adopt a program of continuous health supervision for all currently enrolled students[~~school enrollees~~].

(b) Supervision shall include scheduled, appropriate screening tests for vision and hearing.

(10)[~~(11)~~] A school shall have emergency care procedures, which shall include:

(a) First aid facilities meeting the requirements of 702 KAR 4:170, including provisions for designated areas for the child to recline;

(b) A requirement that whenever children are present during school hours, there shall be at least one (1) adult present in the school who is certified in a standard first aid course which includes CPR for infants and children;

(c) A requirement that, at all times when enrolled students, for whom documentation under KRS 158.838(2) or (7) has been provided to the school, are present during school hours or participating in school-related activities, there is a school employee who is trained to administer and can administer or assist with the self-administration of glucagon, insulin, or seizure rescue medications. A student shall be permitted to conduct the actions and possess the supplies and equipment described in KRS 158.838(7) at school-related activities regardless of whether the student is a participant or mere observer of the school-related activity;

(d) A number at which parents can be reached; and

(e)[~~(d)~~] The name of a family physician.[~~(12) A local board of education shall require immunizations as required by KRS 214.034.~~]

Section 3. Cumulative Health Records. (1) A school shall initiate a cumulative health record for each student[~~pupil~~] entering its school.

(a) The record shall be maintained throughout the student's[~~pupil's~~] attendance.

(b) The record shall be uniform and shall be on the form Student's[~~Pupil's~~] Cumulative Health Record, KDESHS006, or the record shall be maintained electronically in the student information system.

(c) The record shall include screening tests related to growth and development, vision, hearing, and **any** dental **screenings other than the initial dental screening recorded on the Kentucky Dental Screening/Examination Form for School Entry, KDESHS005**, and findings and recommendations of a **health care provider[~~physician~~]** and a dentist.

(d) A follow-up by the proper health or school authorities shall be made on each abnormality noted, and the result shall be recorded.

(2) A local school district[~~authority~~] shall report all known or suspected cases of communicable disease immediately to the local health department.

Section 4. School District Health Personnel. (1)[~~Physical Environment. (1) A board of education shall provide and maintain a physical environment that is conducive to the health and safety of school children in each school under its jurisdiction.~~

~~(2) A local board of education shall comply with current laws and administrative regulations applicable to all public buildings pertinent to health, sanitation, and safety.~~

~~(3) A local board of education shall establish and maintain:~~

~~(a) An adequate supply of water of safe, potable, sanitary quality;~~

~~(b) A state-approved sanitary disposal of sewage, other water carried waste, and solid waste;~~

~~(c) Adequate toilet and lavatory facilities, including soap or detergent as well as towels or other methods for drying hands, and other sanitary fixtures;~~

~~(d) Adequate heating, lighting, and ventilation in all school buildings;~~

~~(e) Adequate facilities and equipment for cafeterias and lunchrooms;~~

~~(f) Supervision of general sanitation and safety of the school buildings, grounds, and playground equipment;~~

~~(g) Beginning with the 2010-2011 school year, proof that all unlicensed school personnel who have accepted delegation to perform medication administration in school have completed a training course provided by the Kentucky Department of Education. This course shall be developed in consultation with the Kentucky Board of Nursing to ensure compliance with 201 KAR 20:400;~~

~~(h) Adequate control of air pollutants; and~~

~~(i) Universal precautions guidelines compatible with Occupational Safety and Health Administration requirements established in 803 KAR 2:320 and 29 C.F.R. 1910.1030.~~

~~Section 5.~~] A superintendent shall designate a person to serve as school health coordinator for the district.[~~(1)~~] The person designated shall meet the **following** minimum qualifications**:**

(a) A valid license to practice as a registered nurse, issued

under KRS 314.041 by the Kentucky Board of Nursing, and three (3) years of registered nursing practice, as defined in KRS 314.011(6);

(b) A school psychologist certificate, issued by the Education Professional Standards Board (EPSB) pursuant to 16 KAR 2:090, and three (3) years of related work experience in a school setting; or

(c) A school social worker certificate, issued by the EPSB pursuant to 16 KAR 2:070, and three (3) years of work experience practicing social work in a school setting[~~required of this position as determined by the Education~~][~~Educational~~]**[~~Professional Standards Board in 16 KAR 4:010, Section 12~~]**[~~, or by the Kentucky Department of Education in the Local District Classification Plan for Class Code: 7271, as indicated in the document Setting Up Employee Classification Codes~~].

(2)[~~Class Title: School Health Coordinator for the district.~~] The school health coordinator shall work in cooperation with all school personnel, the local board of education, the department[~~State Department of Education~~], the local health department, and family resource and youth services centers,[~~and parents~~] in[~~planning,~~] promoting[~~,~~] and implementing a school health services program.

Section 5. Delegation to Perform Medication Administration. (1) A local board of education shall require proof that all unlicensed school personnel who have accepted delegation to perform medication administration in school have completed a training course provided by the department or allowed under KRS 158.838(1)(c). The department's course shall be developed in consultation with the Kentucky Board of Nursing to ensure compliance with 201 KAR 20:400 and KRS 156.502.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Medical Examination of School Employees", KDESHS001, January **1,** 2015[~~February 2012~~];

(b) "**Preventive[~~Preventative~~]** Student Health Care Examination Form", KDESHS002, January **1,** 2015[~~February 2012~~];

(c) "Student's[~~Pupil's~~] Cumulative Health Record", KDESHS006, January **1,** 2015 [~~March 2012~~];

(d)["~~Setting Up Employee Classification Codes", March 2012; (e)~~] "Kentucky Eye Examination Form for School Entry", KDESHS004, January **1,** 2015 [~~March 2012~~]; and

(e)[~~(f) "Immunization Certificate", EPID-230, August 2010; and~~

~~(g)~~] "Kentucky Dental Screening/Examination Form For School Entry", KDESHS005, January **1,** 2015[~~March 2012~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of District Support, Department of Education, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

TERRY HOLLIDAY, Ph.D., Commissioner
ROGER L. MARCUM, Chairperson

APPROVED BY AGENCY: October 13, 2014

FILED WITH LRC: October 14, 2014 at 10 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: This administrative regulation implements several statutory provisions dealing with school health and safety. The administrative regulation describes, for both school district employees and students the necessary forms that are to be completed and the data that should be maintained for each individual.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 156.160(1)(h), (i), and (j), 156.501, 156.502, 158.035, 158.160, 161.145, 214.034, 214.036, and 29 C.F.R. 1910.1030 that set forth the state and federal health data requirements dealing with school health and safety.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for establishing the process and procedures for implementing the required health data collections by local school districts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics for establishing the process and procedures for implementing the required health data collections by local school districts.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendments include the following changes: Changes include updates to language allowing electronic medical records to be submitted to schools, updates to language allowing the acceptance of electronic signatures, and updates language to more clearly define when a school employee must be available to assist with medication administration.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement HB 98 passed in the 2014 Regular Session of the General Assembly.

(c) How the amendment conforms to the content of the authorizing statute: This administrative regulation governs medical examinations necessary and advisable for the protection of physical welfare and safety of public school children and public school employees.

(d) How the amendment will assist in the effective administration of the statutes: The electronic medical records and signatures will streamline health data collection processes used by local public school districts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and health care providers who will use the forms incorporated by reference.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The administrative regulation will impact school districts and health care providers by standardizing and streamlining the health data collection process.

(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: Health care providers will continue to provide local school districts with health data utilizing the forms incorporated by reference. While physicians are not 'regulated entities' under this regulation and they use the forms by choice, physicians can also provide the information electronically as long as it has the same information.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to school districts or the Department of Education other than minimal administrative costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The health data collected by local school districts will be in alignment with state and federal requirements and will inform districts about the health conditions and needs of their students.

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

(a) Initially: There will be no additional cost to school districts or the Department of Education other than minimal administrative costs to update referenced documents for recording health data in the student information system.

(b) On a continuing basis: There will be no additional cost to school districts or the Department of Education other than minimal administrative costs and minimal costs associated with required staff training.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The minimal administrative and training costs will be absorbed in the general operating funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160(1)(h), (i), and (j), 156.501, 156.502, 158.035, 158.160, 161.145, 214.034, 214.036, and 29 C.F.R. 1910.1030.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. No additional costs are expected, other than minimal administrative costs and minimal costs associated with required staff training.

(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? Undeterminable minimal costs

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional costs are expected, other than minimal administrative costs and minimal costs associated with required staff training. Designated unlicensed personnel currently undergo training to administer or assist with administration of medicines. Districts will need to track additional training acquired by staff to administer or assist with administration of glucagon, insulin or seizure rescue medications.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amended After Comments)

902 KAR 20:430. Facilities specifications, operation and services; behavioral health services organizations.

RELATES TO: KRS 17.500, 198B.260, 200.503(2), 210.005(2), (3), 309.080, 309.130, 311.860, 314.042, 319.050, 319.056, 319.064, 319C.010, 335.080, 335.100, 335.300, 335.500, 439.3401, 42 C.F.R. Part 2, 45 C.F.R. 160, 164, 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 290ee-3

STATUTORY AUTHORITY: KRS 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of behavioral health services organizations which provide behavioral health services necessary to treat, support, and encourage individuals with a substance use disorder, mental health disorder, or co-occurring disorder to achieve and maintain the highest possible level of health and self-sufficiency.

Section 1. Definitions. (1) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant licensed under KRS 311.840 to 311.862;

(h) A marriage and family therapist licensed and practicing in accordance with KRS 335.300;

(i) A professional clinical counselor licensed and practicing in accordance with KRS 335.500; or

(j) A licensed professional art therapist as defined by KRS 309.130(2).

(2) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapist associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(3); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(3) "Behavioral health services organization" means an entity licensed under this administrative regulation to provide behavioral health services as described in Section 6 of this administrative regulation.

(4) **"Cabinet" means the Cabinet for Health and Family Services.**

(5) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(6)[(5)] "Child with a severe emotional disability" is defined by KRS 200.503**(3)[(2)]**.

(7)[(6)] "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(8)[(7)] "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(9)[(8)] "Licensed behavior analyst" is defined by KRS 319C.010(6).

(10)[(9)] "Peer support specialist" means a paraprofessional who**:**

(a) Meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; and

(b) Works under the supervision of **one (1) of the following[a]**:

1. Physician;
2. Psychiatrist;
3. Licensed psychologist;
4. Licensed psychological practitioner;
5. Licensed psychological associate;
6. Licensed clinical social worker;
7. Licensed marriage and family therapist;
8. Licensed professional clinical counselor;
9. Certified social worker;
10. Licensed marriage and family therapist associate;
11. Licensed professional counselor associate;
12. Licensed professional art therapist;**[or]**
13. Licensed professional art therapist associate**;**
14. Advanced practice registered nurse;
15. Physician assistant; or
16. Certified alcohol and drug counselor.

(11)[(10)] "Severe mental illness" means the conditions defined by KRS 210.005(2) and (3).

(12)[(11)] "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms resulting from use of a substance which the individual continues to take despite experiencing substance-related problems as a result, including:

(a) Intoxication;

(b) Withdrawal; or

(c) A substance induced mental health disorder.

Section 2. Licensure Application and Fees. (1) An applicant for initial licensure as a behavioral health services organization shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Behavioral Health Services Organization; and

(b) An accompanying initial licensure fee in the amount of $750, made payable to the Kentucky State Treasurer.

(2) At least sixty (60) calendar days prior to the date of annual renewal, a behavioral health services organization shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Behavioral Health Services Organization; and

(b) An annual renewal fee of $500, made payable to the Kentucky State Treasurer.

(3) A behavioral health services organization:

(a) May provide behavioral health services as described in Section 6 of this administrative regulation at extension locations separate from its permanent facility; and

(b) Shall pay a fee in the amount of $250 per extension, submitted to the Office of Inspector General at the time of initial licensure, renewal, or the addition of a new extension to the organization's license.

(4)(a) Name change. A behavioral health services organization shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the organization's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. A behavioral health services organization shall not change the location where a program is operated until an Application for License to Operate a Behavioral Health Services Organization accompanied by a fee of $100 is filed with the Office of Inspector General.

(c) Change of ownership.

1. The new owner of a behavioral health services organization shall submit to the Office of Inspector General an Application for License to Operate a Behavioral Health Services Organization accompanied by a fee of $750 within ten (10) calendar days of the effective date of the ownership change.

2. A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing behavioral health services organization or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(5) To obtain approval of initial licensure or renew a license to operate a behavioral health services organization, the licensee shall be in compliance with this administrative regulation and federal, state, and local laws and regulations pertaining to the operation of the organization.

Section 3. Scope of Operation and Services. (1) A behavioral health services organization shall:

(a) Provide behavioral health services, as described in Section 6 of this administrative regulation, to meet client needs; and

(b) **Unless an extension is granted pursuant to subsection (2) of this section,** become accredited within one (1) year of initial licensure by **one (1) of the following[the]**:

1. Joint Commission;
2. Commission on Accreditation of Rehabilitation Facilities;**[or]**
3. Council on Accreditation**; or**
4. A nationally recognized accreditation organization.

(2)**(a) If a behavioral health services organization has not obtained accreditation in accordance with subsection (1)(b) of this section within one (1) year of initial licensure, the organization may request a one (1) time only extension to complete the accreditation process.**

(b) A request for extension shall:

1. Be submitted in writing to the Office of Inspector General at least sixty (60) days prior to the date of annual renewal;

2. Include evidence that the organization initiated the process of becoming accredited within sixty (60) days of initial licensure and is continuing its efforts to obtain accreditation; and

3. Include an estimated timeframe by which approval of accreditation is anticipated.

(3) The cabinet shall revoke a license if a behavioral health services organization fails to **meet one (1) of the following requirements:**

(a) Become accredited in accordance with subsection (1)(b) of this section**;**

(b) Request an extension in accordance with subsection (2) of this section if accreditation has not been obtained within one (1) year of initial licensure; or

(c)[or fails to] Maintain accreditation.

(4)[(3)] Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation[within one (1) year of initial licensure] and at the time of annual renewal described in Section 2(2) of this administrative regulation.

Section 4. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for:

(a) The behavioral health services organization;

(b) The establishment of administrative policy; and

(c) Ensuring compliance with federal, state, and local laws and regulations pertaining to the operation of the organization.

(2) Executive director. The licensee shall establish lines of authority and designate an executive director who:

(a) May serve in a dual role as the organization's program director described in subsection (5)(a) of this section;

(b) Shall be responsible for the administrative management of the organization, including:

1. The total program of the organization in accordance with the organization's written policies; and

2. Evaluation of the program as it relates to the needs of each client; and

(c) Shall have a master's degree in business administration or a human services field, or a bachelor's degree in a human services field, including:

1. Social work;
2. Sociology;
3. Psychology;
4. Guidance and counseling;
5. Education;
6. Religion;
7. Business administration;
8. Criminal justice;
9. Public administration;
10. Child care administration;
11. Christian education;
12. Divinity;
13. Pastoral counseling;
14. Nursing;
15. Public health; or
16. Another human service field related to working with children with severe emotional disabilities or clients with severe mental illness.

(3) An executive director with a master's degree shall have two (2) years of prior supervisory experience in a human services program.

(4) An executive director with a bachelor's degree shall have a minimum of two (2) years of prior experience in a human services program plus two (2) years of prior supervisory experience in a human services program.

(5) Personnel. A behavioral health services organization shall employ the following personnel directly or by contract:

(a) A program director who shall be a:

1. Psychiatrist;
2. Physician;
3. Certified or licensed psychologist;
4. Licensed psychological practitioner;
5. Advanced practice registered nurse;
6. Licensed professional clinical counselor;
7. Licensed marriage and family therapist;
8. Licensed professional art therapist;
9. Licensed board certified behavior analyst; or
10. Licensed clinical social worker; and

(b) A sufficient number of personnel to provide behavioral health services, which may include:

1. Behavioral health professionals;
2. Behavioral health professionals under clinical supervision;
3. Licensed behavior analysts;
4. Licensed**[~~behavior~~]** assistant **behavior** analysts;
5. Case managers as described in subsections (6), (7), and (8) of this section;
6. Peer support specialists;
7. Certified alcohol and drug counselors; or
8. Community support associates.

(6) A case manager who provides targeted case management services to clients with a substance use disorder shall:

(a) Have a bachelor's degree in a human services field, including:

1. Psychology;
2. Sociology;
3. Social work;
4. Family studies;
5. Human services;
6. Counseling;
7. Nursing; or
8. Another human service degree program related to working with individuals with substance use disorders, mental health disorders, or co-occurring disorders;

(b)1. Have a minimum of one (1) year of full-time employment working directly with adolescents or adults in a human service setting after completion of a bachelor's degree as described in paragraph (a) of this subsection; or

2. Have a master's degree in a human services field as described in paragraph (a) of this subsection;

(c)1. Have successfully completed case management training approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) within six (6) months of employment; and

2. Have successfully completed recertification requirements approved by DBHDID every three (3) years thereafter; and

(d) Be supervised by a behavioral health professional who:

1. Has completed case management training approved by DBHDID; and

2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual basis and face-to-face.

(7) A case manager who provides targeted case management services to clients with co-occurring mental health or substance use disorders and chronic or complex physical health issues shall:

(a) Have a bachelor's degree in a human services field as described in subsection (6)(a) of this section;

(b)1. After completion of a bachelor's degree, have a minimum of five (5) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services; or

2. After completion of a master's degree in social work, family studies, clinical counseling, psychology, nursing, or another human service degree program related to working with individuals with substance use disorders, mental health disorders, or co-occurring disorders, have a minimum of two (2) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services;

(c)1. Have successfully completed case management training approved by the DBHDID within six (6) months of employment; and

2. Have successfully completed recertification requirements approved by DBHDID every three (3) years thereafter; and

(d) For a bachelor's level case manager, be supervised by a behavioral health professional who:

1. Has completed case management training approved by DBHDID; and

2. Has supervisory contact at least three (3) times per month with at least two (2) of the contacts on an individual basis and face-to-face.

(8) A case manager who provides targeted case management services to children with a severe emotional disability or clients with a severe mental illness shall:

(a) Have a bachelor's degree in a human services field as described in subsection (6)(a) of this section;

(b)1. Have a minimum of one (1) year of full-time employment working directly with individuals with behavioral health needs after completion of a bachelor's degree in a behavioral science field as described in subsection (6)(a) of this section; or

2. Have a master's degree in a human services field as described in subsection (6)(a);

(c)1. Have successfully completed case management training approved by DBHDID within six (6) months of employment; and

2. Have successfully completed recertification requirements approved by DBHDID every three (3) years thereafter; and

(d) Be supervised by a behavioral health professional who:

1. Has completed case management training approved by DBHDID; and

2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual basis and face-to-face.

(9) Background checks.

(a) The executive director and all personnel of a behavioral health services organization shall:

1. Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police;**[~~and~~]**

2. Not have a criminal conviction, or plea of guilty, to a:

a. Sex crime as specified in KRS 17.500;

b. Violent crime as specified in KRS 439.3401;

c. Criminal offense against a minor as specified in KRS 17.500; or

d. Class A felony**; and**

3. Not be listed on the following:

a. Central registry established by 922 KAR 1:470;

b. Nurse aide or home health aide abuse registry established by 906 KAR 1:100; or

c. Caregiver misconduct registry established by 922 KAR 5:120E and 922 KAR 5:120.

(b) A behavioral health services organization **may use Kentucky's national background check system established by 906 KAR 1:190 to satisfy the background check requirements of paragraph (a) of this subsection.**

(c) A behavioral health services organization shall perform annual criminal record **and registry** checks as described in paragraph (a) of this subsection on a random sample of at least twenty-five (25) percent of all personnel.

(10) Policies. The behavioral health services organization shall establish written policies for the administration and operation of the organization which shall be available to all personnel and include:

(a) A description of the organizational structure specifying the responsibility, function, and interrelations of each organizational unit, and the lines of administrative and clinical authority;

(b) The organization's method and procedure for storage, dispensing, and administering a drug or biological agent;

(c) A client grievance procedure as described in subsection (14) of this section;

(d) The organization's procedure for maintaining the confidentiality of client records in accordance with federal, state, and local statutes and regulations; and

(e) Personnel policy, including:

1. A job description and qualifications for each personnel category;

2. A plan for orientation of personnel to the policies and objectives of the organization and on-the-job training, if necessary; and

3. An annual training program for staff which **shall**[~~may~~] include:

a. Detection and reporting of abuse, neglect, or exploitation;

b. Behavioral management, including de-escalation training;

c. Physical management procedures and techniques; and

d. Emergency and safety procedures.

(11) Personnel record. A personnel record shall be kept on each staff member and shall contain the following items:

(a) Name and address;

(b) Verification of all training and experience, including licensure, certification, registration, or renewals;

(c) Verification of submission to the background check **requirements of**[~~required by~~] subsection (9) of this **section**[~~administrative regulation~~];

(d) **Annual** performance appraisals; and

(e) Employee incident reports.

(12) After hours services.

(a) The behavioral health services organization shall provide, directly or through written agreement with another behavioral health services provider, access to face-to-face emergency services twenty-four (24) hours per day, seven (7) days per week.

(b) Emergency services shall include interventions necessary to screen, assess, refer, and treat an individual from the point of the identified emergency or behavioral health crisis to the point of resolution of the emergency or crisis.

(13) Quality assurance and utilization review.

(a) The behavioral health services organization shall have a quality assurance and utilization review program designed to:

1. Enhance treatment and care through the ongoing objective assessment of services provided, including the correction of identified problems; and

2. Provide an effective mechanism for review and evaluation of the service needs of each client.

(b) The need for continuing services shall be evaluated immediately upon a change in a client's service needs or a change in the client's condition to ensure that proper arrangements have been made for:

1. Discharge;

2. Transfer; or

3. Referral to another service provider, if appropriate.

(14) Client grievance policy. The behavioral health services organization shall have written policies and procedures governing client grievances which shall include the following:

(a) Identification of a behavioral health services organization ombudsman;

(b) A process for filing a written client grievance;

(c) An appeals process with time frames for filing and responding to a grievance in writing;

(d) Protection for a client from interference, coercion, discrimination, or reprisal; and

(e) Conspicuous posting of the grievance procedures in a public area to inform a client of:

1. His or her right to file a grievance;

2. The process for filing a grievance; and

3. The address and telephone number of the behavioral health services organization's and cabinet's ombudsman.

Section 5. Residential Services for Substance Use Disorders. (1) If a behavioral health services organization licensed under this administrative regulation provides residential services to clients with a substance use disorder, the organization shall obtain separate licensure as an alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370.

(2) In addition to meeting the requirements of 908 KAR 1:370 for residential treatment programs, a behavioral health services organization that provides residential services for substance use disorders shall:

(a) Provide intensive treatment and skills building in a structured and supportive environment;

(b) Assist the client in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;

(c) Provide services in a twenty-four (24) hour a day, live-in facility that offers a planned and structured regimen of care aimed at treating individuals with addiction or co-occurring mental health and substance use disorders;

(d) Assist the client in making necessary changes to enable the individual to live drug- or alcohol-free;

(e) Provide services under the medical direction of a physician; and

(f) Provide continuous nursing services **in which a registered nurse shall be:**

1. On-site during traditional first shift hours, Monday through Friday;

2. Continuously available by phone after hours; and

3. On-site as needed in follow-up to telephone consultation after hours.

Section 6. Services. (1) A behavioral health services organization licensed under this administrative regulation shall obtain separate licensure as an alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370 if the organization provides any of the following outpatient services for the treatment of individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis:

(a) Screening;

(b) Assessment;

(c) Crisis intervention;

(d) Mobile crisis services;

(e) Day treatment;

(f) Peer support;

(g) Intensive outpatient program services;

(h) Individual outpatient therapy;

(i) Group outpatient therapy;

(j) Family outpatient therapy;

(k) Collateral outpatient therapy;

(l) Screening, brief intervention and referral to treatment; or

(m) Targeted case management.

(2) A behavioral health services organization shall provide treatment to meet client needs, including one (1) or more of the

following:

(a) Screening which shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, or certified alcohol and drug counselor to determine the:

1. Likelihood that an individual has a mental health, substance use, or co-occurring disorder; and

2. Need for an assessment;

(b) Assessment which shall:

1. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst,**[~~or~~]** licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, **or a certified alcohol and drug counselor** who gathers information and engages in a process with the client, thereby enabling the professional to:

a. Establish the presence or absence of a mental health, substance use, or co-occurring disorder;

b. Determine the client's readiness for change;

c. Identify the client's strengths or problem areas which may affect the treatment and recovery processes; and

d. Engage the client in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the client to develop a plan of care if a clinical disorder or service need is assessed; and

4. Not include psychological or psychiatric evaluations or assessments;

(c) Psychological testing which shall:

1. Be performed by a licensed psychologist, licensed psychological associate, or licensed psychological practitioner; and

2. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities, and interpretation and written report of testing results;

(d) Crisis intervention which:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to the client or another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities;

3. Shall be provided:

a. On-site at the behavioral health services organization's facility;

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one (1) on one (1) encounter;

4. May include verbal de-escalation, risk assessment, or cognitive therapy;

5. Shall be provided by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision; or

c. Certified alcohol and drug counselor;

6. Shall be followed by a referral to noncrisis services, if applicable; and

7. May include:

a. Further service prevention planning, including:

(i) Lethal means reduction for suicide risk; or

(ii) Substance use disorder relapse prevention; or

b. Verbal de-escalation, risk assessment, or cognitive therapy;

(e) Mobile crisis services which shall:

1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;

2. Be provided for a duration of less than twenty-four (24) hours;

3. Not be an overnight service; and

4. Be a **multi-disciplinary team based intervention that ensures[~~crisis response in a home or community setting to provide an immediate evaluation, triage, and~~]** access to acute **mental health and** substance use**[~~disorder~~]** services**[~~including treatment~~]** and supports to:

a. Reduce symptoms or harm; or

b. Safely transition an individual in an acute crisis to **the** appropriate**, least restrictive level of care[~~crisis stabilization and detoxification supports or services~~]**;

5. **Involve all services and supports necessary to provide:**

a. Integrated crisis prevention;

b. Assessment and disposition;

c. Intervention;

d. Continuity of care recommendations; and

e. Follow-up services;

6. Be provided **face-to-face in a home or community setting** by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision; or

c. Certified alcohol and drug counselor; and

7.[~~6.~~] Ensure access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;

(f) Day treatment which shall:

1. Be a nonresidential, intensive treatment program designed for children who:

a. Have a substance use disorder, mental health disorder, or co-occurring disorder;

b. Are under twenty-one (21) years of age; and

c. Are at high risk of out-of-home placement due to a behavioral health issue;

2. Consist of an organized, behavioral health program of treatment and rehabilitative services for substance use disorder, mental health disorder, or a co-occurring disorder;

3. Have unified policies and procedures that address the organization's philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning;

4. Include the following:

a. Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

b. Behavior management and social skill training;

c. Independent living skills that correlate to the age and development stage of the client; or

d. Services designed to explore and link with community resources before discharge and to assist the client and family with transition to community services after discharge;

5. Be provided as follows:

a. In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

b. On school days and during scheduled school breaks;

c. In coordination with the child's individual educational plan **or Section 504 plan** if the child has an individual educational plan **or Section 504 plan**;

d. By personnel that includes a behavioral health professional, a behavioral health professional under clinical supervision, a certified alcohol and drug counselor, or a peer support specialist; and

e. According to a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

6. Not include a therapeutic clinical service that is included in a child's individualized education plan;

(g) Peer support which shall:

1. Be provided by a peer support specialist;

2. Be structured and scheduled nonclinical therapeutic activity with a client or group of clients;

3. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills; and

4. Be identified in the client's plan of care;

(h) Intensive outpatient program services which shall:

1. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

2. Be provided at least three (3) hours per day at least three (3) days per week;

3. Include the following:

a. Individual outpatient therapy;

b. Group outpatient therapy;

c. Family outpatient therapy unless contraindicated;

d. Crisis intervention; or

e. Psycho-education during which the client or client's family member shall be:

(i) Provided with knowledge regarding the client's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

(ii) Taught how to cope with the client's diagnosis or condition in a successful manner;

4. Include a treatment plan which shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lower level of care;

5. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, or a certified alcohol and drug counselor;

6. Include access to a board-certified or board-eligible psychiatrist for consultation;

7. Include access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and

8. Be provided in a setting with a minimum client-to-staff ratio of ten (10) clients to one (1) staff person;

(i) Individual outpatient therapy which shall:

1. Be provided to promote the:

a. Health and wellbeing of the client; or

b. Recovery from a substance related disorder;

2. Consist of:

a. A face-to-face encounter with the client; and

b. A behavioral health therapeutic intervention provided in accordance with the client's plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the client; and

c. Improving functioning;

4. Not exceed three (3) hours per day; and

5. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst,**[~~or~~]** licensed assistant behavior analyst working under the supervision of a licensed behavior analyst**, or a certified alcohol and drug counselor**;

(j) Group outpatient therapy which shall:

1. Be provided to promote the:

a. Health and wellbeing of the client; or

b. Recovery from a substance related disorder;

2. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the client's plan of care;

3. **Excluding multi-family group therapy,** be provided in a group setting of nonrelated individuals, not to exceed twelve (12) individuals in size. For group outpatient therapy, a nonrelated individual means any individual who is not a spouse, significant other, parent or person with custodial control, child, sibling, stepparent, stepchild, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild;

4. Focus on the psychological needs of the client as evidenced in the client's plan of care;

5. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

6. Not include physical exercise, a recreational activity, an educational activity, or a social activity;

7. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130;

8. Ensure that the group has a deliberate focus and defined course of treatment;

9. Ensure that the subject of group outpatient therapy shall be related to each client participating in the group; and

10. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst,**[~~or~~]** licensed assistant behavior analyst working under the supervision of a licensed behavior analyst**, or a certified alcohol and drug counselor** who shall maintain individual notes regarding each client within the group in the client's record;

(k) Family outpatient therapy which shall:

1. Consist of a face-to-face behavioral health therapeutic intervention provided through scheduled therapeutic visits between the therapist, the client, and at least one (1) member of the client's family;

2. Address issues interfering with the relational functioning of the family;

3. Seek to improve interpersonal relationships within the client's home environment;

4. Be provided to promote the health and wellbeing of the client or recovery from a substance use disorder;

5. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130; and

6. Be provided by a behavioral health professional**,[~~or~~]** a behavioral health professional under clinical supervision**, or a certified alcohol and drug counselor**;

(l) Collateral outpatient therapy which shall consist of a face-to-face behavioral health consultation:

1. With a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21), household member, legal representative, school personnel, or treating professional;

2. Provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst,**[~~or~~]** licensed assistant behavior analyst working under the supervision of a licensed behavior analyst**, or a certified alcohol and drug counselor**; and

3. Provided upon the written consent of a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21). Documentation of written consent shall be signed and maintained in the client's record;

(m) Service planning which shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, or licensed assistant behavior analyst working under the supervision of a licensed behavior analyst to:

1. Assist a client in creating an individualized plan for services needed for maximum reduction of **the effects of a** mental **health disorder[~~disability~~]**;

2. Restore a client's functional level to the client's best possible functional level; and

3. Develop a service plan which:

a. Shall be directed by the client; and

b. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan;

(n) Residential services for substance use disorders as described in Section 5 of this administrative regulation;

(o) Screening, brief intervention and referral to treatment for substance use disorders which shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use prior to the need for more extensive or specialized treatment;

2. Consist of:

a. Using a standardized screening tool to assess the individual for risky substance use behavior;

b. Engaging a client who demonstrates risky substance use behavior in a short conversation, providing feedback and advice;

c. Referring the client to therapy or other services that address substance use if the client is determined to need additional services; and

3. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, or a certified alcohol and drug counselor;

(p) Assertive community treatment for mental health disorders which shall:

1. Include assessment, treatment planning, case management,

psychiatric services, medication prescribing and monitoring, individual and group therapy, peer support, mobile crisis services, mental health consultation, family support, and basic living skills;

2. Be provided by a multidisciplinary team of at least four (4) professionals, including a psychiatrist, nurse, case manager, peer support specialist and any other behavioral health professional or behavioral health professional under clinical supervision; and

3. Have adequate staffing to ensure that no caseload size exceeds ten (10) participants per team member;

(q) Comprehensive community support services which shall:

1. Consist of activities needed to allow an individual with a mental health disorder to live with maximum independence in the community through the use of skills training as identified in the client's treatment plan;

2. Consist of using a variety of psychiatric rehabilitation techniques to:

a. Improve daily living skills;

b. Improve self-monitoring of symptoms and side effects;

c. Improve emotional regulation skills;

d. Improve crisis coping skills; and

e. Develop and enhance interpersonal skills; and

3. Be provided by a;

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Community support associate;

d. Licensed behavior analyst; or

e. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;

(r) Therapeutic rehabilitation program for an adult with a severe mental illness or child with a severe emotional disability which shall:

1. Include services designed to maximize the reduction of mental illness or emotional disability and restoration of the client's functional level to the individual's best possible functioning;

2. Establish the client's own rehabilitative goals within the person-centered plan of care;

3. Be delivered using a variety of psychiatric rehabilitation techniques focused on:

a. Improving daily living skills;

b. Self-monitoring of symptoms and side effects;

c. Emotional regulation skills;

d. Crisis coping skills; and

e. Interpersonal skills; and

4. Be provided individually or in a group by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision; or

c. Peer support specialist; or

(s) Targeted case management services which shall:

1. Include services to one (1) or more of the following target groups:

a. An adult or a child with substance use disorder;

b. An adult or child with co-occurring mental health or substance use disorder and chronic or complex physical health issues;

c. A child with a severe emotional disability; or

d. An adult with severe mental illness;

2. Be provided by a case manager as described in Section 4(6), (7), or (8) of this administrative regulation; and

3. Include the following assistance:

a. Comprehensive assessment and reassessment of client needs to determine the need for medical, educational, social, or other services. The reassessment shall be conducted annually or more often if needed based on changes in the client's condition;

b. Development of a specific care plan which shall be based on information collected during the assessment and revised if needed upon reassessment;

c. Referral and related activities, which may include:

(i) Scheduling appointments for the client to help the individual obtain needed services; or

(ii) Activities that help link the client with medical, social, educational providers, or other programs and services which address identified needs and achieve goals specified in the care plan; and

d. Monitoring which shall be face-to-face and occur no less than once every three (3) months to determine that:

(i) Services are furnished according to the client's care plan;

(ii) Services in the care plan are adequate; and

(iii) Changes in the needs or status of the client are reflected in the care plan; and

e. Contacts with the client, family members, service providers, or others are conducted as frequently as needed to help the client:

(i) Access services;

(ii) Identify needs and supports to assist the client in obtaining services; and

(iii) Identify changes in the client's needs.

(3) Excluding methadone-based treatment which is restricted to regulation under 908 KAR 1:340, a behavioral health services organization may employ or have an affiliation with a physician or physicians who prescribe FDA-approved drugs for the treatment of opioid addiction in adult patients. The behavioral health services organization shall comply with the following requirements:

(a) Ensure that the physician documents in the patient's record whether the patient is compliant with prescribed dosing as evidenced by the results of:

1. A KASPER report released to the physician pursuant to KRS 218A.202(6)(e); and

2. Drug testing;

(b) Offer individual and group outpatient therapy as a service and document monitoring of compliance with recommended non-medication therapies even if the therapies are provided in another behavioral health setting; and

(c) Ensure that the physician complies with any prescribing and dispensing standards promulgated by the Kentucky Board of Medical Licensure for FDA-approved drugs used for the treatment of opioid addiction.

(4) A narcotic treatment program (NTP) licensed under 908 KAR 1:340 may obtain licensure as a behavioral health services organization if the NTP employs or has an affiliation with a physician or physicians who prescribe FDA-approved drugs other than methadone for the treatment of opioid addiction in adult patients.

Section 7. Plan of Care. (1) Each client receiving direct treatment from a behavioral health services organization shall have an individual plan of care signed by a behavioral health professional.

(2) A plan of care shall:

(a) Describe the services to be provided to the client, including the frequency of services;

(b) Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;

(c) Describe the client's functional abilities and limitations, or diagnosis listed in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders;

(d) Specify each staff member assigned to work with the client;

(e) Identify methods of involving the client's family or significant others if indicated;

(f) Specify criteria to be met for termination of treatment;

(g) Include any referrals necessary for services not provided directly by the behavioral health services organization; and

(h) The date scheduled for review of the plan.

(3) The client shall participate to the maximum extent feasible in the development of his or her plan of care, and the participation shall be documented in the client's record.

(4)(a) The **initial** plan of care shall be **developed**[~~reviewed and updated~~] through multidisciplinary team conferences as clinically indicated and at least thirty (30) days following the first ten (10) days of treatment.

(b)**1.** The plan of care **for individuals receiving residential services for substance use disorder or intensive outpatient program services** shall be reviewed every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.

2. The plan of care for individuals receiving outpatient services, as described in Section 6(2)(a) through (g) and (i)

through (s) of this administrative regulation, shall be reviewed and updated every six (6) months thereafter or earlier if clinically indicated.

(c) The plan of care and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.

(5) A medical service, including a change of medication, a diet restriction, or a restriction on physical activity shall be ordered by a physician or other ordering practitioner acting within the limits of his or her statutory scope of practice.

Section 8. Client Records. (1) A client record shall be maintained for each individual receiving services.

(2) Each entry shall be current, dated, signed, and indexed according to the service received.

(3) Each client record shall contain:

(a) An identification sheet, including the client's name, address, age, gender, marital status, expected source of payment, and referral source;

(b) Information on the purpose for seeking a service;

(c) If applicable, consent of appropriate family members or guardians for admission, evaluation, and treatment;

(d) Screening information pertaining to the mental health or substance use disorder;

(e) If applicable, a psychosocial history;

(f) If applicable, staff notes on services provided;

(g) If applicable, the client's plan of care;

(h) If applicable, disposition;

(i) If applicable, assigned status;

(j) If applicable, assigned therapists; and

(k) If applicable, a termination study recapitulating findings and events during treatment, clinical impressions, and condition on termination.

(4) Ownership.

(a) Client records shall be the property of the organization.

(b) The original client record shall not be removed from the organization except by court order or subpoena.

(c) Copies of a client record or portions of the record may be used and disclosed. Use and disclosure shall be as established in this administrative regulation.

(5) Retention of records. After a client's death or discharge, the completed client record shall be placed in an inactive file and:

(a) Retained for six (6) years; or

(b) If a minor, three (3) years after the client reaches the age of majority under state law, whichever is the longest.

(6) Confidentiality and Security: Use and Disclosure.

(a) The organization shall maintain the confidentiality and security of client 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, including 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(b) The organization may use and disclose client records. Use and disclosure shall be as established or required by:

1. HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or

2. 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(c) This administrative regulation shall not be construed to forbid the behavioral health services organization from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

Section 9. Client Rights. (1) A behavioral health services organization shall have written policies and procedures to ensure that the rights of a client are protected while receiving one (1) or more services as described in Section 6 of this administrative regulation.

(2) A behavioral health services organization shall have written policies and procedures governing client grievances pursuant to Section 4(14) of this administrative regulation.

(3) A client shall not be unlawfully discriminated against in determining eligibility for a service.

(4) During a behavioral health services organization's intake procedures, a client shall sign a statement which specifies that the client has the right to:

(a) Give informed consent to receive a service.

1. An adult shall sign an informed consent to receive a service.

2. A parent, caregiver, or person who has custodial control of a child shall sign an informed consent for the child to receive a service;

(b) Have input into his or her plan of care and be informed of the plan's content;

(c) Receive individualized treatment;

(d) File a grievance, recommendation or opinion regarding the services the client receives;

(e) Give informed written consent regarding participation in a research study with the exception of a child whose parent or guardian shall give informed written consent;

(f) Confidentiality according to Section 7(6) of this administrative regulation;

(g) Request a written statement of the charge for a service and be informed of the policy for the assessment and payment of fees;

(h) Be informed of the rules of client conduct, including the consequences for the use of alcohol and other drugs or other infractions that may result in disciplinary action or discharge;

(i) Be treated with consideration, respect, and personal dignity;

(j) Review his or her client record in accordance with the organization's policy; and

(k) Receive one (1) free copy of his or her client record.

(5) **The statement of client rights as described in subsection (4) of this section shall be:**

(a) Provided to the client; or

(b) If the client is a minor or incapacitated, provided to the client, client's parent, guardian, or other legal representative; and

(c) Read to the client or client's parent, guardian, or other legal representative if requested or if either cannot read.

(6) A program providing twenty-four (24) hour care shall also specify on the client rights statement that a client has the right to:

(a) Vote in a political election; and

(b) Reasonable accommodations to afford privacy in bathing and toileting.

(7)[~~(6)~~] If a client is restricted from exercising a client right because it is contraindicated by the client's physical or mental condition, there shall be documentation in the client record of the reason for the restriction and of the explanation given to the client.

Section 10. Physical Environment. (1) Accessibility. A behavioral health services organization shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Fire safety. A behavioral health services organization shall be approved by the State Fire Marshal's office prior to initial licensure or if an organization changes location.

(3) Physical location and overall environment.

(a) A behavioral health services organization shall:

1. Comply with building codes, ordinances, and administrative regulations which are enforced by city, county, or state jurisdictions;

2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

3. Have a publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day;

4. Have a reception and waiting area;

5. Provide a restroom; and

6. Have an administrative area.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety

and well-being of clients, personnel, and visitors are assured.

(4) Prior to occupancy, the facility shall have final approval from appropriate agencies.

Section 11. License Procedures. The behavioral health services organization shall be subject to the provisions of 902 KAR 20:008, Sections 1, 2, 5, 6, and 7.

Section 12. **Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Behavioral Health Services Organization if:**

(a) Any person with ownership interest in the organization has had previous ownership interest in a health care facility that had its license revoked or voluntarily relinquished its license as the result of an investigation or pending disciplinary action;

(b) Any person with ownership interest in the organization has been discontinued from participation in the Medicaid Program due to fraud or abuse of the program; or

(c) The applicant fails after the initial inspection to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section 2(5).

(2) The cabinet shall revoke a license if it finds that:

(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the behavioral health services organization to comply with the provisions of this administrative regulation;

(b) The behavioral health services organization fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section 2(5);

(c) The behavioral health services organization fails to comply with the requirements of Section 6(3) of this administrative regulation if the organization employs or has an affiliation with a physician or physicians who prescribe FDA-approved drugs, excluding methadone, to adults for the treatment of opioid addiction; or

(d) The behavioral health services organization is terminated from participation in the Medicaid Program pursuant to 907 KAR 1:671.

(3) The denial or revocation of a behavioral health services organization's license shall be mailed to the applicant or licensee, by certified mail, return receipt requested, or by personal service. Notice of the denial or revocation shall set forth the particular reasons for the action.

(4) The denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(5) Emergency action to suspend a license.

(a) The cabinet shall take emergency action to suspend a behavioral health services organization's license if the cabinet has probable cause to believe that:

1. The continued operation of the organization would constitute a danger to the health, welfare, or safety of its patients; or

2. A physician employed by or affiliated with the organization may be engaged in the improper or inappropriate prescribing or dispensing of an FDA-approved drug for the treatment of opioid addiction.

(b)1. The behavioral health services organization shall cease operating immediately on the date the organization is served with the notice of emergency suspension.

2. Notice of the emergency suspension shall set forth the particular reasons for the action.

(c) If the cabinet issues an emergency suspension of the behavioral health services organization's license pursuant to paragraph (a)2 of this subsection, the cabinet shall refer the physician to the Kentucky Board of Medical Licensure and appropriate law enforcement agency.

(6) Notice of an emergency suspension shall be served on the behavioral health services organization by certified mail, return receipt requested, or by personal service.

(7)(a) Any behavioral health services organization required to comply with an emergency suspension issued under subsection (5) and (6) of this section may submit a written request for an emergency hearing within five (5) calendar days of receipt of the notice to determine the propriety of the suspension.

(b) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing.

(c) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency suspension.

(d) The emergency suspension shall be affirmed if there is substantial evidence of an immediate danger to the public health, safety, or welfare.

(8) The decision rendered under subsection (7) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to circuit court.

(9) If the cabinet issues an emergency suspension, the cabinet shall take action to revoke the behavioral health services organization's license pursuant to subsection (3) of this section if:

(a) The organization fails to submit a written request for an emergency hearing within five (5) calendar days of receipt of notice of the emergency suspension;

(b) The decision rendered under subsection (7) of this section affirms that there is substantial evidence of an immediate danger to the public health, safety, or welfare; or

(c) Referral to the Kentucky Board of Medical Licensure and law enforcement agency in accordance with subsection (5)(c) of this section results in an administrative sanction or criminal conviction against a physician employed by or affiliated with the organization.

(10) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

Section 13. Incorporation by Reference. (1) The OIG 20:430, "Application for License to Operate a Behavioral Health Services Organization", **October[~~July~~]** 2014 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. 902 KAR 20:430

MARYELLEN B. MYNEAR, Inspector General
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: October 8, 2014
FILED WITH LRC: October 9, 2014 at 1 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Maryellen B. Mynear

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates a new health facility licensure category called "behavioral health services organizations".

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum requirements for the licensure of behavioral health services organizations (BHSO) which provide behavioral health services to treat, support, and encourage individuals with a substance use disorder, mental health disorder, or co-occurring disorder to achieve and maintain the highest possible level of health and self-sufficiency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function. Administration of the licensure function includes

establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. In addition, KRS 215B.042 authorizes the Cabinet to establish reasonable application fees for licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the minimum licensure requirements necessary for the operation of behavioral health services organizations.

(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 amended after comments regulation makes the following changes in response to public and agency comments:
In response to recent changes to the Medicaid State Plan, adds advanced practice registered nurses, physician assistants, and certified drug and alcohol counselors to the list of practitioners who may supervise peer support specialists; Adds a provision which allows behavioral health services organizations to request an extension beyond one (1) year of initial licensure to complete the accreditation process if the BHSO demonstrates evidence that it initiated the process of becoming accredited within sixty (60) days of initial licensure and continues its efforts to obtain accreditation; Adds language which allows a BHSO to be accredited by "a nationally recognized accreditation organization"; In addition to the requirement for criminal background checks, adds a requirement for a check of the central registry, nurse aide or home health aide abuse registry, and caregiver misconduct registry on BHSO employees; In response to recent changes to the Medicaid State Plan, adds certified alcohol and drug counselors to the list of professionals who may provide the following services: assessment, individual outpatient therapy, group outpatient therapy, collateral outpatient therapy, and family outpatient therapy; Clarifies that multi-family group therapy is excluded from the requirement that "group therapy" be restricted to a group of unrelated persons; Retains the requirement for review of an individual's plan of care every thirty (30) days and update of the plan of care every sixty (60) days (or earlier if clinically indicated) for individuals receiving residential services for substance use disorder or intensive outpatient program services, but adds language to allow for the plan of care to be reviewed and updated every six (6) months (or earlier if clinically indicated) for all other behavioral health services described in Section 6; Clarifies that a BHSO may employ or have an affiliation with a physician or physicians who prescribe FDA-approved drugs (excluding methadone) for the treatment of opioid addiction in adult patients and establishes requirements for such programs; Clarifies that client rights must be read to the client if requested, and provided to the client's parent, guardian, or other legal representative if the client is a minor; and clarifies the criteria for denial or revocation of licensure.

(b) The necessity of the amendment to this administrative regulation: This amended after comments regulation includes revisions made in response to public and agency comments.

(c) How the amendment conforms to the content of the authorizing statutes: This amended after comments administrative regulation conforms to the content of KRS 216B.042 which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function.

(d) How the amendment will assist in the effective administration of the statutes: This amended after comments administrative regulation assists in the effective administration of the statutes by establishing the minimum licensure requirements necessary for the operation of behavioral health services organizations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Under this administrative regulation, clinical behavioral health services entities may apply for licensure as a behavioral health services organization. Upon approval of licensure, behavioral health services organizations may enroll in the Kentucky Medicaid Program for reimbursement of covered behavioral health services provided to Medicaid recipients.

(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: Entities interested in applying for licensure as a behavioral health services organization will be required to comply with the licensure standards established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities licensed under this new administrative regulation will be subject to the licensure fees described in the response to question (7).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities licensed under this administrative regulation will be eligible to enroll in the Kentucky Medicaid Program for reimbursement of covered behavioral health services provided to Medicaid recipients. Additionally, the anticipated expansion in the number of behavioral health services providers ensures that Medicaid recipients will have access to Medicaid-covered services for the treatment of substance use disorders, mental health disorders, or co-occurring disorders.

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

(a) Initially: The cost of implementing this administrative regulation is expected to be absorbable because the licensure fee is anticipated to cover the cost of regulating behavioral health services organizations, including initial and routine surveys conducted by at least one (1) nurse consultant inspector, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.

(b) On a continuing basis: The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating behavioral health services organizations on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from behavioral health services organizations 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: As a new administrative regulation, the initial fee for licensure as a behavioral health services organization will be $750, the annual renewal fee will be $500, and the fee for each extension location will be $250. A processing fee of twenty-five (25) dollars will be charged for a change of name and a fee of $100 will be charged for a change of location. A change of ownership must be documented on a new licensure application and submission of an accompanying fee of $750.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This new administrative regulation establishes licensure fees as described in the response to question (7).

(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? Under this administrative regulation, clinical behavioral health services entities may apply for licensure as a behavioral health services organization.

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

regulation. KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Cabinet will collect an initial fee of $750 from each applicant for licensure as a behavioral health services organization. The Cabinet anticipates fifty (50) to seventy-five (75) applicants during the first year. Therefore, the Cabinet may collect between $37,500 to $56,250 in licensure fees.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Cabinet will collect an annual renewal fee of $500 from each licensed behavioral health services organization. The Cabinet anticipates there will be approximately seventy-five (75) licensed behavioral health services organizations operating in subsequent years. Therefore, the Cabinet may collect approximately $37,500 in licensure fees during subsequent years.

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is expected to be absorbable because the licensure fee is anticipated to cover the cost of regulating behavioral health services organizations, including initial and routine surveys conducted by at least one (1) nurse consultant inspector, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating behavioral health services organizations on a continuing basis.

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
Office of Inspector General
Division of Health Care
(Amended After Comments)

902 KAR 20:440. Facilities specifications, operation and services; residential crisis stabilization units.

RELATES TO: KRS 200.503(2), 210.005, 309.130(2), 311.571, 311.840 – 311.862, 314.042, 319.050, 319.056, 319C.010, 335.080, 335.100, 335.300, 335.500, 45 C.F.R. 160, 164, 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 209ee-3, 42 C.F.R. Part 2

STATUTORY AUTHORITY: KRS 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of residential crisis stabilization units which serve at-risk children or children with severe emotional disabilities, at-risk adults or adults with severe mental illness, or individuals with substance use disorder or co-occurring disorders.

Section 1. Definitions. (1) "Behavioral health professional" means: (a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant licensed under KRS 311.840 to 311.862;

(h) A marriage and family therapist licensed and practicing in accordance with KRS 335.300;

(i) A professional clinical counselor licensed and practicing in accordance with KRS 335.500; or

(j) A licensed professional art therapist as defined by KRS 309.130(2).

(2) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapist associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(3); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(3) **"Cabinet" means the Cabinet for Health and Family Services.**

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Chemical restraint" means the use of a drug that:

(a) Is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others;

(b) Has the temporary effect of restricting the resident's freedom of movement; and

(c) Is not a standard treatment for the resident's medical or psychiatric condition.

(6)[~~(4)~~] "Child with a severe emotional disability" is defined by KRS 200.503**(3)[~~(2)~~]**.

(7)[~~(5)~~] "Crisis stabilization unit" means a community-based facility that is not part of an inpatient unit and which provides crisis services to no more than twelve (12) clients who require overnight stays.

(8) "Mechanical restraint" means any device attached or adjacent to a resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

(9)[~~(6)~~] "Peer support specialist" means a paraprofessional who:

(a) Meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; and

(b) Works under the supervision of **one (1) of the following[~~a~~]**:

1. Physician;
2. Psychiatrist;
3. Licensed psychologist;
4. Licensed psychological practitioner;
5. Licensed psychological associate;
6. Licensed clinical social worker;
7. Licensed marriage and family therapist;
8. Licensed professional clinical counselor;
9. Certified social worker;

10. Licensed marriage and family therapist associate;
11. Licensed professional counselor associate;
12. Licensed professional art therapist;**[~~or~~]**
13. Licensed professional art therapist associate**;**
14. Advanced practice registered nurse;
15. Physician assistant; or
16. Certified alcohol and drug counselor.

(10) "Personal restraint" means the application of physical force without the use of any device for the purpose of restraining the free movement of a resident's body and does not include briefly holding without undue force a resident in order to calm or comfort him or her or holding a resident's hand to safely escort him or her from one (1) area to another.

(11) "Seclusion" means the involuntary confinement of a resident alone in a room or in an area from which the resident is physically prevented from leaving.

(12)[~~(7)~~] "Severe mental illness" means the conditions defined by KRS 210.005(2) and (3).

(13)[~~(8)~~] "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms resulting from use of a substance which the individual continues to take despite experiencing substance-related problems as a result, including:

(a) Intoxication;
(b) Withdrawal; or
(c) A substance induced mental health disorder.

(14)[~~(9)~~] "Time out" means **the restriction of a resident for a period of time to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control[~~a treatment intervention that separates a client from others in a nonsecure area for a time-limited period to permit the client time to regain control over his or her behavior~~]**.

Section 2. Licensure Application and Fees. (1) An applicant for initial licensure as a residential crisis stabilization unit shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Residential Crisis Stabilization Unit; and

(b) An accompanying initial licensure fee in the amount of $750, made payable to the Kentucky State Treasurer.

(2) At least sixty (60) calendar days prior to the date of annual renewal, a residential crisis stabilization unit shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Residential Crisis Stabilization Unit; and

(b) An annual renewal fee of $500, made payable to the Kentucky State Treasurer.

(3)(a) Name change. A residential crisis stabilization unit shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the unit's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. A residential crisis stabilization unit shall not change the location where the unit is operated until an Application for License to Operate a Residential Crisis Stabilization Unit accompanied by a fee of $100 is filed with the Office of Inspector General.

(c) Change of ownership.

1. The new owner of a residential crisis stabilization unit shall submit to the Office of Inspector General an Application for License to Operate a Residential Crisis Stabilization Unit accompanied by a fee of $750 within ten (10) calendar days of the effective date of the ownership change.

2. A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing residential crisis stabilization unit or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(4) To obtain approval of initial licensure or renew a license to operate a residential crisis stabilization unit, the licensee shall be in compliance with this administrative regulation and federal, state, and local laws and regulations pertaining to the operation of the unit.

Section 3. Location. If an alcohol and other drug abuse treatment program licensed pursuant to 908 KAR 1:370 obtains separate licensure under this administrative regulation to operate a residential crisis stabilization unit, the unit shall be located off the campus of any residential treatment program licensed pursuant to 908 KAR 1:370.

Section 4. Accreditation. (1) **Unless an extension is granted pursuant to subsection (2) of this section,** an entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall become accredited within one (1) year of initial licensure by **one (1) of the following[~~the~~]**:

(a) Joint Commission;

(b) Commission on Accreditation of Rehabilitation Facilities;**[~~or~~]**

(c) Council on Accreditation**; or**

(d) A nationally recognized accreditation organization.

(2)**(a) If a residential crisis stabilization unit has not obtained accreditation in accordance with subsection (1)(b) of this section within one (1) year of initial licensure, the facility may request a one (1) time only extension to complete the accreditation process.**

(b) A request for extension shall:

1. Be submitted in writing to the Office of Inspector General at least sixty (60) days prior to the date of annual renewal;

2. Include evidence that the facility initiated the process of becoming accredited within sixty (60) days of initial licensure and is continuing its efforts to obtain accreditation; and

3. Include an estimated timeframe by which approval of accreditation is anticipated.

(3) The cabinet shall revoke the license if the residential crisis stabilization unit fails to **meet one (1) of the following requirements:**

(a) Become accredited in accordance with subsection (1) of this section**;**

(b) Request an extension in accordance with subsection (2) of this section if accreditation has not been obtained within one (1) year of initial licensure; or

(c)[~~fails to~~] Maintain accreditation.

(4)[~~(3)~~] Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation within one (1) year of initial licensure and at the time of annual renewal described in Section 2(2) of this administrative regulation.

Section 5. Administration and Operation. **(1)** The licensee shall be legally responsible for:

(a)[~~(1)~~] The residential crisis stabilization unit;

(b)[~~(2)~~] The establishment of administrative policy; and

(c)[~~(3)~~] Ensuring compliance with federal, state, and local laws and regulations pertaining to the operation of the **residential crisis stabilization unit.**

(2) Executive director. The licensee shall establish lines of authority and designate an executive director who:

(a) May serve in a dual role as the residential crisis stabilization unit's program director described in subsection (5) of this section;

(b) May serve in a dual role as the executive director of a behavioral health services organization (BHSO) if:

1. The residential crisis stabilization unit and the BHSO are owned by the same entity; and

2. The residential crisis stabilization unit has a linkage with the BHSO to assist with continuity of care if needed after discharge from the crisis stabilization unit;

(c) Shall be responsible for the administrative management of the residential crisis stabilization unit, including:

1. The total program of the unit in accordance with the unit's written policies; and

2. Evaluation of the unit as it relates to the needs of each resident; and

(d) Shall have a master's degree in business administration or a human services field, or a bachelor's

degree in a human services field, including:

1. Social work;

2. Sociology;

3. Psychology;

4. Guidance and counseling;

5. Education;

6. Religion;

7. Business administration;

8. Criminal justice;

9. Public administration;

10. Child care administration;

11. Christian education;

12. Divinity;

13. Pastoral counseling;

14. Nursing;

15. Public health; or

16. Another human service field related to working with children with severe emotional disabilities or clients with severe mental illness.

(3) An executive director with a master's degree shall have two (2) years of prior supervisory experience in a human services program.

(4) An executive director with a bachelor's degree shall have a minimum of two (2) years of prior experience in a human services program plus two (2) years of prior supervisory experience in a human services program.

(5) A residential crisis stabilization unit shall have a program director who:

(a) May serve in a dual role as the program director of a BHSO if:

1. The residential crisis stabilization unit and the BHSO are owned by the same entity; and

2. The residential crisis stabilization unit has a linkage with the BHSO to assist with continuity of care if needed after discharge from the crisis stabilization unit; and

(b) Shall be a:

1. Psychiatrist;

2. Physician;

3. Certified or licensed psychologist;

4. Licensed psychological practitioner;

5. Advanced practice registered nurse;

6. Licensed professional clinical counselor;

7. Licensed marriage and family therapist;

8. Licensed professional art therapist;

9. Licensed board certified behavior analyst; or

10. Licensed clinical social worker[~~organization~~].

Section 6. License Procedures. An entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall be subject to the provisions of 902 KAR 20:008, Sections 1, 2, 5, 6, and 7.

Section 7. Background Checks and Personnel Records. (1) All personnel of a residential crisis stabilization unit shall:

(a) Have a criminal record check performed upon initial hire and every two (2) years through the Administrative Office of the Courts or the Kentucky State Police;**[~~and~~]**

(b) Not have a criminal conviction, or plea of guilty, to a:

1. Sex crime as specified in KRS 17.500;

2. Violent crime as specified in KRS 439.3401;

3. Criminal offense against a minor as specified in KRS 17.500; or

4. Class A felony**; and**

(c) Not be listed on the following:

1. Central registry established by 922 KAR 1:470;

2. Nurse aide or home health aide abuse registry established by 906 KAR 1:100; or

3. Caregiver misconduct registry established by 922 KAR 5:120E and 922 KAR 5:120.

(2)**(a)** Prior to initial hire, an out-of-state criminal background information check shall be obtained for any applicant recommended for employment in a residential crisis stabilization unit who has resided or resides outside of the Commonwealth.

(b) A residential crisis stabilization unit may use Kentucky's national background check system established by 906 KAR 1:190 to satisfy the background check requirements of subsection (1) and subsection (2)(a) of this section.

(3) A residential crisis stabilization unit shall perform annual criminal record **and registry** checks as described in subsection (1) of this section on a random sample of at least twenty-five (25) percent of all personnel.

(4) A personnel record shall be kept on each staff member and shall contain the following items:

(a) Name and address;

(b) Verification of all training and experience, including licensure, certification, registration, or renewals;

(c) Verification of submission to the background check **requirements of subsections (1), (2), and (3)[~~required by subsection (1)~~]** of this section;

(d) Performance appraisals conducted no less than annually; and

(e) Employee incident reports.

Section 8. Quality Assurance and Utilization Review. (1) The residential crisis stabilization unit shall have a quality assurance and utilization review program designed to:

(a) Enhance treatment and care through the ongoing objective assessment of services provided, including the correction of identified problems; and

(b) Provide an effective mechanism for review and evaluation of the service needs of each client.

(2) The need for continuing services shall be evaluated immediately upon a change in a client's service needs or a change in the client's condition to ensure that proper arrangements have been made for:

(a) Discharge;

(b) Transfer; or

(c) Referral to another service provider, if appropriate.

Section 9. Client Grievance Policy. The residential crisis stabilization unit shall have written policies and procedures governing client grievances which shall include the following:

(1) A process for filing a written client grievance;

(2) An appeals process with time frames for filing and responding to a grievance in writing;

(3) Protection for a client from interference, coercion, discrimination, or reprisal; and

(4) Conspicuous posting of the grievance procedures in a public area to inform a client of:

(a) His or her right to file a grievance;

(b) The process for filing a grievance; and

(c) The address and telephone number of the cabinet's ombudsman.

Section 10. Services **and Staffing**. (1) An entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall provide the following services:

(a) Screening;

(b) Assessment:

(c) Treatment planning;

(d) Individual outpatient therapy;

(e) Group outpatient therapy; and

(f) Psychiatric services.

(2) An entity licensed under this administrative regulation to operate a residential crisis stabilization unit may provide:

(a) Family therapy; or

(b) Peer support by a peer support specialist.

(3)(a) The services identified in subsection (1) and (2)(a) of this section shall be delivered by a behavioral health professional or a behavioral health professional under clinical supervision.

(b) **In addition to the professionals identified in paragraph (a) of this subsection, the services identified in subsection (1)(a), (b), (d), and (e) and subsection (2)(a) of this section[~~The service identified in subsection (1)(a) of this section~~]** may be provided by a certified alcohol and drug counselor.

(c)**1.** A residential crisis stabilization unit shall have access to a

board-certified or board-eligible psychiatrist twenty-four (24) hours per day, seven (7) days per week.

2. The psychiatrist may serve more than one (1) residential crisis stabilization unit and be available through telehealth consultation.

(d) The psychiatrist shall be available to evaluate, provide treatment, and participate in treatment planning.

(4) If a crisis stabilization program serves adults with a severe mental illness or substance use disorder and children with severe emotional disabilities:

(a) The programs shall not be located on the same campus; and

(b) The children's program shall serve clients:

1. Under the age of eighteen (18); or

2. Up to the age of twenty-one (21) if developmentally appropriate for the client.

(5) A residential crisis stabilization unit shall:

(a) Provide treatment for acute withdrawal, if appropriate;

(b) Complete a mental status evaluation and physical health questionnaire of the client upon admission;

(c) Have written policies and procedures for:

1. Crisis intervention; and

2. Discharge planning which shall begin at the time of admission and aftercare planning processes;

(d) Make referrals for physical health services to include diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the client's stay in the residential crisis stabilization unit or identified during the admission assessment;

(e) Have a description of linkages with behavioral health services organizations licensed under 902 KAR 20:430 or other programs which:

1. Address identified needs and achieve goals specified in the treatment plan; and

2. Help promote continuity of care after discharge;

(f) Have at least one (1) direct-care staff member assigned direct-care responsibility for:

1. Every four (4) clients during normal waking hours; and

2. Every six (6) clients during normal sleeping hours;

(g) Ensure that administrative **management[~~oversight~~]** of the unit is provided by **the unit's executive director[~~a staff member who shall be a:~~**

~~1. Behavioral health professional; or~~

~~2. Behavioral health professional under clinical supervision~~];

(h) Provide a training program for direct-care staff pertaining to:

1. The care of clients in a crisis stabilization unit;

2. Detection and reporting of abuse, neglect, or exploitation;

3. Emergency and safety procedures;

4. Behavior management, including de-escalation training;

5. Physical management procedures and techniques;

6. Suicide prevention and care; and

7. Trauma informed care; and

(i) Assure that each client shall be:

1. In need of short-term behavior management and at risk of placement in a higher level of care;

2. Able to take care of his or her own personal needs, if an adult;

3. Medically able to participate in services; and

4. Served in the least restrictive environment available in the community.

Section 11. Client Records. (1) A client record shall be maintained for each individual receiving services.

(2) Each entry shall be current, dated, signed, and indexed according to the service received.

(3) Each client record shall contain:

(a) An identification sheet, including the client's name, address, date of birth, gender, marital status, expected source of payment, and referral source;

(b) Information on the purpose for seeking a service;

(c) If applicable, consent via signature of appropriate family members or guardians for admission, evaluation, and treatment;

(d) Mental status evaluation and physical health questionnaire of the client taken upon admission;

(e) Staff notes for all services provided;

(f) Documentation of treatment planning, including diagnosis and all services to be provided; and

(g) Documentation of medication prescribing and monitoring used in treatment.

(4) Ownership.

(a) Client records shall be the property of the **residential crisis stabilization unit[~~organization~~]**.

(b) The original client record shall not be removed from the **residential crisis stabilization unit[~~organization~~]** except by court order or subpoena.

(c) Copies of a client record or portions of the record may be used and disclosed. Use and disclosure shall be as established in this administrative regulation.

(5) Retention of records. After a client's death or discharge, the completed client record shall be placed in an inactive file and:

(a) Retained for six (6) years; or

(b) If a minor, three (3) years after the client reaches the age of majority under state law, whichever is the longest.

(6) Confidentiality and Security: Use and Disclosure.

(a) The residential crisis stabilization unit shall maintain the confidentiality and security of client 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, including 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(b) The residential crisis stabilization unit may use and disclose client records. Use and disclosure shall be as established or required by:

1. HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or

2. 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(c) This administrative regulation shall not be construed to forbid the residential crisis stabilization unit from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

Section 12. Client Rights. (1) A residential crisis stabilization unit shall have written policies and procedures to ensure that the rights of a client are protected, including a statement of rights and responsibilities which shall be:

(a) Provided at the time of admission:

1. To the client; or

2. If the client is a minor or incapacitated, to the client, client's parent, guardian, or other legal representative;

(b) Read to the client or client's parent, guardian, or other legal representative if requested or if either cannot read;

(c) Written in language that is understandable to the client;

(d) Conspicuously posted in a public area of the facility; and

(e) Cover the following:

1. The right to treatment, regardless of race, religion, or ethnicity;

2. The right to recognition and respect of personal dignity in the provision of all treatment and care;

3. The right to be provided treatment and care in the least restrictive environment possible;

4. The right to an individualized plan of care;

5. The right of the client, including the client's parents or guardian if the client is a minor, to participate in treatment planning;

6. The nature of care, procedures, and treatment provided;

7. The right to an explanation of risks, side effects, and benefits of all medications and treatment procedures used;

8. The right to be free from verbal, sexual, physical, or mental abuse; and

9. The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility

of the facility if the client refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or in accordance with professional standards, to terminate the relationship with the client upon reasonable notice.

(2) A residential crisis stabilization unit's written policies and procedures concerning client rights shall assure and protect the client's personal privacy within the constraints of his or her plan of care, including:

(a) Visitation by family or significant others in a suitable area of the facility; and

(b) Telephone communications with family or significant others at a reasonable frequency.

(3)(a) If a privacy right is limited, a full explanation shall be given to the client or the client's parent or guardian if the client is a minor.

(b) Documentation shall be included in the client's record of any privacy limitation.

(4) Information shall be provided to the client, or the client's parent or guardian if the client is a minor, regarding the use and disposition of special observation and audio visual techniques, which may include the following:

(a) One (1) way vision mirror;

(b) Audio recording;

(c) Video tape recording;

(d) Television;

(e) Movie; or

(f) Photographs.

(5)(a) If the residential crisis stabilization unit serves children as described in Section 10(4)(b) of this administrative regulation, written policy and procedures shall be developed in consultation with professional and direct-care staff to provide for behavior management of residents, including the use of a time-out room.

(b)**1.** Behavior management techniques**:**

a. Shall be explained fully to each client and the client's parent, guardian, or other legal representative**; and**

b. May include time out or personal restraint.

2. Prone holds, chemical restraint, and mechanical restraint shall be prohibited in a residential crisis stabilization unit.

(c) The unit shall prohibit cruel and unusual disciplinary measures including the following:

1. Corporal punishment;

2. Forced physical exercise;

3. Forced fixed body positions;

4. Group punishment for individual actions;

5. Verbal abuse, ridicule, or humiliation;

6. Denial of three (3) balanced nutritional meals per day;

7. Denial of clothing, shelter, bedding, or personal hygiene needs;

8. Denial of access to educational services;

9. Denial of visitation, mail, or phone privileges for punishment;

10. Exclusion of the resident from entry to his or her assigned living unit; and

11. **Personal** restraint or seclusion as a punishment or employed for the convenience of staff.

(d) Written policy shall prohibit residents from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct-care staff from administering disciplinary measures to residents.

(6) If **personal restraint is[~~therapeutic holds are~~]** used as a safe behavioral management technique, the residential crisis stabilization unit shall have a policy which shall describe:

(a) Criteria for appropriate use of **personal restraint[~~therapeutic holds~~]**;

(b) Documentation requirements; and

(c) **Ensure that staff who implement the use of personal restraint shall:**

1. Have documented training in the proper use of the procedure used;

2. Be certified in physical management by a nationally-recognized training program in which certification is obtained through skilled-out testing; and

3. Receive annual training and recertification in crisis intervention and behavior management[~~The requirement for completion of a training course approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities prior to using therapeutic holds~~].

Section 13. Reports of Abuse, Neglect, or Exploitation. (1) A residential crisis stabilization unit shall have written policies which assure:

(a) The reporting of cases of abuse, neglect, or exploitation of adults and children to the cabinet pursuant to KRS Chapters 209 and 620; and

(b) That a resident may file a complaint with the cabinet concerning resident abuse, neglect, or exploitation.

(2) The unit shall have evidence that all allegations of abuse, neglect, or exploitation are thoroughly investigated internally, and shall prevent further potential abuse while the investigation is in progress.

Section 14. Medication Prescribing and Monitoring in a Residential Crisis Stabilization Unit. (1) Medication prescribing and monitoring shall be under the direction of a licensed psychiatrist, a licensed physician supervised by a psychiatrist, or an APRN certified in psychiatric-mental health nursing practice who meets the requirements established in 201 KAR 20:057.

(2) Prescriptions concerning medication shall not exceed an order for more than five (5) refills.

(3) Medication prescribing and monitoring used in treatment shall be recorded in the staff notes and on a special medications chart in the client record.

(4) A copy of the prescription shall be kept in the client record.

(5) A blood or other laboratory test or examination shall be performed in accordance with accepted medical practice on each client receiving medication prescribed or administered by the residential crisis stabilization unit staff.

(6) Drug supplies shall be stored under proper sanitary, temperature, light, and moisture conditions.

(7) Medication kept by the unit shall be properly labeled.

(8) A medication shall be stored in the originally received container unless transferred to another container by a pharmacist or another person licensed to transfer the medication.

(9) Medication kept in the unit shall be kept in a locked cabinet.

(10) A controlled substance shall be kept under double lock (e.g., in a locked box in a locked cabinet).

(11) There shall be a controlled substances record, in which is recorded:

(a) The name of the client;

(b) The date, time, dosage, balance remaining, and method of administration of each controlled substance;

(c) The name of the prescribing physician or other ordering practitioner acting within the scope of his or her license to practice; and

(d) The name of the nurse who administered it, or staff who supervised the self-administration.

(12) Access to the locked cabinet shall be restricted to a designated medication nurse or other authorized personnel.

(13) Medication to be self-administered shall be made available to the client at the time of administration.

Section 15. Facility Requirements. (1) Living Unit. A living unit shall be located within a single building in which there is at least 120 square feet of space for each resident in the facility.

(2) Bedrooms.

(a) More than four (4) clients shall not sleep in a bedroom.

(b) A bedroom shall be equipped with a bed for each client.

(c) A bed shall:

1. Be at least thirty-six (36) inches wide and at least five (5) feet in length;

2. Be long and wide enough to accommodate the client's size;

3. Have a mattress cover, two (2) sheets, a pillow, and bed covering to keep the client comfortable;

4. Be equipped with a support mechanism and a clean mattress; and

5. Be placed so that a client shall not experience discomfort

because of proximity to a radiator or heat outlet, or exposure to a draft.

(d) There shall be separate sleeping quarters for males and females.

(e) A client shall not be housed in a room, a detached building, or other enclosure that has not previously been inspected and approved for residential use by the Office of Inspector General and the Department of Housing, Buildings and Construction.

(3) Bathrooms.

(a) For every eight (8) residents, each residential crisis stabilization unit shall have at least one (1):

1. Wash basin with hot and cold water;

2. Bath or shower with hot and cold water; and

3. Flush toilet.

(b) If separate toilet and bathing facilities are not provided, males and females shall not be permitted to use those facilities at the same time.

(4) Living area.

(a) The living area shall provide comfortable seating for all clients housed within the residential crisis stabilization unit.

(b) Each living unit shall be equipped with a:

1. Working sink; and

2. Stove and refrigerator, unless a kitchen is directly available within the same building as the living unit.

(5) There shall be adequate lighting, heating, heated water, and ventilation.

(6) There shall be space for a client to store personal belongings, including a receptacle where personal property may be stored and locked.

(7) The residential crisis stabilization unit shall be kept in good repair, neat, clean, free from accumulations of dirt and rubbish, and free from foul, stale, and musty odors.

(8) The residential crisis stabilization unit shall be kept free from insects and rodents with their harborages eliminated.

(9) The residential crisis stabilization unit shall establish an infection control system which includes training personnel on proper hygiene related to infections prevalent among alcohol and other drug abusers.

(10) Services shall be provided in an area where clients are ensured privacy and confidentiality.

Section 16. Facility Specifications. (1) A residential crisis stabilization unit shall:

(a) Be of safe and substantial construction;

(b) Be in compliance with applicable state and local laws relating to zoning, construction, plumbing, safety, and sanitation;

(c) Be approved by the State Fire Marshal's office prior to initial licensure or if the unit changes location; and

(d) Meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) A residential crisis stabilization unit shall:

(a) Have a written emergency plan and procedures for meeting potential disasters such as fires or severe weather;

(b) Post the emergency plan conspicuously in a public area of the unit and provide a copy to all personnel;

(c) Provide training for all personnel on how to report a fire, extinguish a small fire, and evacuate a building; and

(d) Practice fire drills monthly, with a written record kept of all practiced fire drills, detailing the date, time, and residents who participated.

Section 17. **Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Residential Crisis Stabilization Unit if:**

(a) Any person with ownership interest in the crisis stabilization unit has had previous ownership interest in a health care facility that had its license revoked or voluntarily relinquished its license as the result of an investigation or pending disciplinary action;

(b) Any person with ownership interest in the crisis stabilization unit has been discontinued from participation in the Medicaid Program due to fraud or abuse of the program; or

(c) The applicant fails after the initial inspection to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section 2(5).

(2) The cabinet shall revoke a license if it finds that:

(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the residential crisis stabilization unit to comply with the provisions of this administrative regulation;

(b) The residential crisis stabilization unit fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section 2(5); or

(c) The residential crisis stabilization unit is terminated from participation in the Medicaid Program pursuant to 907 KAR 1:671.

(3) The denial or revocation of a residential crisis stabilization unit's license shall be mailed to the applicant or licensee, by certified mail, return receipt requested, or by personal service. Notice of the denial or revocation shall set forth the particular reasons for the action.

(4) The denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(5) Emergency action to suspend a license.

(a) The cabinet shall take emergency action to suspend a residential crisis stabilization unit's license if the cabinet has probable cause to believe that the continued operation of the unit would constitute a danger to the health, welfare, or safety of its residents.

(b)1. The residential crisis stabilization unit shall cease operating immediately on the date the unit is served with the notice of emergency suspension.

2. Notice of the emergency suspension shall set forth the particular reasons for the action.

(6) Notice of an emergency suspension shall be served on the residential crisis stabilization unit by certified mail, return receipt requested, or by personal service.

(7)(a) Any residential crisis stabilization unit required to comply with an emergency suspension issued under subsection (5) and (6) of this section may submit a written request for an emergency hearing within five (5) calendar days of receipt of the notice to determine the propriety of the suspension.

(b) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing.

(c) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency suspension.

(d) The emergency suspension shall be affirmed if there is substantial evidence of an immediate danger to the health, safety, or welfare of the residents.

(8) The decision rendered under subsection (7) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to circuit court.

(9) If the cabinet issues an emergency suspension, the cabinet shall take action to revoke the residential crisis stabilization unit's license pursuant to subsection (3) of this section if:

(a) The facility fails to submit a written request for an emergency hearing within five (5) calendar days of receipt of notice of the emergency suspension; or

(b) The decision rendered under subsection (7) of this section affirms that there is substantial evidence of an immediate danger to the health, safety, or welfare of the residents.

(10) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

Section 18. Incorporation by Reference. (1) The OIG 20:440, "Application for License to Operate a Residential Crisis Stabilization Unit", **October[~~July~~]** 2014 edition, is incorporated by reference.

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

MARYELLEN B. MYNEAR, Inspector General
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: October 8, 2014
FILED WITH LRC: October 9, 2014 at 1 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Maryellen B. Mynear

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates a new licensure category for "residential crisis stabilization units".

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to establish the minimum requirements for the licensure of residential crisis stabilization units which are community-based programs that offer an array of services to stabilize a crisis and divert individuals from placement in a higher level of care.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function. Administration of the licensure function includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. In addition, KRS 215B.042 authorizes the Cabinet to establish reasonable application fees for licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the minimum licensure requirements necessary for the operation of residential crisis stabilization units.

(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 amended after comments regulation makes the following changes in response to public and agency comments:
In response to recent changes to the Medicaid State Plan, adds advanced practice registered nurses, physician assistants, and certified drug and alcohol counselors to the list of practitioners who may supervise peer support specialists; Adds a provision to allow residential crisis stabilization units (RCSU) to request an extension beyond one (1) year of initial licensure to complete the accreditation process if the RCSU demonstrates evidence that it initiated the process of becoming accredited within sixty (60) days of initial licensure and continues its efforts to obtain accreditation; Clarifies that an RCSU may be accredited by "a nationally recognized accreditation organization"; Clarifies that a residential crisis stabilization unit must have a designated executive director and a program director, who may also serve as the executive director and program director of a behavioral health services organization if both licensees are owned by the same entity and a linkage exists for the BHSO to assist with continuity of care after discharge from the residential crisis stabilization unit if needed; Clarifies the responsibilities and qualifications of the executive director and program director; In addition to the requirement for criminal background checks, adds a requirement for a check of the central registry, nurse aide or home health aide abuse registry, and caregiver misconduct registry on RCSU employees; In response to recent changes to the Medicaid State Plan, clarifies that certified alcohol and drug counselors may provide the following services in addition to screening: assessment, individual outpatient therapy, group outpatient therapy, and family outpatient therapy; Clarifies that a psychiatrist may serve more than one (1) RCSU and may be available through telehealth; Clarifies that time out and personal restraint may be used as a behavior management technique; however, prone holds, chemical restraint, and mechanical restraint shall be prohibited; Clarifies that staff who implement the use of personal restraint shall be properly trained and certified, as well as receive annual training; and Clarifies the criteria for denial or revocation of licensure.

(b) The necessity of the amendment to this administrative regulation: This amended after comments regulation includes revisions made in response to public and agency comments.

(c) How the amendment conforms to the content of the authorizing statutes: This amended after comments administrative regulation conforms to the content of KRS 216B.042 which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function.

(d) How the amendment will assist in the effective administration of the statutes: This amended after comments administrative regulation assists in the effective administration of the statutes by establishing the minimum licensure requirements necessary for the operation of residential crisis stabilization units.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Under this administrative regulation, entities may apply for licensure as a residential crisis stabilization unit.

(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: Entities interested in applying for licensure as a residential crisis stabilization unit will be required to comply with the licensure standards established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities licensed under this new administrative regulation will be subject to the licensure fees described in the response to question (7).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities licensed under this administrative regulation will be eligible to enroll in the Kentucky Medicaid Program. Additionally, residential crisis stabilization units help ensure that Medicaid recipients will have access to treatment needed to stabilize a child with a severe emotional disability, adult with severe mental illness, or individual with substance use disorder.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The cost of implementing this administrative regulation is expected to be absorbable because the licensure fee is anticipated to cover the cost of regulating residential crisis stabilization units, including initial and routine surveys conducted by at least one (1) OIG inspector, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.
(b) On a continuing basis: The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating residential crisis stabilization units on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from residential crisis stabilization units 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: As a new administrative regulation, the initial fee for licensure as a residential

crisis stabilization unit will be $750 and the annual renewal fee will be $500. A processing fee of twenty-five (25) dollars will be charged for a change of name and a fee of $100 will be charged for a change of location. A change of ownership must be documented on a new licensure application and submission of an accompanying fee of $750.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This new administrative regulation establishes licensure fees as described in the response to question (7).

(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? Under this new administrative regulation, entities may apply for licensure as a residential crisis stabilization unit.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Cabinet will collect an initial fee of $750 from each applicant for licensure as a residential crisis stabilization unit.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Cabinet will collect an annual renewal fee of $500 from each licensed residential crisis stabilization unit.

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is expected to be absorbable because the licensure fee is anticipated to cover the cost of regulating residential crisis stabilization units, including initial and routine surveys conducted by at least one (1) inspector, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating residential crisis stabilization units on a continuing basis.

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 Behavioral Health, Developmental and Intellectual Disabilities
Division of Administration and Financial Management
(Amended After Comments)

908 KAR 3:050. Per diem rates.

RELATES TO: KRS 210.710, 210.720, 210.730

STATUTORY AUTHORITY: KRS 194A.050 (1), 210.720(2), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.720(2) requires the secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance, and treatment for state owned facilities[~~a facility operated by the cabinet~~] at frequent intervals which shall be the uniform charge for persons receiving those services. KRS 210.750 authorizes the secretary to promulgate administrative regulations to implement KRS 210.710 to 210.760, the Patient Liability Act of 1978. This administrative regulation establishes the patient cost per day for board, maintenance, and treatment at state owned facilities [~~operated by the cabinet~~].

Section 1. Facility Rates. (1) Facilities owned[~~operated~~] by the state[~~cabinet~~] shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (3) of this section that is provided.

(2) The per diem rate for room and board for each facility shall be as follows:

Facility		Rate
Central State Hospital		$1,025[~~$865~~]
Bingham Gardens		$1,500[~~$1,590~~]
Western State Hospital		$740
Western State Nursing Facility		$385[~~$325~~]
Outwood ICF/MR		$775[~~$650~~]
Oakwood Community Center	Unit 1	$1,225[~~$1,320~~]
	Unit 2	$1,115[~~$1,200~~]
	Unit 3	$1,110[~~$1,200~~]
	Unit 4	$1,115[~~$1,200~~]
Hazelwood Center		$1,015[~~$890~~]
Glasgow State Nursing Facility		$355
Del Maria		$625[~~$630~~]
Meadows		$750[~~$735~~]
Windsong		$680[~~$770~~]
Eastern State Hospital		$625[~~$565~~]
Eastern State Nursing Facility		**$660**

(3) A separate charge shall be imposed if the following treatment services are provided at a Department for Behavioral Health, Developmental and Intellectual Disabilities facility listed in subsection (2) of this section:

(a) Physician's services;
(b) EEG;
(c) EKG;
(d) Occupational therapy;
(e) Physical therapy;
(f) X-ray;
(g) Laboratory;
(h) Speech therapy;
(i) Hearing therapy;
(j) Psychology;
(k) Pharmacy;
(l) Respiratory therapy;
(m) Anesthesia;
(n) Electroshock therapy;
(o) Physician assistant; and
(p) Advanced practice registered nurse.

Section 2. Board, Maintenance, and Treatment Charges. The cost per day for board, maintenance, and treatment charges shall be established using the last available cost report adjusted for inflation. Current rates shall be posted at each facility.

MARY REINLE BEGLEY, Commissioner
AUDREY TAYSE HAYNES

APPROVED BY AGENCY: October 8, 2014

FILED WITH LRC: October 9, 2014 at 1 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula DeWitt or Susan Walker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the patient cost per day for board, maintenance, and treatment for a facility owned by the state which shall be the uniform charge for persons receiving those services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with the provisions of KRS 210.720(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 210.720(2) requires the cabinet to establish, at frequent intervals, the patient cost per day for board, maintenance and treatment for a facility owned by the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the patient cost per day for board, maintenance and treatment for a facility owned by the state as required by KRS 210.720(2). The per diem rates are determined by applying a formula that has been in use since the 1980s. This formula calculates per diem rates by dividing actual costs for a state owned facility (using cost reports from a previous fiscal year) by the total number of patient days.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to establish the revised patient cost per day for facilities owned by the state as required by KRS 210.270(2).

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to assure that the cabinet complies with KRS 210.720(2) by establishing the patient cost per day for board, maintenance, and treatment for each facility owned by the state.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 210.720(2) requires the cabinet to establish the patient cost per day for board, maintenance and treatment for a facility owned by the state at a frequent interval.

(d) How the amendment will assist in the effective administration of the statutes: KRS 210.720(1) requires that every patient admitted to a facility owned by the state, except for prisoners transferred in accordance with KRS 202A.201 shall be charged for board, maintenance, and treatment. This administrative regulation establishes a rate for room, board, and treatment which is based on a formula in use for over twenty (20) years that calculates per diem rates by dividing actual cost for a state owned facility (using cost reports from the previous fiscal year) by the total number of patient days.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are sixteen (16) state owned facilities affected by this administrative regulation. In addition, this amendment will affect only a small number of patients (approximately ten (10) on any given day out of an average daily statewide census in excess of 1,000) admitted to these facilities who have the financial resources to be 100 percent self-pay and are uninsured. Medicare pays at the reimbursement rates it establishes under CMS requirements, not the per diem rates found in this regulation. Private insurers and MCOs will pay a negotiated rate to state owned facilities – just as they do with other health care providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each facility will be required to change the charge rates in their billing systems.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any cost for a state owned facility to comply with this administrative regulation. For those few patients who are uninsured and have the resources to be 100 percent self-pay, the per diem rate will increase in some state owned facilities. Thus, they would pay more for services. In other state owned facilities, the per diem rate will decrease resulting in a lower cost for patients who are 100 percent self-pay and uninsured.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This change will ensure that the facilities are reimbursed for services and treatments they rendered to self-pay patients.

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

(a) Initially: There will be no additional cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost 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: Residential services are funded primarily with restricted agency funds generated from patient charges.

(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 adjusts the charge rates as required by statute. Because only a small number of patients (those who have the resourced to be 100 percent self-pay and who are uninsured) will be required to pay the revised rates, it is anticipated that the revenue increase would be approximately $14,000. Medicare, Medicaid and private insurance payors do not base their reimbursement on this billed amount, but on Medicare and Medicaid reimbursement requirements. And private insurers and MCOs are based on negotiated rates.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation establishes, as required by law, charges for room, board, and treatment at state owned facilities. At some state owned facilities, the per diem rate will increase; at other facilities, the per diem rate will decrease. Per diem rates are set utilizing the facilities most recently completed cost reports.

(9) Tiering: Is tiering applied? Tiering is not appropriate in this administrative regulation because all facility rates are set based on actual cost.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the sixteen (16) state owned facilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.720 (2)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate a minimal amount of additional revenue for the Department for Behavioral Health, Developmental and Intellectual Disabilities – approximately $14,000 in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate a minimal amount of additional revenue for the Department for Behavioral Health, Developmental and Intellectual Disabilities – approximately $14,000 in subsequent years.

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

year? There will be no additional cost associated administrating this regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost associated with administrating this regulation in subsequent years.

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

Revenues (+/-): This administrative regulation does not generate any revenue.

Expenditures (+/-): This administrative regulation sets per diem rate for facilities owned by the state.

Other Explanation:

PROPOSED AMENDMENTS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 4:080. Student aid applications.

RELATES TO: KRS 164.518, 164.744(2), 164.748(4), (7), (8), 164.753(3), (4), (6), 164.7535, 164.769, 164.780, 164.785, 164.7890, 34 C.F.R. 654.1-654.5, 654.30-654.52, 20 U.S.C. 1070d-31 - 1070d-41

STATUTORY AUTHORITY: KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 34 C.F.R. 654.30, 654.41, 20 U.S.C. 1070d-37, 1070d-38

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) authorizes the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by KHEAA.

Section 1. Applications. In order to participate in a specified grant, scholarship, or work-study program administered by the Kentucky Higher Education Assistance Authority, the following application forms shall be completed in accordance with their instructions:

(1) For the KHEAA Grant Program as set forth in 11 KAR 5:130, the 2014-2015 Free Application for Federal Student Aid (FAFSA);

(2) For the KHEAA Work-Study Program as set forth in 11 KAR 6:010, the KHEAA Work-Study Program Student Application;

(3) For the Teacher Scholarship Program as set forth in 11 KAR 8:030, the Teacher Scholarship Application;

(4) For the Early Childhood Development Scholarship Program as set forth in 11 KAR 16:010:

(a) The 2014-2015 Free Application for Federal Student Aid (FAFSA); and

(b) The Early Childhood Development Scholarship Application;

(5) For the Robert C. Byrd Honors Scholarship Program as set forth in 11 KAR 18:010:

(a) For high school and home school students, the Robert C. Byrd Honors Scholarship Program; and

(b) For GED recipients, the Robert C. Byrd Honors Scholarship Program GED Recipients;

(6) For the Go Higher Grant Program as set forth in 11 KAR 5:200;

(a) The 2014-2015 Free Application for Federal Student Aid (FAFSA); and

(b) The Go Higher Grant Program Application;[~~and~~]

(7) For the Coal County Scholarship Program for Pharmacy Students as set forth in 11 KAR 19:010, the Coal County Scholarship Program for Pharmacy Students Application; and

(8) For the Kentucky Coal County College Completion Scholarship Program as set forth in 11 KAR 20:020:

(a) The 2014-2015 Free Application for Federal Student Aid (FAFSA); and

(b) The Kentucky Coal County College Completion Scholarship Application.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Free Application for Federal Student Aid July 1, 2014 – June 30, 2015" (FAFSA), December 2013;

(b) The "KHEAA Work-Study Program Student Application", July 2001;

(c) The "Teacher Scholarship Application", June 2006;

(d) The "Early Childhood Development Scholarship Application", April 2006;

(e) The "Robert C. Byrd Honors Scholarship Program", June 2009;

(f) The "Robert C. Byrd Honors Scholarship Program-GED Recipients", June 2009;

(g) The "Go Higher Grant Program Application", January 2008;[~~and~~]

(h) The "Coal County Scholarship Program for Pharmacy Students Application", February 2011; and

(i) The "Kentucky Coal County College Completion Scholarship Application", October 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material may also be obtained at www.kheaa.com.

LISA PAYNE, Chair

APPROVED BY AGENCY: September 30, 2014

FILED WITH LRC: October 10, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, November 24, 2014, 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 1, 2014. 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: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study program administered by the Authority.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administration of the Early Childhood Development Scholarship Program, KHEAA Work-study Program, Teacher Scholarship Program, College Access Program (CAP), Kentucky Tuition Grant (KTG), and Go Higher Grant Programs as well as the Robert C. Byrd Scholarship Program pursuant to KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 34 C.F.R. 654.30, 654.41, and 20 U.S.C. 1070d-36, 1070d-37, 1070d-38.

(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 prescribing the applications to be utilized under the grant, scholarship and work-study programs administered by the Authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes by prescribing and incorporating the various application forms to be used by students to apply for the financial aid programs administered by the authority.

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

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

adding the applications to be completed for the newly-established Kentucky Coal County College Completion Scholarship program to the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to set forth the applications required to be completed by student applicants for awards under this new scholarship program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by adding to the application regulation the applications required for participation in the newly-created Kentucky Coal County College Completion Scholarship program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the Kentucky Coal County College Completion Scholarship program by setting forth the applications required of those seeking awards under this program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment to this administrative regulation will affect all those individuals who seek to apply for an award under the Kentucky Coal County College Completion Scholarship program.

(4) Provide an analysis of how the entities identified in (3) above will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment. Those individual who seek to participate in the Kentucky Coal County College Completion Scholarship program will be required to complete the applications specified in the regulation in order to be considered for an award.

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

(a) Initially: There is no cost to implement this administrative regulation.

(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: No funding source is required in order to implement this administrative regulation since it merely sets for the applications required for participation in the Kentucky Coal County College Completion Scholarship 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: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation 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 applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. 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? 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 164.518(3), 164.744(2), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 164.7890(9), 34 C.F.R. §654.30, §654.41, 20 U.S.C. §1070d-36, 37, 38.

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 administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

(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 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 regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 15:090. Kentucky Educational Excellence Scholarship (KEES) program.

RELATES TO: KRS 154A.130(4), 164.7871, 164.7874, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889

STATUTORY AUTHORITY: KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the Authority to administer the Kentucky Educational Excellence Scholarship (KEES) trust fund. KRS 164.7874(16) requires the Authority to determine the KEES curriculum's courses of study. KRS 164.7879(3)(d) requires the Authority to determine the eligibility of a noncertified, nonpublic high school graduate and of a GED recipient for a supplemental award. KRS 164.7874(3) requires the Authority to establish a table to convert an SAT score to an ACT score. KRS 164.7881(6) requires the Authority to establish a five (5) year postsecondary education program standard. KRS 164.7881(4)(a) requires the Authority to establish overall award levels for the program. KRS 164.7879(2)(c) requires the Authority to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record. KRS 164.7881(4)(c) requires the Authority to identify equivalent undergraduate programs of study. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution and shall not include summer sessions.

(2) "Accredited out-of-state high school" means a high school that is:

(a) Located in a state other than Kentucky or in another country; and

(b) A member of an organization belonging to the Commission on International and Trans-Regional Accreditation.

(3) "ACT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" is defined by KRS 158.007(1).

(5) "Course" means the equivalent of one (1) credit as determined by KDE in 704 KAR 3:305.

(6) "Cumulative grade point average" means the total grade point average for a postsecondary education student as reported by the postsecondary education institution where the student is currently enrolled.

(7) "Department of Defense school" means a school operated by the U. S. Department of Defense for the purpose of providing a high school education to a child whose custodial parent or guardian is in active military or diplomatic service in a state other than Kentucky or in another country.

(8) "Dual credit" is defined in KRS 158.007(8).

(9) "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating postsecondary education institution that the student is attending.

(10)[~~(9)~~] "Free and Reduced Price Lunch" means the National School Lunch program established by the United States Department of Agriculture to provide subsidized meals to lower income students.

(11)[~~(10)~~] "GED" means a general educational development diploma awarded to a student.

(12)[~~(11)~~] "International baccalaureate" is defined by KRS 158.007(10).

(13)[~~(12)~~] "KDE" means the Kentucky Department of Education authorized and established pursuant to KRS 156.010.

(14)[~~(13)~~] "SAT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the College Board.

Section 2. High School Grade Point Average Calculation and Reporting. (1) An eligible high school student's grade point average for an academic year shall be calculated using each letter grade awarded for all courses taken during an academic year. The grading scale cutoff scores used to determine the letter grade for each course shall be the same as those used to determine the letter grade for each course reported on the student's official high school transcript.

(2)(a) Except as provided in paragraphs[~~paragraph~~] (b) and (c) of this subsection, an eligible high school student's grade point average shall be calculated by:

1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A", 3.0 is a "B", 2.0 is a "C", 1.0 is a "D", and 0.0 is an "F";

2. Adding the total number of points accumulated for an academic year; and

3. Dividing the total number of points accumulated in subparagraph 2 of this paragraph by the total number of units for the academic year.

(b) For an eligible high school student taking an advanced placement or international baccalaureate course during the academic year, the course grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F".

(c) Beginning with the academic year 2015-2016, for an eligible high school student taking a dual credit course during the academic year, the course grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F". This weighted scale shall not be applicable to a remedial course.

(3) The grade point average reported for an eligible high school student for each academic year shall include all information as set forth in KRS 164.7885(1) and be submitted to the authority in either an electronic or hard copy format.

(4) A high school student who participated in an educational high school foreign exchange program or the Congressional Page School that was approved by the student's local high school shall have the student's grade point average reported in accordance with KRS 164.7879(2)(b).

Section 3. High School Students of Custodial Parents or Guardians in Active Military Service. (1)(a) For purpose of determining eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the custodial parent or guardian meets the requirements of KRS 164.7879(2)(c)1a and b and shall submit the "Home of Record Certification" to the Authority.

(b) The Authority annually shall notify the eligible high school student and the custodial parent or guardian of the student's eligibility.

(2)(a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (1)(a) of this section, shall be responsible for:

1. Requesting grade and curriculum information from the local school; and

2. Requesting that the local school submit the information to the Authority using the "Curriculum Certification" Form and the "Data Submission" Form.

(b) Upon receipt of curriculum and grade information from an accredited out-of-state high school or Department of Defense school for a student determined to be eligible for the KEES Program under this section, the authority shall:

1. Verify that the submitted curriculum meets the requirements of Section 4 of this administrative regulation;

2. Verify that the out-of-state high school or Department of Defense school is an accredited high school; and

3. Retain the "Curriculum Certification" on file until the student's eligibility has expired.

Section 4. Postsecondary Student Eligibility and KEES Curriculum. (1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:

(a) Has earned a base scholarship award in high school;

(b) Has completed the KEES curriculum as set forth in subsection (2) of this section;

(c) Has graduated from a Kentucky high school except as provided in Section 2(4) or 3 of this administrative regulation; and

(d) Is enrolled in a participating institution in an eligible program.

(2) Except as provided in subsection (4) of this section, the KEES curriculum shall consist of the curriculum standards established in 704 KAR 3:305

(3) A student who graduates from high school at the end of the fall semester of his or her senior year and who meets the requirements of KRS 164.7874(7) shall be eligible to earn a KEES award for that year upon:

(a) Completion of no fewer than three (3) courses of study; and

(b) Satisfying the provisions of KRS 164.7879.

(4) Except as provided in subsection (5) of this section, a high school may substitute an integrated, applied, interdisciplinary or higher level course for a required course or required academic and career interest standards-based learning experience if:

(a) The course provides the same or greater academic rigor and the course covers or exceeds the minimum required content areas established in 703 KAR 4:060; or

(b) The course is an honors course, cooperative education course, advanced placement course, international baccalaureate course, dual credit course, or a course taken at a postsecondary education institution.

(5) Beginning with the 2012-2013 academic year, only one (1) cooperative education course per academic year shall count for purposes of satisfying KEES curriculum requirements.

(6) A high school annually shall provide written documentation to a student on whether the student's schedule of coursework meets the requirements of the KEES curriculum.

Section 5. Eligible Postsecondary Education Programs. (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the Authority.

(2) An eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board except as provided in subsection (4) of

this section.

(3) Pursuant to KRS 164.7881(6), the following academic programs at Kentucky postsecondary education institutions shall be approved as five (5) year baccalaureate degree programs:

(a) Landscape architecture (04.0601); and

(b) For students that graduated from high school not later than the 2004-2005 academic year, engineering if enrollment in the engineering program has been continuous (14.0101, 14201, 14.0301, 14401, 14501, 14.0701, 14.0801, 14.0901, 14.1001, 14.1201, 14.1301, 14.1401, 14.1701, 14.1801, 14.1901, 14.2101, 14.2301, 14.2401, 14.2801, 14.9999.01, 14.3501).

(4) Pursuant to KRS 164.7881(4)(c)1, an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:

(a) Has not received eight (8) semesters of a KEES award;

(b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs:

1. Pharm. D;

2. The optometry or veterinary medicine programs at an institution which is a part of the Kentucky Contract Spaces Program; or

3. A program contained on the Equivalent Undergraduate Programs List; and

(c) Has not completed a baccalaureate degree.

Section 6. SAT Conversion Table. (1) Pursuant to KRS 164.7874(3), the following SAT to ACT Conversion Table shall be used to convert scores for SAT exams taken prior to the 2011-2012 academic year:

Table C-2
Concordance Between SAT I Recentered V+M Score and ACT Composite Score

SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	34	1320	30	1090	24	860	18	630	13
1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		
1400	31	1170	26	940	20	710	15		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table can be used to relate SAT I V+M scores to ACT Composite scores.
The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.
Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).
January 1998

(2) Pursuant to KRS 164.7874(3), the SAT to ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after the 2011-2012 academic year. Only the scores from the critical reasoning and mathematics sections of the SAT within a single exam administration shall be considered for KEES supplemental awards.

Table C-2
Concordance Between SAT I Re centered V+M Score and ACT Composite Score

SAT I V+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite
1600	36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	13
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	35	1320	29	1090	24	860	18	630	13

1540	35	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	12
1520	34	1290	29	1060	23	830	17	600	12
1510	34	1280	28	1050	23	820	17	590	12
1500	34	1270	28	1040	22	810	16	580	12
1490	34	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	27	1010	21	780	16	550	11
1460	33	1230	27	1000	21	770	16	540	11
1450	33	1220	27	990	21	760	15	530	11
1440	33	1210	27	980	21	750	15	520	11
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15		
1410	32	1180	26	950	20	720	15		
1400	32	1170	26	940	20	710	14		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table can be used to relate SAT CR+M scores to ACT Composite scores.
The estimates are based on the test scores of 300,437 students who took both the ACT and the SAT CR+M between September 2004 and June 2006. Because the ACT and the SAT CR+M have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.
Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).
June, 2008

Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who is a citizen, national or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

(a) The student is not a convicted felon;

(b) The date of the student's graduation is May 1999 or thereafter;

(c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and

(d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who is a citizen, national or permanent resident of the United States and who has not graduated from either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

(a) The student is not a convicted felon;

(b) The student's 18th birthday occurs on or after January 1, 1999;

(c) The student takes and receives a GED diploma in Kentucky within five (5) years of attaining eighteen (18) years of age;

(d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and

(e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:

(a) The parents meet the provisions of KRS 164.7879(2)(c)1a and b;

(b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and

(c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.

(4) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.

(5)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.

(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify the Authority of the student's eligibility.

Section 8. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of obtaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 9. Supplemental Award for Achievement on Examinations. (1) Pursuant to KRS 164.7879(3)(c), a supplemental award shall be provided for achievement on Advanced Placement (AP) or International Baccalaureate (IB) examinations to an eligible high school student whose family was eligible for free and reduced price lunch during any year of high school.

(2)(a) An eligible high school shall report the status of each student as eligible or ineligible for free and reduced price lunch to the Authority on an annual basis.

(b) In determining a high school student's free and reduced price lunch eligibility, the high school shall utilize the income eligibility guidelines published each year by the United States Department of Agriculture, Food and Nutrition Service.

Section 10. Administrative Responsibilities and Expenses of Program. (1) The Authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the "Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund" described in KRS 164.7877(1) and (3).

(2) The Authority annually shall adopt a budget proposal indicating the amount of funds available and a detailed listing of the expenditures necessary to operate the program.

(3) The Authority shall develop an allotment schedule for the release of the administrative funds.

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

(a) "Home of Record Certification", June 2005;

(b) "Curriculum Certification", June 2005;

(c) "Data Submission", June 2005; and

(d) "Equivalent Undergraduate Programs List", June 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LISA PAYNE, Chair

APPROVED BY AGENCY: September 30, 2014

FILED WITH LRC: October 10, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on Monday, November 24, 2014, 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 on December 1, 2014. 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: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures for administering the Kentucky Educational Excellence Scholarship (KEES) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program for the Kentucky Higher Education Assistance Authority (KHEAA).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.7877(3) requires KHEAA to administer the funds appropriated to the trust fund for the program; KRS 164.7874(14) requires KHEAA to determine the KEES curriculum's courses of study; KRS 164.7879(3)(c) requires KHEAA to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award; KRS 164.7874(3) requires KHEAA to establish a table to convert an SAT score to an ACT standard; KRS 164.7881(6) requires KHEAA to establish a five (5) year postsecondary education program standard; KRS 164.7881(4)(a) requires KHEAA to establish overall award levels for the program; KRS 164.7879(2)(c) requires KHEAA to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record; and KRS 164.7535 and 164.7881 (4)(c) require KHEAA to identify equivalent undergraduate programs of study. This administrative regulation established these requirements related to the KEES program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing program eligibility criteria for administration of the KEES program by KHEAA.

(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 regulation by adding "dual credit" as a defined term for KEES purposes and providing for the use of a weighted 5.0 scale in calculating the course grade point average for KEES reporting for high school students enrolled in dual-credit courses.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary in order to appropriately weight the difficulty of dual credit courses in calculating KEES awards.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require KHEAA to develop regulations for administration of the KEES program. This amendment enhances the provisions pertaining to calculation of course grade point average for those students enrolled in dual credit courses.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the effective administration of the statutes by adding "dual credit" as a defined term for KEES purposes and providing for the use of a weighted 5.0 scale in calculating the course grade point average for KEES reporting for high school students enrolled in dual-credit courses

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All potential KEES recipients beginning with academic year 2015-2016 who might enroll in dual credit courses would be positively impacted by this amendment.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Those KEES recipients who enroll in dual credit courses will be positively impacted by this amendment in that their grade point average calculation will be based on a weighted 5.0 scale.

(5) Provide an estimate of how much it will cost 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: 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. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. 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 OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact 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. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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 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 regulation will not generate any revenue for

subsequent years.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation for the first year.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 19:010. Coal County Scholarship Program for pharmacy students.

RELATES TO: KRS 164.740, 164.7890

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7890(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7890(9) requires the authority to promulgate administrative regulations establishing the terms and conditions for the award, cancellation, and repayment of coal county scholarships for pharmacy students. This administrative regulation establishes the eligibility, application, and disbursement requirements for scholarships provided under the program.

Section 1. Definitions. (1) "Authority" is defined by KRS 164.740(1).

(2) "Coal-producing county" is defined by KRS 164.7890(2).

(3) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation.

(4) "Eligible student" means any individual who satisfies the requirements set forth in KRS 164.7890(3) and (5).

(5) "Full-time practice" means providing services as a pharmacist in a coal-producing county for a minimum of 2,000 hours per calendar year.

(6) "Home County" means the county of permanent home residence of the student at the time in which the application is made, as determined by a preponderance of evidence such as a student's permanent address, parent's mailing address, parent's tax returns, location of high school of graduation and additional criteria as needed for a determination of residency status in accordance with 13 KAR 2:045.

(7) "Qualified service" is defined in KRS 164.7890(3)(d).

Section 2. Eligibility of Applicants and Selection Process. (1) Applicants shall complete the Coal County Scholarship Program for Pharmacy Students Application as required by 11 KAR 4:080, Section 1(7), according to its instructions. The applicant shall ensure that the completed application is received by the authority on or before May 1, or the next regular business day if May 1 falls on a weekend or holiday, preceding the academic year for which the award is requested.

(2) Eligibility of renewal applicants. A person who previously received a loan or scholarship pursuant to KRS 164.7890 shall be eligible to apply for and be considered for a renewal coal county scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with the standards prescribed by the participating institution.

(3) Recipients shall be selected from among eligible applicants in the following order:

(a) Renewal applicants whose home counties are coal-producing counties; and

(b) Initial applicants whose home counties are coal-producing counties[~~;~~

~~(c) Renewal applicants whose home counties are not coal-producing counties; and~~

~~(d) Initial applicants whose home counties are not coal-producing counties~~].

(4) If there are more applicants within a category listed in subsection (3) of this section than there are funds available, the applications in each category shall be ranked to receive available funds by date of receipt of application.

Section 3. Entrance Counseling. (1) Each participating institution shall conduct entrance counseling for each scholarship recipient prior to requesting scholarship funds from the Authority on the recipient's behalf.

(2) The counseling shall be provided through either in-person sessions or by electronic or written means with the recipient's acknowledgement of receipt thereof.

(3) The following topics shall be covered through the counseling:

(a) The recipient's obligation to repay the scholarship if the recipient fails to provide qualified service as required under the program;

(b) The consequences of defaulting on any repayment obligation imposed under this program;

(c) The recipient's obligation to repay the scholarship even if the recipient is not satisfied with the quality of education received, does not complete the program of study, or does not find employment in the appropriate field or service area after graduation; and

(d) The importance of contacting the authority to advise of any change with respect to the recipient's name, address, enrollment status, or other contact information.

Section 4. Disbursements. (1) Each disbursement of a coal county scholarship shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified pharmacy service in lieu thereof.

(2) Within thirty (30) days following receipt by the authority of the original signed promissory note for the student awarded a coal county scholarship, the authority shall send to the institution a roster containing the recipient's name and Social Security number.

(3) The participating institution shall verify the student's full-time enrollment in a Pharm D. program and completion of entrance counseling on the roster and return it to the authority.

(4) Upon receipt of the institution's completed roster, the authority shall disburse funds to the institution on behalf of all eligible students to receive the scholarship by electronic funds transfer.

(5) Disbursement of a coal county scholarship shall be made at the beginning of each fall and spring term.

(6) The participating institution shall be responsible for proper delivery of the funds. Upon the receipt of funds, the participating institution shall immediately credit the recipient's account and notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.

(7) The participating institution shall retain record of the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for whom funds are being returned, the amount being returned, and the reason funds are being returned.

(8) If a recipient withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the institution shall return the proceeds to the authority.

(9)(a) If a recipient subsequently refuses to repay the scholarship on grounds that the student was unaware of or did not receive delivery of the scholarship proceeds from the school, upon written request from the authority, the institution shall promptly provide documentary evidence to the authority that the recipient

received or had funds credited to the student's account and was notified of this transaction.

(b) The school shall otherwise reimburse the authority for any amount of the scholarship that is unenforceable absent that documentary evidence.

(c) The obligation of the school to provide the documentary evidence specified in paragraph (a) of this subsection shall continue until the recipient's obligations for repayment of the scholarship is paid in full or otherwise discharged.

Section 5. Refunds. (1) If a student fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after the student's first day of class of the period of enrollment or changes enrollment status, the Authority shall be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority, the refund and repayment shall be due to the authority for its financial assistance programs in accordance with this section.

(3) The institution shall adopt and implement a fair and equitable refund policy for financial assistance administered by the authority which shall be:

(a) A clear and conspicuous written statement;

(b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently-enrolled students;

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

(4) The institution's refund policy for financial assistance administered by the authority shall either:

(a) Use the same methods and formulas for determining the amount of a refund as the institution uses for determining the return of federal financial assistance funds; or

(b) Be a separate and distinct policy adopted by the institution that is based upon:

1. The requirements of applicable state law; or

2. The specific refund standards established by the institution's nationally-recognized accrediting agency.

(5) The amount of the refund shall be determined in accordance with the educational institution's refund policy relative to financial assistance funds, except as provided in subsection (7) of this section.

(6) If the institution determines that a refund of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment prior to allocating the refund to institutional or private sources of financial assistance.

(7)(a) If a coal county scholarship recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an over award and a full refund and repayment of the coal county scholarship shall be required, notwithstanding any institutional policy to the contrary.

(b) If the institution is unable to document the student's last date of attendance, any coal county scholarship disbursement for that award period shall be subject to full refund.

(c) If a coal county scholarship recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full coal county scholarship shall be subject to:

1. Cancellation, if not yet disbursed; or

2. Refund if the coal county scholarship has already been disbursed.

(8)(a) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(b) Refunds by the institution transmitted to the authority shall be accompanied by:

1. The student's name and Social Security Number;

2. The reason for the refund;

3. The date of enrollment status change; and

4. The semester and year.

(c) Failure of the institution to make restitution if required shall, without precluding other remedies, be deemed cause for limitation, suspension, or termination of the participation of the institution in accordance with 11 KAR 4:020.

Section 6. Notification Requirements. (1) A scholarship recipient shall notify the authority in writing within thirty (30) days of:

(a) Cessation of full-time enrollment in a pharmacy program;

(b) Certification to practice pharmacy in the Commonwealth of Kentucky;

(c) Failure to obtain certification to practice pharmacy in the Commonwealth of Kentucky;

(d) Employment in a qualified service position;

(e) Cessation of employment in a qualified service position;

(f) Failure, within 180 days following certification to practice pharmacy in the Commonwealth of Kentucky, to obtain employment in full-time practice in a coal-producing county within the Commonwealth of Kentucky as a certified pharmacist for a majority of the calendar year; or

(g) Change of name, permanent home address or place of employment.

(2) The school of pharmacy shall notify the authority in writing within thirty (30) days of learning that a Coal County Scholarship Program for Pharmacy Students award recipient ceases to be enrolled on a full-time basis in the school of pharmacy.

Section 7. Records. (1) A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student receiving aid under this program and the disbursement of funds and institutional charges necessary to audit the disposition of these funds.

(2) The institution's records shall be maintained for at least three (3) years after the student ceases to be enrolled at the institution.

LISA PAYNE, Chair

APPROVED BY AGENCY: September 30, 2014

FILED WITH LRC: October 10, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, November 24, 2014, 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 on December 1, 2014. 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: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the framework for the Authority's implementation and administration of the Coal County Scholarship Program for Pharmacy Students.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations

pertaining to the administration of the Coal County Scholarship Program for Pharmacy Students pursuant to KRS 164.7890.

(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 prescribing the definitions, eligibility criteria, entrance counseling, disbursement procedures and record-keeping requirements for the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with the effective administration of the statutes by establishing the framework for administration of this scholarship 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 will change the existing administrative regulation by eliminating from eligibility for an award under the program individuals who were not permanent residents of a Kentucky coal-producing county for at least one (1) year immediately preceding the academic year for which an award is sought.

(b) The necessity of the amendment to this administrative regulation: During the 2014 Regular Legislative Session, the General Assembly amended KRS 164.7890 to remove eligibility for those individuals who are not permanent residents of a Kentucky coal-producing county as set forth in (a). This amendment aligns the regulation with the amended statute.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by further prescribing the eligibility criteria for an award under this scholarship program.

(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 aligning the student eligibility criteria set forth in the regulation with that specified in the authorizing statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All residents of Kentucky who seek to obtain a scholarship under this program in order to pursue a degree in pharmacy studies will be affected by the amendment to this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: Residents of Kentucky who seek to obtain a scholarship under this program will be affected by the amendment to this administrative regulation in that such applicants will be required to be permanent residents of a Kentucky coal-producing county in order to be eligible for an award under this program. Those Kentucky residents who have not established permanent residency in Kentucky coal-producing counties will be ineligible for a scholarship.

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

(a) Initially: There is no cost to implement this administrative regulation.

(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 program is funded in full through transfer of receipts from the coal severance tax levied pursuant to KRS 143.020.

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

(8) State whether or not this administrative regulation 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 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 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? 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 164.744(2), KRS 164.748(4), KRS 164.753(3) and KRS 164.7890.

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 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 regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute 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:

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Amendment)

201 KAR 9:310. Continuing medical education.

RELATES TO: KRS 214.610, 214.615, 214.620, 218A.205, 311.565(1)(b), 311.601, 620.020

STATUTORY AUTHORITY: KRS 311.565(1)(a), (b), 311.601(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.601(1) authorizes the board to promulgate an administrative regulation that establishes requirements to insure the continuing professional competency of licensees. This administrative regulation establishes continuing medical education requirements for physicians in Kentucky, including requirements for courses relating to the use of KASPER, pain management, and addiction disorders required for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

Section 1. Continuing Medical Education. Except as provided in Section 4 of this administrative regulation, at the time a licensee seeks to renew his or her license, the licensee shall submit verification of satisfactory completion of a program of continuing medical education using the Continuing Medical Education Certification Form by the renewal deadline established in 201 KAR 9:051.

Section 2. In order to meet the continuing medical education requirements, a licensee shall:

(1) Submit evidence that thirty (30) of the sixty (60) hours were certified in Category I by an organization accredited by the:

(a) Accreditation Council on Continuing Medical Education; or

(b) The American Osteopathic Association;

(2) Submit evidence that:

(a) The licensee has received the American Medical Association's "physician recognition award", or the American Osteopathic Association's "osteopathic physicians' recognition award"; and

(b) The award is in effect at the time the license is renewed;

(3) Submit verification that the:

(a) Licensee has completed continuing medical education requirements of any specialty organization which is recognized by the American Medical Association or American Osteopathic Association as at least equivalent to their recognition awards; and

(b) Certification is in effect at the time a license is renewed; or

(4) Submit verification that the licensee is in, or has been in, an approved postgraduate training program. Each year of postgraduate training shall be equivalent to fifty (50) hours of continuing medical education.

Section 3. Required Hours of Continuing Education. (1)(a) For each three (3) year continuing education cycle, a licensee shall complete a total of sixty (60) hours of continuing medical education, if his or her license has been renewed for each year of a continuing medical education cycle.

(b) If the license has not been renewed for each year of a continuing medical education cycle, a licensee shall complete twenty (20) hours of continuing medical education for each year for which the license has been renewed.

(c) A licensee whose initial licensure was granted the first year of the continuing education cycle for which verification is submitted shall complete sixty (60) hours of continuing medical education before the end of the cycle.

(d) A licensee whose initial licensure was granted the second year of the continuing education cycle for which verification is submitted shall complete forty (40) hours of continuing medical education before the end of the cycle.

(e) A licensee whose initial licensure was granted the third year of the continuing education cycle for which verification is submitted shall complete twenty (20) hours of continuing medical education before the end of the cycle.

(2) Upon renewal of licensure following the end of a three (3) year continuing education cycle, a licensee shall certify that he or she has met the continuing medical education requirements for the cycle as provided by this section.

(3) Verification of completion of continuing medical education requirements shall be submitted upon request by the board.

Section 4. Extensions of Time. (1) To request an extension of time, the licensee shall submit:

(a) A completed Request for Extension to Complete Required CME Hours; and

(b) The fee required by 201 KAR 9:041, Section 1(17).

(2) The board may grant an extension of time to a physician who for sufficient cause has not yet received continuing medical education certification, following the submission of the items required by subsection (1) of this section.

Section 5. During each ten (10) year period of practice, each licensee shall complete a minimum of two (2) hours of continuing medical education in HIV/AIDS courses approved pursuant to KRS 214.610, 214.615 and 214.620.

Section 6. (1) For each three (3) year continuing education cycle beginning on January 1, 2015, a licensee who is authorized to prescribe or dispense controlled substances within the Commonwealth at any time during that cycle shall complete at least four and one-half (4.5) hours of approved continuing education hours relating to the use of KASPER, pain management, addiction disorders, or a combination of two (2) or more of those subjects. A licensee may satisfy this requirement by completing a single approved program of four and one-half (4.5) hours or longer or by completing multiple approved programs for a total of four and one-half (4.5) hours or longer for that cycle.

(2) Each physician licensed to practice medicine or osteopathy within the Commonwealth of Kentucky who is authorized to prescribe or dispense controlled substances within the Commonwealth from July 20, 2012 through the end of the three (3) year continuing education cycle beginning on January 1, 2012 and ending on December 31, 2014 shall complete at least four and one-half (4.5) hours of approved Category I Credit continuing medical education hours relating to the use of KASPER, pain management, addiction disorders, or a combination of two (2) or more of those subjects on or before December 31, 2014. The licensee may satisfy this requirement by completing a single approved program of four and one-half (4.5) hours or longer or by completing multiple approved programs for a total of four and one-half (4.5) hours or longer for this cycle.

(3) Each physician licensed to practice medicine or osteopathy within the Commonwealth of Kentucky who is authorized to prescribe or dispense controlled substances during the calendar years 2013 and 2014, but not during any portion of 2012, shall complete at least three (3) hours of approved Category I Credit continuing medical education hours relating to the use of KASPER, pain management, addiction disorders, or a combination of two (2) or more of those subjects on or before December 31, 2014. The licensee may satisfy this requirement by completing a single approved program of three (3) hours or longer or by completing multiple approved programs for a total of three (3) hours or longer for those two (2) years.

(4) Each physician licensed to practice medicine or osteopathy within the Commonwealth of Kentucky who is authorized to prescribe or dispense controlled substances during calendar year 2014, but not during any portion of 2012 or 2013, shall complete at least one and one-half (1.5) hours of approved Category I Credit continuing medical education hours relating to the use of KASPER, pain management, addiction disorders, or a combination of two (2) or more of those subjects on or before December 31, 2014. The licensee may satisfy this requirement by completing a single approved program of one and one-half (1.5) hours or longer or by completing multiple approved programs for a total of one and one-half (1.5) hours or longer for that calendar year.

(5)(a) To qualify as approved continuing education under this section, the educational program shall have been approved in advance for the specified number of continuing education hours by the board.

(b) The board may approve an educational program that:

1. Consists of a live presentation;

2. Is presented by a live or recorded webinar; or

3. Is presented through an online module.

(c) The board shall maintain a current listing of approved continuing education programs on its official Web site, www.kbml.ky.gov.

(6)(a) In order to lawfully prescribe or dispense controlled substances within the Commonwealth of Kentucky, a licensee shall complete the required number of continuing education hours for each period designated in this section.

(b) Failure to complete the required number of continuing education hours for the required period or to submit the required written verification within the time specified shall constitute a violation of KRS 311.595(9) and (12), which shall constitute an immediate danger to the public health, safety, or welfare, for the purposes of KRS 311.592 and 13B.125.

(c) If the board determines that a licensee has failed to complete the required continuing education hours within the time

specified or has failed to provide the written verification of completion within the time specified, the appropriate inquiry panel or its chair shall promptly issue an emergency order restricting that licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky until the licensee has completed the required continuing education hours for that period and has provided written verification of completion to the board.

(d) An emergency order restricting a licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky issued pursuant to paragraph (c) of this subsection shall remain valid and in effect until the board has received written verification that the licensee has successfully completed the required continuing education hours for the time period specified. Upon receipt of the written verification, the panel or its chair shall immediately issue an order terminating the emergency order issued pursuant to this section.

(e) If a licensee who is affected by an emergency order issued pursuant to this section requests an emergency hearing pursuant to KRS 13B.125(3), the hearing officer conducting the emergency hearing shall affirm the emergency order if presented with written notification on board letterhead stating that the board has not received the required written verification that the licensee completed the required continuing education hours for the period specified by the time specified.

(7) If a licensee prescribes or dispenses a controlled substance within the Commonwealth of Kentucky during any period after the licensee has failed to complete the required continuing education hours within the time specified or has failed to provide written verification of completion within the time specified, each instance of prescribing or dispensing of a controlled substance shall constitute a separate violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(1)(b) and shall serve as the basis for disciplinary sanctions pursuant to KRS 311.595.

Section 7. Each licensee practicing in the specialty of pediatrics, radiology, family medicine, or emergency medicine and each licensee practicing in an urgent care practice environment shall complete at least one (1) hour of continuing medical education regarding the recognition and prevention of pediatric abusive head trauma in a course approved by the board pursuant to KRS 620.020, prior to December 31, 2017, or within five (5) years of initial licensure.

Section 8. The board may randomly require physicians submitting certification of continuing medical education to demonstrate satisfactory completion of the continuing medical education requirements stated in the certification.

Section 9.[~~8.~~] (1) A licensee shall be fined a minimum of $200, if he or she fails to:

(a) Timely complete the continuing medical education requirements; or

(b) Obtain an extension of time for completion of the continuing medical education requirements.

(2)(a) A licensee subject to subsection (1) of this section shall be granted a period of six (6) months to come into compliance.

(b) If a licensee has not completed the continuing medical education requirements within the six (6) month period established by this subsection, his or her license shall:

1. Be immediately suspended; and

2. Remain suspended until the licensee has submitted verifiable evidence that he or she has completed the continuing education requirements.

Section 10.[~~9.~~] A waiver of the requirements established by the provisions of this administrative regulation shall not be granted.

Section 11.[~~10.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Continuing Medical Education Certification Form", January 2013; and

(b) "Request for Extension to Complete Required CME Hours", January 2013.

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

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: October 8, 2014

FILED WITH LRC: October 9, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2014 at 10:00 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 2014, 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 on December 1, 2014. 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: Leanne K. Diakov, 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: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for obtaining continuing medical education hours relating to pediatric abusive head trauma for physicians in the Commonwealth of Kentucky practicing in the specialty of pediatrics, radiology, family medicine, or emergency medicine and each physician practicing in an urgent care practice environment.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for obtaining continuing medical education hours relating to pediatric abusive head trauma for physicians in the Commonwealth of Kentucky practicing in the specialty of pediatrics, radiology, family medicine, or emergency medicine and each physician practicing in an urgent care practice environment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for obtaining continuing medical education hours relating to pediatric abusive head trauma.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for obtaining continuing medical education hours relating to pediatric abusive head trauma for physicians in the Commonwealth of Kentucky practicing in the specialty of pediatrics, radiology, family medicine, or emergency medicine and each physician practicing in an urgent care practice environment.

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

(a) How the amendment will change this existing administrative regulation; This amendment establishes requirements for obtaining continuing medical education hours relating to pediatric abusive head trauma for physicians in the Commonwealth of Kentucky practicing in the specialty of pediatrics, radiology, family medicine, or emergency medicine and each physician practicing in an urgent care practice environment.

(b) The necessity of the amendment to this administrative regulation; It is necessary to promulgate this regulation to establish

the requirements for obtaining continuing medical education hours relating to pediatric abusive head trauma for physicians in the Commonwealth of Kentucky practicing in the specialty of pediatrics, radiology, family medicine, or emergency medicine and each physician practicing in an urgent care practice environment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for obtaining continuing medical education hours relating to pediatric abusive head trauma for physicians in the Commonwealth of Kentucky practicing in the specialty of pediatrics, radiology, family medicine, or emergency medicine and each physician practicing in an urgent care practice environment.

(d) How the amendment will assist in the effective administration of the statutes. This amendment acts specifically to establish the requirements for obtaining continuing medical education hours relating to pediatric abusive head trauma for physicians in the Commonwealth of Kentucky practicing in the specialty of pediatrics, radiology, family medicine, or emergency medicine and each physician practicing in an urgent care practice environment.

(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 who practice in the specialty of pediatrics, radiology, family medicine, or emergency medicine and each licensee practicing in an urgent care practice environment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians who practice in the specialty of pediatrics, radiology, family medicine, or emergency medicine and each licensee practicing in an urgent care practice environment will have to complete a pediatric abusive head trauma course approved by the board prior to December 31, 2017 or within five (5) years of initial licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Approximate cost for each physician to obtain the required number of continuing medical education hours is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Physicians will be appropriately informed in the area of pediatric abusive head trauma.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: None.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is applied because the amendment only applies to physicians practicing in the specialty of pediatrics, radiology, family medicine, or emergency medicine and each physician practicing in an urgent care environment.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Medical Licensure 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 311.565(1)(a), 620.020

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Amendment)

201 KAR 9:450. Fee schedule regarding acupuncturists.

RELATES TO: KRS 311.671, 311.673(1)

STATUTORY AUTHORITY: KRS 311.673(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.673(1) authorizes the board to promulgate administrative regulations necessary to establish fees relating to the licensure[~~certification~~] and regulation of acupuncturists. This administrative regulation establishes a schedule of fees for services rendered by the board.

Section 1. Fee Schedule for Acupuncturists. (1) The fee for initial issuance of a regular license shall be[~~certificate~~ -] $150.

(2) The[~~Application for a temporary certificate - seventy-five (75) dollars.~~

~~(3) Conversion from a temporary certificate to a certificate - seventy-five (75) dollars.~~

~~(4)~~] fee for biennial renewal of a license shall be[~~certificate -~~] $150.

(3) The[~~(5)~~] penalty fee for late renewal of a license shall be[~~certificate~~ -] fifty (50) dollars.

(4) The fee for[~~(6)~~] issuance of a duplicate wallet card shall be five (5) dollars[~~- one (1) dollar~~].

(5) The fee for[~~(7)~~] issuance of a duplicate wall certificate shall be[-] ten (10) dollars.

(6) The fee for[~~(8)~~] verification of a state license[~~certificate~~] to another licensing agency shall be[-] ten (10) dollars.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: October 13, 2014

FILED WITH LRC: October 15, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2014 at 10:30 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 2014, 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 on December 1, 2014. 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: Leanne K. Diakov, 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: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees for services rendered by the board.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish a schedule of fees for services rendered by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish a schedule of fees for services rendered by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish a schedule of fees for services rendered by the board.

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

(a) How the amendment will change this existing administrative regulation; This amendment changes certificate to license. It also deletes the fee required for a temporary license, because the fee is inclusive in the initial application fee. In addition, it changes the fee for issuance of a duplicate wallet card to five (5) dollars.

(b) The necessity of the amendment to this administrative regulation; It is necessary to promulgate this regulation to change certificate to license, to delete the fee required for a temporary license, and to change the fee for the issuance of a duplicate wallet card to five (5) dollars.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation acts specifically to change certificate to license, to delete the fee required for a temporary license, and to change the fee for the issuance of a duplicate wallet card to five (5) dollars.

(d) How the amendment will assist in the effective administration of the statutes. This amendment acts specifically to change certificate to license, to delete the fee required for a temporary license, and to change the fee for the issuance of a duplicate wallet card to five (5) dollars.

(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 acupuncturists who are licensed in the Commonwealth of Kentucky.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Acupuncturists will now receive a license instead of a certificate.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: None.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does increase the fee for the issuance of a duplicate wallet card to five (5) dollars.

(9) TIERING: Is tiering applied? Tiering was not appropriate 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? The Kentucky Board of Medical Licensure 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 311.671, 311.673(1)

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Amendment)

201 KAR 9:460. Written plan.

RELATES TO: KRS 311.671, 311.673(1), 311.680

STATUTORY AUTHORITY: KRS 311.673(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.673(1) authorizes the board to promulgate administrative regulations necessary to the licensure[~~certification~~] and regulation of acupuncturists. This administrative regulation establishes a written plan required by KRS 311.680.

Section 1. Pursuant to requirements of KRS 311.680, the written plan developed by each licensed[~~certified~~] acupuncturist shall include the following information:

(1) Consultation.

(a) The acupuncturist shall identify the protocol to be used to determine whether a potential patient suffers from one of the

potentially serious disorders or conditions listed in KRS 311.680(3), and to determine the identity of the physician treating the patient for the disorder or condition.

(b) The acupuncturist shall identify the telephone, facsimile, letter, or electronic mail as the means of communication to be used to:

1. Notify the treating physician that the patient is seeking treatment by acupuncture and has disclosed that he or she is being treated for a potentially serious disorder or condition; and

2. Obtain verification that the patient is under the care of the physician.

(c) The acupuncturist shall identify the method that will be used to document the consultation and verification made pursuant to Section 1(1)(b)2 of this administrative regulation. If notification and verification are accomplished by telephone, the documentation shall include, at a minimum, the name of the staff member in the physician's office providing the verification.

(d) The acupuncturist shall specify how many attempts he or she will make to obtain verification from the treating physician that the patient is under the care of before initiating treatment by acupuncture. A minimum of two (2) attempts is required before treatment is initiated, but the acupuncturist may choose a higher number of attempts.

(e) While verifying whether the patient is under the physician's care for a potentially serious disorder or condition, if the physician identifies possible contraindications for the use of acupuncture in the particular patient or recommends against the use of acupuncture, the acupuncturist may use her or his professional judgment to determine if it is reasonable to provide acupuncture treatment to that particular patient, considering all available facts.

(f) A potential patient shall be considered to be "under the care of a physician" if receiving regular or recurring treatment from the physician or from a physician assistant being supervised by the physician or from an advanced registered nurse practitioner who is practicing in association with the physician.

(2) Emergency transfer.

(a) The licensed[~~certified~~] acupuncturist shall identify the nearest emergency room facility by name, address and telephone number.

(b) The licensed[~~certified~~] acupuncturist shall identify the protocol for emergency transfer of patients which shall include, at a minimum, the requirement that the acupuncturist will utilize the "911" emergency notification system to arrange for emergency transfer of the patient.

(3) Referral to appropriate health-care facilities or practitioners.

(a) The acupuncturist shall identify, by name, address and telephone number, at least two (2) physicians who have agreed to consult with and accept referrals from the acupuncturist.

(b) If applicable, the acupuncturist shall also identify health-care facilities[~~,~~] that have agreed to accept referrals from the acupuncturist.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: October 13, 2014

FILED WITH LRC: October 15, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2014 at 10:45 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 14, 2014, 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 on December 1, 2014. 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: Leanne K. Diakov, 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: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements necessary to comply with KRS 311.680.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to comply with KRS 311.680.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements necessary to comply with KRS 311.680.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary to comply with KRS 311.680.

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

(a) How the amendment will change this existing administrative regulation; This amendment changes certified to licensed.

(b) The necessity of the amendment to this administrative regulation; It is necessary to promulgate this regulation to change certified to licensed.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation changes certified to licensed.

(d) How the amendment will assist in the effective administration of the statutes. This amendment acts specifically to change certified to licensed.

(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 acupuncturists who are licensed in the Commonwealth of Kentucky.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Acupuncturists will now receive a license instead of a certificate.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: None.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate 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? The Kentucky Board of Medical Licensure 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 311.671, 311.673(1)

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:015. Boat and motor restrictions.

RELATES TO: KRS[~~235.010(4),~~] 150.090, 150.625, 150.990, 235.010(4), 235.990

STATUTORY AUTHORITY: KRS 150.620, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters it has acquired. KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of this state. This administrative regulation limits the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.

Section 1. Definition. "Idle speed" means the slowest possible speed at which maneuverability can be maintained.

Section 2. (1) A person shall not operate on the lakes listed in subsection (2) of this section:

(a) A house boat;

(b) A monohull boat with a center line length exceeding twenty-two (22) feet; or

(c) A pontoon boat with a float or decking exceeding twenty-two (22) feet, except for:

1. Guist Creek Lake, where a pontoon boat with a float or decking up to twenty-four (24) feet may be operated; or

2. In the following lakes, where a pontoon boat with a float or decking up to thirty (30) feet may be operated:

a. Cedar Creek Lake;

b. Lake Beshear; or

c. Lake Malone.

(2) List of lakes:

(a) Arrowhead Slough, Ballard County;

(b) Beaver Creek Lake, Anderson County;

(c) Beaver Dam Slough, Ballard County;

(d) Bert Combs Lake, Clay County;

(e) Big Turner Lake, Ballard County;

(f) Boltz Lake, Grant County;

(g) Briggs Lake, Logan County;

(h) Bullock Pen Lake, Grant County;

(i) Burnt Pond, Ballard County;

(j) Burnt Slough, Ballard County;

(k) Butler Lake, Ballard County;

(l) Carnico Lake, Nicholas County;

(m) Carpenter Lake, Daviess County;

(n) Carter Caves Lake, Carter County;

(o) Cedar Creek Lake, Lincoln County;

(p) Corinth Lake, Grant County;

(q) Cross Slough, Ballard County;

(r) Cypress Slough, Ballard County;

(s) Deep Slough, Ballard County;

(t) Dennie Gooch Lake, Pulaski County;

(u) Elmer Davis Lake, Owen County;

(v) Fishpond Lake, Letcher County;

(w) Goose Lake, Muhlenberg County;

(x) Greenbo Lake, Greenup County;

(y) Guist Creek Lake, Shelby County;

(z) Happy Hollow Lake, Ballard County;

(aa) Island Lake, Ohio County;

(bb) Kincaid Lake, Pendleton County;

(cc) Kingdom Come Lake, Harlan County;

(dd) Kingfisher Lakes, Daviess County;

(ee) Lake Beshear, Caldwell County;

(ff) Lake Chumley, Lincoln County;

(gg) Lake Malone, Muhlenberg County;

(hh) Lake Mauzy, Union County;

(ii) Lake Reba, Madison County;

(jj) Lake Washburn, Ohio County;

(kk) Lebanon City Lake, Marion County;

(ll) Lincoln Homestead Lake, Washington County;

(mm) Little Green Sea, Ballard County;

(nn) Little Turner Lake, Ballard County;

(oo) Long Pond, Ballard County;

(pp) Marion County Lake, Marion County;

(qq) Martin County Lake, Martin County;

(rr) McNeely Lake, Jefferson County;

(ss) Metcalfe County Lake, Metcalfe County;

(tt) Mill Creek Lake, Wolfe County;

(uu) Mitchell Lake, Ballard County;

(vv) Pan Bowl Lake, Breathitt County;

(ww) Pikeville City Lake, Pike County;

(xx) Sandy Slough, Ballard County;

(yy) Shanty Hollow Lake, Warren County;

(zz) Shelby Lake, Ballard County;

(aaa) South Lake, Ohio County;

(bbb) Spurlington Lake, Taylor County;

(ccc) Swan Lake, Ballard County;

(ddd) Twin Pockets Slough, Ballard County;

(eee) Wilgreen Lake, Madison County.

(3) Length restrictions in this section shall not apply to a canoe.

(4) A person shall not operate a personal watercraft as defined in KRS 235.010(4) on Cedar Creek Lake.

Section 3.[~~2.~~] (1) A person shall not operate:

(a) A boat motor without an underwater exhaust; or

(b) A boat faster than idle speed when passing a boat with an occupant actively engaged in fishing, except in a designated skiing zone.

(2) The requirements in subsection (1) of this section shall apply on:

(a) Beaver Lake, Anderson County;

(b) Boltz Lake, Grant County;

(c) Bullock Pen Lake, Grant County;

(d) Carnico Lake, Nicholas County;

(e) Cedar Creek Lake; Lincoln County;

(f) Corinth Lake, Grant County;

(g) Elmer Davis Lake, Owen County;

(h) Greenbo Lake, Owen County;
(i) Guist Creek Lake, Shelby County;
(j) Kincaid Lake, Pendleton County;
(k) Lake Beshear, Caldwell County;
(l) Lake Malone, Muhlenburg County;
(m) Pan Bowl Lake, Breathitt County;
(n) Shanty Hollow Lake, Warren County;
(o) Swan Lake, Ballard County; and
(p) Wilgreen Lake, Madison County.

Section 4.[~~3.~~] A person shall not operate an electric or an internal combustion boat motor on:
(1) Dennie Gooch Lake, Pulaski County;
(2) Kingdom Come Lake, Harlan County; and
(3) Lake Chumley, Lincoln County.

Section 5.[~~4.~~] A person shall not operate an internal combustion boat motor and shall only be allowed to use an electric trolling motor on:
(1) Arrowhead Slough, Ballard County;
(2) Beaver Dam Slough, Ballard County;
(3) Bert Combs Lake, Clay County;
(4) Big Turner Lake, Ballard County;
(5) Briggs Lake, Logan County;
(6) Burnt Pond, Ballard County;
(7) Burnt Slough, Ballard County;
(8) Butler, Ballard County;
(9) Carpenter Lake, Daviess County;
(10) Carter Caves Lake, Carter County;
(11) Cross Slough, Ballard County;
(12) Cypress Slough, Ballard County;
(13) Deep Slough, Ballard County;
(14) Fishpond Lake, Letcher County;
(15) Happy Hollow Lake, Ballard County;
(16) Kingfisher Lake, Daviess County;
(17) Lake Mauzy, Union County;
(18) Lake Reba, Madison County;
(19) Lake Washburn, Ohio County;
(20) Lebanon City Lake, Marion County;
(21) Lincoln Homestead Lake, Washington County;
(22) Little Green Sea, Ballard County;
(23) Little Turner Lake, Ballard County;
(24) Long Pond, Ballard County;
(25) Marion County Lake, Marion County;
(26) Martin County Lake, Martin County;
(27) McNeely Lake, Jefferson County;
(28) Metcalfe County Lake, Metcalfe County;
(29) Mill Creek Lake, Wolfe County;
(30) Mitchell Lake, Ballard County;
(31) Pikeville City Lake, Pike County;
(32) Sandy Slough, Ballard County;
(33) Shelby Lake, Ballard County;
(34) Spurlington Lake, Taylor County; and
(35) Twin Pockets Slough, Ballard County.

[~~Section 5. On the following lakes, a person shall not operate a boat motor larger than ten (10) horsepower:~~
~~(1) Beaver Lake, Anderson County;~~
~~(2) Boltz Lake, Grant County;~~
~~(3) Bullock Pen Lake, Grant County;~~
~~(4) Corinth Lake, Grant County;~~
~~(5) Elmer Davis Lake, Owen County;~~
~~(6) Kincaid Lake, Pendleton County;~~
~~(7) Shanty Hollow Lake, Warren County; and~~
~~(8) Swan Lake, Ballard County.~~]

Section 6. A person shall not operate a motorboat faster than idle speed on:
(1) Carnico Lake, Nicholas County;
(2) Goose Lake, Muhlenberg County;
(3) Greenbo Lake, Greenup County;
(4) Island Lake, Ohio County;
(5) South Lake, Ohio County;
(6) Pan Bowl Lake, Breathitt County; and
(7) Wilgreen Lake, Madison County.

Section 7. A person operating a boat motor greater[~~larger~~] than ten (10) horsepower shall not exceed idle speed at any time on the following lakes:
(1) Beaver Lake, Anderson County;
(2) Boltz Lake, Grant County;
(3) Bullock Pen Lake, Grant County:
(4) Corinth Lake, Grant County;
(5) Elmer Davis Lake, Owen County;
(6) Herb Smith/Cranks Creek Lake, Harlan County;
(7) Kincaid Lake, Pendleton County;
(8) Martins Fork Lake, Harlan County;
(9) Shanty Hollow Lake, Warren County; and
(10) Swan Lake, Ballard County[~~(1) Herb Smith/Cranks Creek Lake; and (2) Martins Fork Lake~~].

KAREN WALDROP, Deputy Commissioner,
For GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary
APPROVED BY AGENCY: October 13, 2014
FILED WITH LRC: October 14, 2014 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2014, at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by close of business December 1, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation limits the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the safety of individuals boating on these small lakes and to minimize interference with other users.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters it has acquired. KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable and safe use of all waters of the state.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation helps fulfill the purpose of KRS 150.620 and 235.280 by providing fair, reasonable, equitable, and safe use of small lakes in the state.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will allow boats with motors larger than 10 horsepower to operate at idle speed at Beaver, Boltz,

Bullock Pen, Corinth, Elmer Davis, Kincaid, Shanty Hollow, and Swan lakes. Previously, motors larger than ten (10) horsepower were prohibited at these lakes.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to legally allow boats with motors greater than ten (10) horsepower to operate at idle speeds at these lakes, which will increase fishing opportunities for boaters with motors greater than ten (10) horsepower without sacrificing safety on these small lakes.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who have boats with motors greater than ten (10) horsepower will be able to legally operate their motors at the above lakes. It is unknown how many people this will affect.

(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: People fishing at the above small lakes will be able to operate a boat with a motor greater than ten (10) horsepower, but at idle speed only.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to individuals as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All individuals who have boats with motors larger than ten (10) horsepower will now be able to run those motors at idle speed when fishing at Beaver, Boltz, Bullock Pen, Corinth, Elmer Davis, Kincaid, Shanty Hollow, and Swan lakes.

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

(a) Initially: There will be no cost initially to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees will be directly or indirectly increased.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters it has acquired. KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable and safe use of all waters of the state.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue will not be generated by this administrative regulation for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue will not be generated by this administrative regulation during subsequent years.

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

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

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:140. Requirements for wild turkey hunting.

RELATES TO: KRS 150.010,[~~150.092,~~] 150.170[~~(3)~~], 150.175, 150.305, 150.360,[~~150.365, 150.390(1),~~] 150.990[~~(11)~~]

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

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 such requirements apply to a limited area. KRS 150.390(1) prohibits the taking of[~~governing~~] wild turkeys in any manner contrary to any provisions of KRS Chapter 150 or its administrative regulations[~~turkey hunting~~]. This administrative regulation establishes legal methods of take and checking and recording requirements[~~procedures~~] for[~~hunting~~] wild turkey hunting[~~to assure the continued protection and conservation of wild turkey populations, and a permanent and continued supply for present and future residents of the state~~].

Section 1. Definitions. (1) "Baited area" means an area where feed, grains or other substances capable of luring wild turkeys have been placed.

(2) "Crossbow" means a bow capable of holding an arrow at full or partial draw without human aid.

(3) "Youth" means a person under the age of sixteen (16) by the day of the hunt.

Section 2. Wild Turkey Season Dates and Bag Limits. A person shall only[~~not~~] take a wild turkey[~~(1) Except on the dates and~~] during the seasons established in[~~times specified in~~]:

(1)[~~(a)~~] 301 KAR 2:142;

(2)[~~(b)~~] 301 KAR 2:144; and

(3)[~~(c)~~] 301 KAR 2:111[~~; or (2) By means other than those specified in this administrative regulation~~].

Section 3. License and Wild Turkey Permit Requirements. Unless exempted by KRS 150.170[~~(3)~~], a person hunting a wild turkey shall possess proof of purchase of a valid Kentucky hunting license and[~~a person hunting a wild turkey shall possess~~] a:

(1) Valid spring turkey[~~hunting~~] permit during the spring season; or

(2) Valid fall turkey[~~archery hunting~~] permit during a[~~the~~]

fall[archery] season[; or(3) Fall turkey gun hunting permit if hunting with a firearm or crossbow during the fall gun season].

Section 4. Harvest Recording. (1)[An adult shall accompany and maintain control of a person under sixteen (16) years of age turkey hunting with a firearm. (2)] Immediately after harvesting[taking] a wild turkey, and prior to moving the carcass, a person shall[: (a)] record[,] in writing the:

(a)[, the] Species[, date] taken;

(b) Date taken;

(c)[,] County where taken; and

(d)[, and] Sex of the wild turkey[bird before moving the carcass from the site where] taken[. This information shall be logged and registered] on[one (1) of the following]:

1. The hunter's log section on the reverse side of a license or permit;

2. The hunter's log produced in a hunting guide;

3. A hunter's log printed from the Internet;

4. A hunter's log available from any KDSS agent; or

5. An index or similar card.

(2) A person shall[or reasonable facsimile thereof; and (b)] retain and possess the completed hunter's log while the person is in[his possession whenever the hunter is in] the field during the current hunting season.

Section 5. Checking a Wild Turkey. (1)[(3)] A person shall check a harvested wild turkey by:

(a) Completing[Calling 1-877-245-4263] the telecheck process after calling (800) 245-4263 or completing the check-in process on the department's Web site at fw.ky.gov:

1. Before midnight on the day the wild turkey is recovered[harvested]; and

2. Prior to processing[(b) Providing] the carcass[information requested by the automated check-in system]; and

(b)[(c)] Writing the check-in authorization number[given by the system] on the hunter's log as established[described] in Section 4 of this administrative regulation.

(2)[(4)] A person shall:

(a) Not knowingly provide false information when completing the hunter's log, checking a wild turkey, or creating a carcass tag; or

(b) Check a wild turkey before transporting it out of Kentucky.

(3)[(5) A person taking a turkey on a Wildlife Management Area shall follow the tagging and checking requirements in 301 KAR 2:142 and 301 KAR 2:111.

(6)] If a hunter transfers possession of a harvested wild turkey [leaves the possession of a hunter], the hunter shall attach to the carcass a hand-made tag[,] which contains the information established in paragraphs (a) through (c) of this subsection:

(a) A valid confirmation number;

(b) The[,] hunter's name;[,] and

(c) The hunter's telephone[a phone] number[, to the carcass].

Section 6. Weapon Restrictions.[5. Firearms and Archery Equipment.] (1) A person[hunting wild turkey] shall only[not] use the weapons and ammunition established in paragraphs (a) through (c) of this subsection to take a wild turkey[or carry]:

(a) A crossbow[rifle] or archery equipment loaded with a non-barbed broadhead which has a minimum cutting diameter of seven-eighths (7/8) inch, whether:

1. Expandable; or

2. Non-expandable[handgun];

(b) A .410 shotgun or larger, but no larger than a ten (10) gauge shotgun[or smaller than twenty (20) gauge];

(c) A shell containing shot of size no larger than number four (4).

(2) A[; (d) Shotgun slugs;

(e) A firearm during archery-only seasons;

(f) Barbed broadheads;

(g) Broadheads smaller than seven-eighths (7/8) inch wide;

(h) Arrows with chemical treatments or attachments containing chemicals; or

(i)] crossbow shall be equipped with[without] a working safety device.[(2) A person hunting wild turkeys may use a crossbow during firearm season.]

Section 7. Hunter Restrictions[6. Baiting]. (1) A person shall not hunt wild turkeys on a baited area or by the aid of baiting:

(a) While bait is present; or

(b) For thirty (30) days after the bait has been removed.

(2) A person may hunt wild turkeys[turkey] on an area where grain, feed or other substance exists as the result of:

(a) A bona fide agricultural practice; or

(b) Manipulating a crop for a wildlife management purpose.

(3) A field shall be considered baited if grain, feed or other substance grown on the field is removed and later returned to the field.

(4)[Section 7. Turkey Hunting Restrictions. (1)] A person hunting wild turkeys:

(a) May use a hand or mouth-operated call; and

(b) Shall not:

1. Use a dog to aid in taking a wild turkey during the spring season;

2. Hunt from a boat;

3. Use or possess an electronic or digital calling device;

4. Use a live decoy; or

5. Harvest[Take] a roosting turkey[; or

6. Hunt with a crossbow without a working safety device].

(5) In an area open to wild turkey hunting and where wild turkeys are reasonably expected to occur,[(2)] a person shall not mimic the sound of a wild turkey from:

(a) March 1 until the opening of the youth turkey[spring] season; and

(b) The close of the youth turkey season and the opening of the statewide turkey season[in an area open to hunting if turkeys are reasonably expected to occur].

(6) An adult shall accompany and maintain control of a youth who is hunting wild turkeys with a firearm.

KAREN WALDROP, Deputy Commissioner,
For GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: October 13, 2014

FILED WITH LRC: October 14, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2014, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made available unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by close of business December 1, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507 fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the hunting seasons, limits, and equipment restrictions under which wild turkeys may be taken.

(b) The necessity of this administrative regulation: To establish wild turkey hunting season requirements and methods of take to

provide reasonable hunting opportunity, while properly managing turkey populations in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish open seasons for the taking of wildlife, regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of wild turkeys in any manner contrary to any provisions of Chapter 150 or its regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in administering the above statutes by defining seasons, bag limits, and methods of take used to manage wild turkeys in Kentucky.

(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 adds the .410 shotgun as a legal weapon for hunting wild turkeys. It also contains modifications to conform to administrative regulation style requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to maximize hunter opportunity without negatively impacting the wild turkey resource.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All hunters that pursue wild turkeys will be affected by this regulatory amendment. In 2013, there were 24,724 Turkey Permits sold in Kentucky. There were an additional 66,239 Sportsman Licenses sold in 2013; those also allow the take of wild turkeys.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hunters will be allowed to use .410 shotguns while hunting wild turkeys. Current weapon restrictions prohibit the use of shotguns that are smaller than twenty (20) gauge.

(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 direct cost to hunters as a result of this amendment to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunters will now be able to use .410 shotguns to hunt wild turkeys.

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

(a) Initially: There will be no administrative cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the department 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 fees established or increased.

(9) TIERING: Is tiering applied? No. Tiering was not used because all persons who hunt wild turkeys are required to abide by the same seasons, methods of take, bag limits, harvest recording procedures, and checking requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife 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) and 150.390(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue generated by this administrative regulation for the first year is expected to be stable to slightly increasing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue generated by this administrative regulation for subsequent years is expected to be stable to slightly increasing.

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

(d) How much will it cost to administer this program for subsequent years? There will be no administrative cost 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 (+/-): This amendment may generate some additional revenue as increased hunter opportunity could produce additional license and permit sales.

Expenditures (+/-): None.

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:144. Fall wild turkey hunting.

RELATES TO: KRS 150.010, 150.170, 150.175[~~(1)(r)~~], 150.305, 150.360, 150.390, 150.990[~~(11)~~]

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(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 such requirements apply to a limited area. KRS 150.390(1) prohibits the taking of wild turkeys in any manner contrary to any provisions of KRS Chapter 150 or its administrative regulations. This administrative regulation establishes seasons, bag limits, hunter requirements, and special area restrictions for fall wild turkey hunting[~~KRS 150.025(1) and 150.390(1) authorize the department to promulgate administrative regulations governing wild turkey hunting. This administrative regulation establishes season dates, shooting hours and other requirements for fall firearm and archery turkey seasons~~].

Section 1. Definitions. (1) "Crossbow" means a bow capable of holding an arrow at full or partial draw without human aid.

(2) "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.

Section 2. Statewide Wild Turkey Season Dates[~~Seasons and Shooting Hours~~]. Except as specified in 301 KAR 2:111, a person shall only take wild turkeys during the seasons established in subsections (1) through (3) of this section:

(1) Archery season shall be the first Saturday in September through the third Monday in January;[~~.~~]

(2) Crossbow season shall be:

(a) From October 1 through the end of the third full weekend in October; and

(b) From the second Saturday in November through December 31; and[~~.~~]

(3) Firearm season shall be:

(a) For seven (7) consecutive days beginning the fourth Saturday in October[~~for seven (7) consecutive days~~]; and

(b) For seven (7) consecutive days beginning the first Saturday in December[~~for seven (7) consecutive days~~].

[~~(4) A person may take a wild turkey from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.~~]

Section 3.[~~2.~~] Legal Equipment[~~Weapons~~]. (1) A person shall only use legal weapons and ammunition as[~~Firearms, archery and crossbow equipment shall meet the specifications~~] established in 301 KAR 2:140[~~, Section 5~~].

(2)[~~(1)~~] Fall archery season. Archery equipment may be used.

(3)[~~(2)~~] Fall crossbow season. Crossbows and archery equipment may be used.

(4)[~~(3)~~] Fall firearm season. Archery equipment, crossbows, and firearms may be used.

Section 4. Wild Turkey[~~3.~~] Bag Limits. (1) A person shall not take more than [~~a total of~~] four (4) wild turkeys, no more than two (2) of which shall be taken with a firearm[~~with a maximum of:~~

~~(a) Two (2) wild turkeys during the fall archery and crossbow seasons; and~~

~~(b) Two (2) wild turkeys during the fall firearm season~~].

(2) Only one (1) of the turkeys taken pursuant to subsection (1) of this section shall have a visible beard at least three (3) inches long.

(3) A person shall not harvest more than one (1) wild turkey per day[~~Section 4. Hunter Orange. Wild turkey hunters shall wear hunter orange during the fall firearm deer season as established in 301 KAR 2:172, Section 4~~].

Section 5. Hunter Restrictions. (1)[~~Use of Dogs.~~] Dogs may be used to aid in taking wild turkeys during any fall season.

(2) A person may take a wild turkey from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(3) A person hunting wild turkeys in the fall shall comply with all license, permit, and check-in requirements established in 301 KAR 2:140[~~turkey~~].

Section 6. Wildlife Management Areas. Unless specified below, Wildlife Management Areas shall be open to fall wild turkey hunting under the statewide requirements specified in Sections 2 through 6[~~1 through 4~~] of this administrative regulation and 301 KAR 2:140.

(1) Ballard Wildlife Management Area. A person shall not hunt wild turkeys during the fall firearm, crossbow, or archery season.

(2) Barren River Wildlife Management Area. On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person:

(a) Shall not hunt during the fall firearm season with a breech-loading firearm;

(b) May use a muzzleloading shotgun[~~muzzleloader~~] or crossbow during the fall firearm season; and

(c) May use a crossbow during the fall archery season.

(3) Higginson-Henry Wildlife Management Area. A person shall not use[~~or possess~~] a firearm while turkey hunting.

(4) Pioneer Weapons Area. A person may use a crossbow during the fall archery turkey season.

(5) Main block of Robinson Forest. A person shall not hunt wild turkeys during the fall firearm, crossbow, or archery season except persons participating in a department-authorized hunt.

(6) Swan Lake Unit of Boatwright Wildlife Management Area. A person shall not hunt wild turkeys during the fall firearm, crossbow, or archery season.

Karen Waldrop, Deputy Commissioner,
For Gregory K. Johnson, Commissioner
Robert H. Stewart, Secretary

APPROVED BY AGENCY: October 13, 2014

FILED WITH LRC: October 14, 2014 at 4 p.m.

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CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the statewide fall hunting seasons, bag limits, equipment restrictions, and hunting methods under which wild turkeys may be taken.

(b) The necessity of this administrative regulation: To establish a fall turkey season to further manage and conserve the wild turkey population in Kentucky while allowing reasonable hunting opportunity.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish open seasons for the taking of wildlife, regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of wild turkeys in any manner contrary to any provisions of Chapter 150 or its regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in administering the above statutes by defining fall seasons, bag limits, and methods of take used to manage wild turkeys in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies regulatory language with respect to the existing one (1)-bird daily bag limit for turkeys in the fall. In addition, this amendment allows archery and crossbow hunters to harvest all four (4) wild turkeys during any open fall season for turkeys. It also contains modifications to conform to administrative regulation style requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to maximize hunter opportunity without negatively affecting the wild turkey resource.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All hunters that pursue wild turkeys will be affected by this regulatory amendment. In 2013, there were 2,486 Fall Turkey Permits sold in Kentucky. There were an additional 66,239 Sportsman Licenses sold in 2013; those also allow the take of wild turkeys in the fall.

(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: Archery and crossbow hunters would be permitted to harvest the four (4)-bird season bag limit during any open season in the fall, including the fall firearm season. Current restrictions require two (2) birds to be harvested during the fall firearm season for turkeys.

(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 direct cost to hunters as a result of this amendment to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The turkey hunters of the Commonwealth will be affected positively, as additional hunter opportunity will be allowed.

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

(a) Initially: There will be no additional cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the department 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 fees established or increased.

(9) TIERING: Is tiering applied? No. Tiering was not used because all persons who hunt wild turkeys are required to be in compliance.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife 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) and 150.390(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not likely that this amendment will increase revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not likely that this amendment will increase revenue for subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional administrative cost 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 (+/-): None.

Other Explanation:

Education and Workforce Development Cabinet
Kentucky Board of Education
Department of Education
(Amendment)

705 KAR 4:250. Energy technology engineering career pathway.

RELATES TO: KRS 158.808, 158.810

STATUTORY AUTHORITY: KRS 156.070, 158.808

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.808 requires the[~~Kentucky~~] Department of Education (department) to establish and administer an energy technology engineering career pathway, approve grant recipients, and distribute funds to local school districts. The Kentucky Board of Education is authorized by KRS 158.808 to promulgate administrative regulations for the administration of that program. This administrative regulation establishes a process for the department[~~Kentucky Board of Education~~] to administer the energy technology engineering career track program, approve grant recipients, and distribute funds to local school districts.

Section 1. Definitions[~~Definition~~]. (1) "Career pathway" is defined in KRS 158.810(6)[~~means a coherent, articulated sequence of rigorous academic and career and technical courses, including dual credit opportunities, leading to a postsecondary degree or industry-recognized certification or licensure, that is developed, implemented, and maintained in partnership with secondary and postsecondary institutions, businesses, and employers~~].

(2) "Secondary area center" is defined in KRS 158.810(11).

Section 2. Application Process. (1) A Kentucky public school district shall be eligible to apply for a grant through a request for proposal process.

(2) A local school district superintendent shall submit the application and have the approval of participating schools' school-based decision making councils and local board of education.

(3) A grant application shall indicate the fiscal agent as:

(a) A local board of education for all district comprehensive secondary schools and locally-operated secondary area centers; or

(b) The department's Office of Career and Technical Education for all state-operated secondary area centers.

(4) To be eligible for funding, an applicant school shall provide an energy career pathway which includes the following components:

(a) Energy-related applications, including energy and power technology, engineering design and development, and energy-related research and applications as developed by the department in consultation with representatives from the energy technology industry, the University of Kentucky Center for Applied Energy Research, the Council on Postsecondary Education, the Kentucky Community and Technical College System, the Kentucky Department for Energy Development and Independence, and local school districts[~~The Project Lead the Way middle school program Gateway to Technology, with content to include energy-related activities and the following Project Lead the Way pre-engineering courses at the high school level:~~

~~1. Introduction to Engineering Design;~~

~~2. Principles of Engineering;~~

~~3. Digital Electronics;~~

~~4. A specialized course in Energy and Power Technology, or integration of energy-related content and applications in each of the Project Lead the way courses. The content shall include energy-related applications as developed by the Kentucky Department of Education, in consultation with representatives from the energy technology industry, the University of Kentucky Center for Applied Energy Research, the Council on Postsecondary Education, the Kentucky Community and Technical College System, Governor's Office of Energy Policy, local school districts, and Project Lead the Way; and~~

~~5. Engineering Design and Development, with content to include energy-related research and applications~~];

(b) The opportunity for students to participate in energy related internships or cooperative education with energy-related industries or postsecondary education;

(c) Matching funds that shall be allocated to directly support the implementation of the program, which may include other state, federal, local, or nonpublic sources, within the uses and conditions set forth by the source of those funds. Previously awarded energy and engineering initiative[~~Project Lead the Way~~] state grants and local matches shall not be considered as matching funds for this program; and

(d)[~~Status as a registered Project Lead The Way site prior to disbursement of funds; and (e)~~] Submission of seven (7) complete copies of the application plus an electronic copy.

Section 3. Selection of Grants. (1) The criteria for selection of applications for funding shall be based on the appropriateness and quality of the following:

(a) Process for identifying potential students and estimated enrollment in the Energy Technology Engineering Career Pathway;

(b) An implementation plan, which includes:

1. Computer availability, including hardware and software commonly used in related fields;

2. Teacher availability and certification;

3. Elementary school integration;

4. Middle school and high school program;

5. Measures of student progress to be utilized;

6. Instructional space;

7. Student Recruitment Plan, including recruitment of traditionally underserved populations;

8. Business and postsecondary partners and other education partnerships; and

9. Narrative of budget and timeline, including the efficient and effective use of proposed grant funds and matching funds;

(c) Program evaluation to include annual graduate follow-up surveys; and

(d) Level of individual school and district commitment for teacher professional development[~~; and (e) Narrative of budget and timeline, including the efficient and effective use of proposed grant funds and matching funds~~].

(2) An application shall be reviewed as follows:

(a) A team of evaluators shall review the application; and

(b)[~~1.~~] The department[~~Kentucky Department of Education~~] shall approve funding based upon the results of the review.

(3)[~~2.~~] Consideration may be given to provide for geographic diversity and the number of students to be served in order to maximize the benefits of the program.

Section 4. Grant Allocations and Requirements. (1) The award size or range of grants shall be determined by the department[~~Kentucky Department of Education~~].

(2) Allowable expenditures include:

(a) Laboratory equipment and instructional materials necessary for[~~Project Lead the Way~~] instruction;

(b) Computers and computer upgrades;

(c) Computer software required by the curriculum[~~Project Lead the Way~~];

(d) A laptop computer for the instructor;

(e) Travel expenses and registration fees for teachers and school administrators, including school counselors, to attend[~~the~~] required conferences and trainings[~~Project Lead the Way counselors conference~~];

(f)[~~Travel expenses and registration fees for teachers to attend the required Project Lead the Way summer teacher institutes;~~

~~(g)~~] Resources and professional learning[~~development~~] for integrating energy activities in the curriculum; and

(g)[~~(h)~~] Energy related instructional materials and equipment.

(3) State grant funds shall not be used to maintain, renovate, or build facilities or pay teacher salaries, but local district expenditures for these purposes may be included as matching funds.

(4) Monitoring of awarded grants shall include the following:

(a) Fiscal reports submitted semi-annually[~~quarterly~~] to the department[~~of Education~~]; and

(b) Annual program evaluation report on the implementation plan that outlines the project accomplishments related to the project need, objectives, and outcomes.

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 L. MARCUM, Chairperson

APPROVED BY AGENCY: October 13, 2014

FILED WITH LRC: October 14, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2014, at 10 a.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 1, 2014. 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 establishes the processes to be followed by the agency when administering the energy technology engineering career track program, approving grant recipients, and distributing the funds to local districts.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.808 that required the agency to establish an energy and engineering technology career track program and distribute funds to local school districts that wish to implement such career pathways.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides criteria for the grant application process, as well as guidance surrounding proper implementation plans and data reporting procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics on how to apply for the implementation and sustainability funds outlined in KRS 158.808

that are available to districts that offer these pathways at the middle and high school levels.

(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 amendments would ensure equitable access to the grant funds, regardless of the district's chosen pathway curriculum. Vendor-specific language within the original form of the administrative regulation has been removed, as this decision should be made based upon the needs of the specific school and the local industry.

(b) The necessity of the amendment to this administrative regulation: As new and emerging secondary programs are developed around the STEM (Science, Technology, Engineer and Technology) fields, and these programs continue to grow in popularity and demand, the need has become evident to provide greater accessibility to these grant funds.

(c) How the amendment conforms to the content of the authorizing statute: The amendments maintain the integrity of the grant application process, as well as the implementation and data reporting procedures.

(d) How the amendment will assist in the effective administration of the statutes: The amendments seek to promote and increase participation in these career pathways through the financial support of the grant funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts and state-operated area technology centers in Kentucky that offer energy and engineering technology career pathways.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The administrative regulation will impact identified schools and districts by providing the detail necessary to apply for the grant funding outlined in KRS 158.808.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts wishing to apply for such funds must submit a formal application that adheres to the requirements outlined in the administrative regulation. They must also comply with the implementation and sustainability plans, as well as accurate and timely data reporting requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The chosen school districts to be awarded the grant funds are required to find matching funds, allocated directly to support the implementation of the program. The number of awardees and the award amounts are determined each year by the agency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit school districts by ensuring that all who desire to offer such pathways have the same access and opportunity to apply for these implementation and sustainability funds, regardless of what program or curriculum vendor they choose.

(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: 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 increase will be necessary.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts that offer these pathways.

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 Kentucky school districts

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.808, KRS 158.810

(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? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? No additional costs from previous years.

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

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Fire Commission
(Amendment)

739 KAR 2:060. Certification and qualifications of fire service[~~protection~~] instructors.

RELATES TO: KRS 95A.040(3)(b)1[~~95A.040(2)(b)~~]

STATUTORY AUTHORITY: KRS 95A.050(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.040(3)(b)[~~95.040(b)~~] authorizes the Commission on Fire Protection Personnel Standards and Education to certify fire service[~~protection~~] instructors. This administrative regulation sets forth the criteria for instructor certification, including the training and educational requirements of applicants for certification[~~prerequisite for and justification of those instructors~~].

Section 1. Definitions. (1) "Bridge course" means an educational program provided by the commission to update out-of-state fire service instructors seeking Kentucky instructor certification through reciprocity on paperwork and legal requirements specific to fire service instructors certified in the Commonwealth of Kentucky.

(2)[~~A~~] "Certified professional firefighter" means a firefighter who meets the requirement of KRS 95A.210 and 95A.230.

(3)[~~(2)~~] "Certified volunteer firefighter" means an individual who has received at least 150 hours of certified training as recognized by the Commission on Fire Protection Personnel Standards and Education and who receives at least twenty (20) hours of certified training annually to maintain certification.

(4)[~~(3)~~] "Commission" means the Commission on Fire Protection Personnel Standards and Education[~~commission~~] as defined by KRS 95A.210(1).

[~~(4) "Educational methodology course" means a course meeting the objectives of NFiPA 1041 and conducted by:~~

~~(a) KCTCS;~~

~~(b) a Kentucky college or university;~~

~~(c) The National Fire Academy;~~

~~(d) A governmental entity authorized by the National Fire Academy to train within its jurisdiction and approved by the Fire Commission; or~~

~~(e) An agency approved by the Fire Commission to train within its jurisdiction.~~]

(5) "Fire department" means a fire department recognized by the commission as defined by KRS 75.400(2) and KRS 95.010(1)(c)[~~in KRS 75.400 and Chapter 95~~].

(6) "Firefighter I" means an individual who has demonstrated the knowledge and skills to function as an integral member of a firefighting team under direct supervision in hazardous conditions and is certified by the commission through the International Fire Service Accreditation Congress in the Commonwealth of Kentucky.

(7) "Firefighter II" means an individual who has demonstrated the skills and depth of knowledge to function under general supervision and is certified by the commission through the International Fire Service Accreditation Congress in the Commonwealth of Kentucky.

(8) "Fire service instructor"[~~(7) "Fire protection instructor" or "fire service training officer"~~] means a person certified pursuant to KRS 95A.040(2)(b) and this administrative regulation as qualified to instruct fire protection personnel or oversee the training of fire protection personnel.

(9) "IFSAC" means the International Fire Service Accreditation Congress.

(10)[~~(8)~~] "KCTCS" means the Kentucky Community and Technical College System.

(11) "MOI" means an educational methodology course meeting the objectives of NFPA 1041 and conducted by:

(a) KCTCS;

(b) A Kentucky college or university;

(c) The National Fire Academy;

(d) A governmental entity authorized by the National Fire Academy to train within its jurisdiction and approved by the commission; or

(e) An agency approved by the commission to train within its jurisdiction.

(12) "Reciprocity" means the recognition of an IFSAC certification from another state, territory, province, or nation following verification that the certification is current, valid, and without restriction.

(13) "Train the Trainer course" means a pedagogy program intended to educate certified fire service instructors on the primary highlights and uses of courses taught to fire protection personnel.

Section 2. Levels of Certification and Scope. (1) The commission shall certify fire service instructors at the following levels:

(a) Instructor Level I;

(b) Instructor Level II; and

(c) Instructor Level III.

(2) Instructors may only teach fire service subjects upon meeting all requirements for certification mandated by this administrative regulation. A certified fire service instructor may only teach subjects within the scope of the instructor's respective fire service instructor level, subject to the conditions set forth in this section of this administrative regulation.

(3) Persons certified as Level I fire service instructors shall be authorized to conduct firefighter training at any fire department or agency located in the Commonwealth subject to the following:

(a) Training shall only be conducted at the request of a fire department or agency; and

(b) Upon invitation, a person certified as a Level I fire service instructor shall conduct training using curricula approved by the commission.

(4) A person certified as a Level II fire service instructor shall be authorized to conduct firefighter training at any fire department or agency located in the Commonwealth subject to the following:

(a) Training shall only be conducted at the request of a fire department or agency; and

(b)1. At a fire department of which the Level II fire service instructor is not a member, the Level II fire service instructor may personally conduct training using lesson plans which he or she has developed; or

2. At a fire department of which the Level II fire service instructor is a member, the Level II fire service instructor may allow a Level I fire service instructor to conduct training under the Level II fire service instructor's direction, using lesson plans developed by the Level II fire service instructor.

(5) A Level III fire service instructor shall be authorized to:

(a) Develop comprehensive training curricula and programs for use by single or multiple organizations;

(b) Conduct organization needs analysis;

(c) Design record keeping and scheduling systems;

(d) Develop training goals and implementation strategies; and

(e) Conduct firefighter training and Level I and II fire service instructor training at any fire department or agency located in the Commonwealth. Training shall only be conducted at the request of a fire department or agency.

(6) Instructors shall successfully complete the commission's Train the Trainer course and shall thereafter teach only from lesson plans developed by the commission or State Fire Rescue Training, or curricula approved by the commission prior to instruction[~~Level I Fire Protection Instructors. Persons certified as Level I fire protection instructors shall be authorized to deliver training to the fire department of which they are a member.~~

~~(1) Requirements for certification. An individual shall be certified by the commission as a Level I instructor if satisfactory written evidence is submitted to the commission that the individual meets the following criteria:~~

~~(a) Has submitted a completed application that has been approved by his fire chief;~~

~~(b) Is a high school graduate or the equivalent;~~

~~(c) Has two (2) years experience as a firefighter;~~

~~(d) Is a Kentucky certified firefighter; and~~

~~(e) Submits proof that he has completed a sixteen (16) hour National Fire Academy Instructional Techniques class or a class that has been approved by the commission.~~

~~(2) Certification terms. Certification shall expire after a period of three (3) years, unless renewed.~~

~~(3) Certification renewal.~~

~~(a) Certification shall be renewed if an applicant has:~~

~~1. Taught at least thirty-two (32) hours, prior to the expiration of his certification; or~~

~~2. Attended a sixteen (16) hour National Fire Academy Instructor class, or an equivalent approved by the commission.~~

~~(b) It shall be the responsibility of the individual instructor and his agency to submit an application for renewal on Form KFI-1, July 14, 1998~~].

Section 3. Instructor Certification Requirements. (1) No instructor at any level shall be authorized to teach without first meeting all requirements set by the commission for certification.

(2) An applicant for initial certification as a Level I fire service instructor shall complete and submit the following:

(a) A completed Level I Fire Service Instructor Application signed by the applicant's fire chief or designee;

(b) Verification of two (2) years' continuous experience as a certified professional or volunteer firefighter in the Commonwealth of Kentucky, or in another state, preceding the application date for Level I fire service instructor certification;

(c) Copies of IFSAC accredited Kentucky, or IFSAC accredited Kentucky reciprocity, Firefighter I and II certificates subject to the following requirements:

1. The applicant's certification seal numbers shall be denoted in the designated portion of the instructor Level I application; and

2. The applicant's IFSAC accredited Kentucky, or IFSAC accredited Kentucky reciprocity, certification shall provide documentation of successful completion of both written and skills performance tests;

(d) A copy of the applicant's high school diploma or general equivalency diploma (GED), and one (1) of the following MOI:

1. First MOI: Certification as an IFSAC accredited Kentucky, or IFSAC accredited Kentucky Reciprocity, Instructor I;

2. Second MOI: A Bachelor's degree in education issued by an accredited institution of higher education; and

3. Third MOI: Holds a position as an instructor or instructional faculty member of an institution of higher education in the subject of fire service, or a related field.

(3) An applicant for initial certification as a Level II fire service instructor shall submit the following:

(a) A completed Level II Fire Service Instructor Application signed by the applicant's fire chief or designee, with the applicant's IFSAC accredited Kentucky, or IFSAC accredited Kentucky Reciprocity certification seal number(s) denoted as indicated;

(b) Verification of four (4) years' continuous experience as a certified professional or volunteer firefighter in the Commonwealth of Kentucky, or in another state, preceding the application date for Level I fire service instructor certification;

(c) Proof of two (2) years' experience as a Level I fire service instructor; and

(d) Verification of completion of all Level I fire service instructor renewal requirements as set forth in this administrative regulation.

(4) An individual desiring initial certification as a Level III fire service instructor shall submit the following:

(a) A Level III Fire Service Instructor Application completed on the applicant's behalf by the fire department for which the applicant has served as an active member for at least six (6) consecutive years and signed by the applicant's fire chief or designee, with the applicant's IFSAC accredited Kentucky, or IFSAC accredited Kentucky Reciprocity certification seal number(s) denoted as indicated;

(b) Service as a fire service Level II instructor for a minimum of two (2) years prior to the application date for fire service Level III instructor certification;

(c) Positive recommendations following interviews with the commission, the Fire Commission Division Director of Operations, and the State Fire Rescue Training Division Director, or the director's designee(s);

(d) Verification of completion of all Level II fire service instructor renewal requirements as set forth in this administrative regulation; and

(e) Evidence of previous assistance with the delivery of at least two (2) MOI approved by the commission[~~Level II Fire Protection Instructors. Persons certified as Level II instructors shall be authorized to deliver training to a fire department within the Commonwealth upon invitation by that agency.~~

~~(1) Requirements for certification. An individual shall be certified by the commission as a Level II fire protection instructor if satisfactory written evidence is submitted to the commission that the individual:~~

~~(a) Is qualified by the following:~~

~~1. Has certified firefighter status;~~

~~2. Has submitted a completed application that has been approved by his fire chief;~~

~~3. Is a high school graduate or the equivalent; and~~

~~4. Has had four (4) years experience as a firefighter; and~~

~~(b) Is further qualified by having completed one (1) of the following:~~

~~1. Has completed a minimum of thirty-two (32) hours of an educational methodology course; or~~

~~2. Holds a valid teaching certificate issued by the Kentucky Department of Education and is a certified firefighter; or~~

~~3. Is a full-time instructor or faculty member of an institution of higher education in Kentucky, teaching in a fire science or fire technology curriculum; or~~

~~4. Holds a valid instructor's certificate issued by an out-of-state fire training agency approved by this commission.~~

~~(2) Certification term. Certification shall expire after a period of three (3) years, unless renewed.~~

~~(3) Certification renewal.~~

~~(a) It shall be the responsibility of the individual instructor and his agency to submit an application for renewal on Form KFI-2, July 14, 1998.~~

~~(b) The following shall be required of an applicant seeking renewal of his certification:~~

~~1. He shall have taught a minimum of sixty (60) hours during his three (3) year certification period; or~~

~~2. He shall have taught a minimum of thirty (30) hours and shall reattend the thirty-two (32) hour educational methodology course~~].

Section 4. Reciprocity. Individuals seeking certification as a Level I, II, or III fire service instructor through reciprocity from any state or territory in the United States shall be granted approval by the commission if the applicant meets all certification requirements for Level I, II, or III instructor certification pursuant to Section 3 of this administrative regulation, if:

(1) The two (2), four (4), or six (6) year continuous work periods mandated by Section 3(2)(b), (3)(b), and (4)(a) of this administrative regulation shall have been completed while certified by and in good standing with the certifying agency of the state in which the firefighter served for the period of time necessary to qualify for reciprocity in the Commonwealth of Kentucky;

(2) The applicant's continuous work periods mandated by Section 2(2)(b), (3)(b), and (4)(a) of this administrative regulation shall immediately precede the date on which the applicant applies for Level I, II, or III fire service instructor certification in the Commonwealth of Kentucky.

(3) The individual shall complete the commission's bridge course prior to certification as a fire service instructor by the commission[~~Level III Fire Protection Instructors. Persons certified as Level III fire protection instructors shall be authorized to deliver training to fire departments or to train persons for Level I and II certification and to train Level II instructors to become Level III fire protection instructors.~~

~~(1) An applicant shall be certified as a Level III instructor if the following has occurred:~~

~~(a) The fire department of which the applicant is a member applies for his recognition by the commission as a Level III instructor;~~

~~(b) The applicant interviewed with the commission, if requested; and~~

~~(c) The following written information has been submitted:~~

~~1. A completed application and resume;~~

~~2. Proof of the applicant's current certification as a Level II fire protection instructor; and~~

~~3. Sufficient evidence of having assisted with the delivery of at least one (1), thirty-two (32) hour educational methodology course or instructional technique class prior to requesting approval as a Level III instructor.~~

~~(2) Certification term. Certification shall be made for a period of three (3) years unless the commission determines that the certification shall be revoked, for cause.~~

~~(3) Certification renewal.~~

~~(a) It shall be the responsibility of the individual instructor to submit an application for renewal prior to expiration of certification. Renewal shall be on Form KFI-3, July 14, 1998.~~

~~(b) A renewal applicant shall have delivered at least one (1) educational methodology course or instructional technique class during his three (3) year certification period.~~

~~(c) A renewal applicant shall have taught a minimum of sixty (60) hours during his certification period.~~

~~(d) A renewal applicant shall attend at least one (1) instructor trainer workshop approved by the commission~~].

Section 5. Instructor Certification Terms and Renewal. (1) Unless renewed, certification for Levels I, II, and III fire service instructors shall expire after a period of two (2) years in a cyclical pattern based upon the last number of the instructor's Kentucky fire instructor number. All instructors with a Kentucky fire instructor number ending in zero (0) or an even number shall recertify by January 1, 2017, and all instructors with a Kentucky fire service instructor number ending in an odd number shall recertify by January 1 of the subsequent year.

(2) The commission shall grant certification renewal for Level I and II instructors who submit:

(a) Documentation of twenty (20) hours of instructional time using curricula developed or approved by the commission and completed prior to the expiration of the instructor's current

certification period;

(b) Verification of attendance of at least twenty (20) student training hours, at least four (4) hours of which shall consist of an MOI approved by the commission; and

(c) A Fire Service Renewal Application provided by the commission and signed by both the applicant and the applicant's fire chief or designee.

(3) The forty (40) instructional and student training hours mandated by subsection (2)(a) and (b) of this section may also be used to complete the instructor's firefighter recertification hours.

(4) The commission shall grant certification renewal for Level III instructors who submit:

(a) A Fire Service Renewal Application provided by the commission and signed by both the applicant and the applicant's fire chief or designee;

(b) Documentation that the applicant has instructed a minimum of one (1) MOI or instructional technique class during the two (2) year certification period; and

(c) Verification of completion of a minimum of one (1) instructor training workshop lasting at least eight (8) hours and approved by the commission.

(5) Fire service instructors who obtained instructor certification prior to the effective date of this administrative regulation shall be required to meet the renewal requirements as set forth in this administrative regulation subsequent to the completion of one (1) full recertification period[~~Fire Protection Instructor Current Status. (1) A fire protection instructor who is certified by the commission pursuant to this administrative regulation shall be reclassified as a Level II fire protection instructor and shall conform to this administrative regulation.~~

~~(2) To retain current certified status as an instructor, an individual shall meet the renewal criteria for the level for which he is certified.~~

~~(3) If an instructor does not meet Level II requirements, he shall revert to Level I status.~~

~~(4) If an instructor does not meet the criteria for Level I status, his fire protection instructor certification shall be revoked~~].

Section 6. Suspension or Revocation of Certification and Appeal. (1) The commission's Education and Eligibility/State-Aid Committee may revoke an instructor's certification if, after reasonable notice and a hearing, it is determined that the instructor committed misconduct with regard to fire service instructor certification or job duties. Examples include, but are not limited to:

(a) A material misstatement or misrepresentation in any document furnished to the commission to obtain the issuance or renewal of certification;

(b) Falsification of training records; or

(c) An act of negligence or malfeasance.

(2) A fire service instructor whose certification is subject to revocation shall be entitled to thirty (30) days' notice and a hearing before the commission's Education and Eligibility/State-Aid Committee.

(3) If the commission's Education and Eligibility/State-Aid Committee hearing results in a decision to revoke an instructor's certification, the instructor shall be notified in writing of the action and the right to appeal before the commission no later than ten (10) days following the hearing.

(4) An instructor shall request an appeal in writing within fifteen (15) days of receipt of the notification of the commission's intent to revoke the instructor's certification.

(5) If the individual appeals the commission's intent to revoke his or her instructor certification, a hearing shall be conducted at the next regular meeting of the commission, or within thirty (30) days of the appeal request, whichever is first.

(6) If the commission's hearing results in a decision to revoke an instructor's certification, the instructor shall be notified in writing of the action and the right to appeal pursuant to KRS Chapter 13B no later than ten (10) days following the hearing of the appeal.

(7) The certification of an instructor who fails to maintain active status with a Kentucky fire department or Kentucky State Fire Rescue Training shall be automatically suspended until active status with a Kentucky fire department or Kentucky State Fire Rescue Training is reinstated and all requirements for recertification are met

[~~Revocation of Certification. The commission may revoke certification if, after reasonable notice and a hearing, it is determined that there was:(1) A material misstatement or misrepresentation in any document furnished the commission to obtain the issuance or renewal of a certification;~~

~~(2) Falsification of training records; or~~

~~(3) An act of misconduct, negligence, malfeasance~~].

Section 7. Reinstatement of Certification. (1) The commission shall reinstate the certification of an instructor whose certification has lapsed for a period not exceeding one (1) year, unless the applicant has been subjected to discipline that would prevent reinstatement upon application.

(2) The commission shall reinstate the certification of an instructor whose certification has lapsed for a period of more than one (1) year but not exceeding three (3) years, provided the instructor meets all recertification requirements and has attend a commission recognized bridge course[~~Appeal. (1) A fire protection instructor notified of an intent to revoke his instructor certification, may request a hearing before the commission by submitting a request to be heard, in writing, within fifteen (15) days from the date of receipt of the letter of notification.~~

~~(2) A hearing shall be conducted at the next regularly scheduled meeting of the commission or within thirty (30) days, whichever is first.~~

~~(3) The decision of the commission shall be rendered in writing within ten (10) days of the termination of the hearing~~].

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

(a) "Fire and Emergency Services Instructor, Eighth Edition", 2012;

(b) "Kentucky Fire Service Instructor Level 1 Certification Application", 2014;

(c) "Kentucky Fire Service Instructor Level 2 Certification Application", 2014;

(d) "Kentucky Fire Service Instructor Level 3 Certification Application", 2014; and

(e) "Kentucky Fire Service Instructor Certification Renewal Application", 2014[~~Level I Certification Application and Renewal, Form KFI-1, July 14, 1998.~~

~~(b) Level II Certification Application and Renewal, Form KFI-2, July 14, 1998.~~

~~(c) Level III Certification Application and Renewal, Form KFI-3, July 14, 1998~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ANNE-TYLER MORGAN, Legal Counsel

APPROVED BY AGENCY: October 14, 2014

FILED WITH LRC: October 15, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2014 at 10:00 a.m. Eastern Standard Time at the Kentucky Fire Commission, 118 James Court, Lexington, Kentucky 40505. 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 on December 1, 2014. 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: Anne-Tyler Morgan; Legal Counsel, Kentucky Fire Commission; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 281-6480.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anne-Tyler Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: 739 KAR 2:060 establishes the certification and qualifications of fire service instructors.

(b) The necessity of this administrative regulation: This regulation is mandated by KRS 95A.050(3), which requires the Commission to promulgate reasonable administrative regulations relating to fire protection personnel.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 95A.050(3), which requires the Commission to promulgate reasonable administrative regulations relating to fire protection personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 95A.050(3) requires the Commission to promulgate reasonable administrative regulations relating to fire protection personnel. This administrative regulation ensures that Fire Service Instructors are reasonably certified dependent upon applicable qualifications, skills, and service.

(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 updates the administrative regulation to reflect current policies and forms used by the Commission.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reflect current policies and forms used by the Commission.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 95A.050(3), which requires the Commission to promulgate reasonable administrative regulations relating to fire protection personnel.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures that Fire Service Instructors and the firefighter students that they teach are capable of providing the service for which they are hired.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

(a) All candidates seeking certification as Fire Service Instructors;

(b) All candidates seeking renewal of Fire Service Instructor certification;

(c) All fire chiefs or designees applying for Fire Service Instructor certification on behalf of an applicant.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All candidates for instructor certification or renewal shall meet applicable requirements as mandated in the administrative regulation.

(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 any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from the consistency of instructor certification and renewal requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Commission shall pay for all administrative costs of reviewing certification and renewal requirements, which will not change with this amendment.

(a) Initially: The above paragraph is accurate for initial costs.

(b) On a continuing basis: The above paragraph is accurate for continuing costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Fire Commission is a state agency that receives its annual budget from the state government.

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

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

(9) TIERING: Is tiering applied? Tiering is applied for Fire Service Instructor levels because with each increasing tier, the instructor is able to teach a wider variety of fire service courses.

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 administrative regulation will not relate to any division of state or local government.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 95A.040. No federal statutes necessitate this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government, other than the Commission itself.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government, other than the Commission itself.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

LABOR CABINET
(Amendment)

803 KAR 1:010. Registration of apprenticeship programs.

RELATES TO: KRS Chapter 343

STATUTORY AUTHORITY: KRS 343.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 343.020 authorizes the commissioner[~~executive director~~] with the aid of the Apprenticeship and Training Council to promulgate administrative

regulations to carry out the provisions and purposes of KRS Chapter 343. This administrative regulation establishes labor standards to safeguard the welfare of apprentices, promote apprenticeship opportunities, and to extend the application of those standards by prescribing policies and procedures concerning the registration of acceptable apprenticeship programs with the Kentucky Department[~~Office~~] of Workplace Standards, Supervisor of Apprenticeship and Training. These labor standards cover the registration, cancellation, and deregistration of apprenticeship programs and of apprenticeship agreements.

Section 1. Definitions. (1) "Apprentice" is defined by KRS 343.010(1).

(2) "Apprenticeship agreement" is defined by KRS 343.010(2).

(3) "Apprenticeship program" is defined by KRS 343.010(7).

(4) "Commissioner" is defined by KRS 343.101(3)[~~"Bureau" means the Bureau of Apprenticeship and Training, Employment and Training Administration, United States Department of Labor~~].

(5) "Council" is defined by KRS 343.010(4).

(6) "Employer" is defined by KRS 343.010(10).

(7)[~~"Executive director" is defined by KRS 343.101(3)~~

~~(8)~~] "Joint apprenticeship committee" means a committee, composed of an equal number of representatives of employers and employees, which has been established by an employer or group of employers and a bona fide collective bargaining agent or agents to conduct, operate, or administer an apprenticeship program and enter into apprenticeship agreements with apprentices selected for employment under the particular program.

(8)[~~(9)~~] "Nonjoint apprenticeship sponsor" means an apprenticeship program sponsor in which a bona fide collective bargaining agent does not participate, such as:

(a) An individual nonjoint sponsor, i.e., an apprenticeship program sponsored by one (1) employer without the participation of a union; and

(b) A group nonjoint sponsor, i.e., an apprenticeship program sponsored by two (2) or more employers without the participation of a union.

(9) "Office of Apprenticeship" means the Office of Apprenticeship within the United States Department of Labor.

(10) "Provisional registration" means the one (1) year initial provisional approval of newly registered programs that meet the required standards for program registration, after which program approval shall be:

(a) Made permanent;

(b) Continued as provisional; or

(c) Rescinded following a review by the registration agency.

(11) "Registration agency" means the Kentucky Labor Cabinet, Department of Workplace Standards and its division charged with the responsibility and accountability for apprenticeship within the Commonwealth of Kentucky.

(12)[~~(10)~~] "Registration of an apprenticeship program" means the acceptance and recording of the program by the supervisor, which confirms that the program meets the basic standards and requirements for approval as indicated by written evidence.

(13)[~~(11)~~] "Related instruction" is defined by KRS 343.010(11).

(14)[~~(12)~~] "Sponsor" is defined by KRS 343.010(9).

(15) "State apprenticeship agency" means the Kentucky Department of Workplace Standards and its division charged with the responsibility and accountability for apprenticeship within the Commonwealth of Kentucky.

(16)[~~(13)~~] "Supervisor" is defined by KRS 343.010(5).

(17) "Technical assistance" means guidance provided by registration agency staff in the development, revision, amendment, or processing of a potential or current program sponsor's standards of apprenticeship, apprenticeship agreements, or advice or consultation with a program sponsor to further compliance with this administrative regulation or guidance from the Office of Apprenticeship to a state apprenticeship agency on how to remedy nonconformity with this administrative regulation.

(18) "Transfer" means a shift of apprenticeship registration from one (1) program to another or from one (1) employer within a program to another employer within that same program, if there is agreement between the apprentice and the affected apprenticeship committees or program sponsors.

Section 2. (1) Only an apprenticeship program or agreement that meets the criteria established in this subsection shall be eligible for state apprenticeship agency registration.[~~shall not be eligible for registration unless:~~]

(a) It is in conformity with the requirements of this administrative regulation and the training is in an apprenticeable occupation having the characteristics set forth in 29 C.F.R. 29.4.[~~approved by the Bureau; and~~]

(b) It is in conformity with the regulations on "Equal Employment Opportunity in Apprenticeship and Training" set forth in 29 C.F.R. Part 30, as amended, and Kentucky law on "Equal Employment Opportunity in Apprenticeship and Training" set forth in KRS Chapter 344.

(c) Except as provided under paragraph (d) of this subsection, apprentices shall be individually registered under a registered program. Individual registration may be accomplished:

1. By filing copies of each individual apprenticeship agreement with the registration agency; or

2. Subject to prior state apprenticeship agency approval, by filing a master copy of the agreement followed by a listing of the name, and other required data, of each individual when apprenticed.

(d) The names of persons in probationary employment as apprentices under an apprenticeship program registered by the state apprenticeship agency, if not individually registered under the program, shall be submitted within forty-five (45) days of employment to the state apprenticeship agency for certification to establish the apprentice as eligible for probationary employment.

(e) The registration agency shall be notified within forty-five (45) days of persons who have successfully completed apprenticeship programs; and of transfers, suspensions, and cancellations of apprenticeship agreements and a statement of the reasons therefore.

(f) Applications for new programs that the registration agency determines meet the required standards for program registration shall be given provisional approval for a period of one (1) year. The registration agency shall review all new programs for quality and for conformity with the requirements of this administrative regulation at the end of the first year after registration. At that time:

1. A program that conforms with the requirements of this administrative regulation:

a. May be made permanent; or

b. May continue to be provisionally approved through the first full training cycle.

2. A program not in operation or not conforming to the regulations during the provisional approval shall be recommended for deregistration procedures.

(2) Approved apprenticeship programs shall be accorded registration, evidenced by a certificate of registration or other written indicia.

(3) Any modification or change to a registered program shall be promptly submitted to the registration office and, if approved, shall be recorded and acknowledged as an amendment to the program.

(4) The request for registration of an apprenticeship program, together with all documents and data required by this administrative regulation, shall be submitted in writing or electronic transmission to the supervisor of apprenticeship[~~three (3) copies~~].

(5)(a) If a program is proposed for registration by an employer or employers' association, written acknowledgement of union agreement or "no objection" to the registration shall be required if[~~: 1.~~] the standards, collective bargaining agreement, or other instrument provides for participation by a union in any manner in the operation of substantive matters of the apprenticeship program.[~~; and~~]

(b) If union participation is not evidenced and practiced, the employer or employers' association shall simultaneously furnish a copy of the apprenticeship program and its application for registration to the union collective bargaining agent, if any, of the employees to be trained.

(c) The supervisor shall provide a reasonable time period of not less than forty-five (45)[~~thirty (30) days nor more than sixty~~

~~(60)~~] days for receipt of any union comments before final action on the approval.

(6) If the employees to be trained have no collective bargaining agent, an apprenticeship program may be proposed for registration by an employer or group of employers.

Section 3. The[~~following~~] standards established in this section shall apply to an apprenticeship program.[~~:~~]

(1) The program shall be an organized, written plan embodying the terms and conditions of qualification, recruitment, selection, employment, training, and supervision of one (1) or more apprentices in an apprenticeable occupation and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

(2) The standards shall contain the equal opportunity pledge prescribed in the Kentucky State Plan for equal employment opportunity in apprenticeship and, if applicable, an affirmative action plan and a selection method in accordance with the Kentucky State Plan for equal employment opportunity in apprenticeship, and provisions concerning the following:

(a) The employment and training of the apprentice in a skilled occupation[~~trade~~];

(b) A term of apprenticeship, which for an individual apprentice may be measured either through the completion of the industry standard for on-the-job learning (at least 2,000 hours) (time-based approach), the attainment of competency (competency-based approach), or a blend of the time-based and competency-based approaches (hybrid approach).[~~not less than 2,000 hours of work experience, consistent with training requirements as established by industry practices~~]

1. The time-based approach measures skill acquisition through the individual apprentice's completion of at least 2,000 hours of on-the-job learning as described in a work process schedule.

2. The competency-based approach measures skill acquisition through the individual apprentice's successful demonstration of acquired skills and knowledge, as verified by the program sponsor. Programs utilizing this approach shall still require apprentices to complete an on-the-job learning component of registered apprenticeship. The program standards shall address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for the competencies.

3. The hybrid approach measures the individual apprentice's skill acquisition through a combination of specified minimum number of hours of on-the-job learning and the successful demonstration of competency as described in a work process schedule.

4. The determination of the appropriate approach for the program standards is made by the program sponsor, subject to approval by the registration agency of the determination as appropriate to the apprenticeable occupation for which the program standards are registered;

(c) An outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate time to be spent in each major process;

(d) Provision for organized related and supplemental instruction in technical subjects related to the occupation[~~trade~~]. A minimum of 144 hours for each year of apprenticeship shall be required. This instruction in technical subjects may be accomplished through media such as classroom, occupational, or industry courses, electronic media, or other instruction approved by the registration agency. Every apprenticeship instructor shall:

1. Meet the state Department of Education's requirements for a vocational-technical instructor in the state of registration, or be a subject matter expert, which is an individual, such as a journeyworker, who is recognized within an industry as having expertise in a specific occupation; and

2. Have training in teaching techniques and adult learning styles, which may occur before or after the apprenticeship instructor has started to provide the related technical instruction[~~The instruction may be given in a classroom, through trade, industrial, or correspondence courses of equivalent value, or other forms of approved self-study~~];

(e) A progressively increasing schedule of wages to be paid the apprentice consistent with the skill acquired and whether the required school time shall be compensated. The entry wage shall not be less than forty (40) percent of the established journeyman rate or not less than the minimum wage prescribed by federal or state law, whichever is greater. On projects where the wage rate has been established by law, the apprentice's rate of pay shall be based upon the established journeyman rate;

(f) Periodic review and evaluation of the apprentice's progress in job performance and related instruction and maintenance of appropriate progress records;

(g) The ratio of apprentices to journeymen consistent with proper supervision, training, and continuity of employment, and applicable provisions in collective bargaining agreements, but in a ratio of not more than one (1) apprentice for the first journeyman, and one (1) apprentice for each additional three (3) journeymen; unless approval is granted by the supervisor in cooperation with the commissioner[~~executive director~~] and Apprenticeship and Training Council;

(h) A probationary period of reasonable duration in relation to the full apprenticeship term,[~~not more than four (4) months~~] during which the apprenticeship agreement may be terminated by either party, with full credit for this period toward completion of apprenticeship. The probationary period shall not exceed twenty-five (25) percent of the term of the apprenticeship or one (1) year, whichever is shorter;

(i) Adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction;

(j) Grant of advance standing or credit for previously acquired experience, training skills, or aptitude for all applicants equally, with commensurate wages for any accorded progression step;

(k) The transfer of an apprentice between apprenticeship programs and within an apprenticeship program shall be based on agreement between the apprentice and the affected apprenticeship committees or program sponsors, and shall comply with the following requirements:

1. The transferring apprentice shall be provided a transcript of related instruction and on-the-job learning by the committee or program sponsor;

2. Transfer shall be to the same occupation; and

3. A new apprenticeship agreement shall be executed when the transfer occurs between program sponsors[~~Transfer of employer's training obligation to another employer, if warranted, with full credit to apprentice for satisfactory time and training earned~~];

(l) Assurance of qualified training personnel and adequate supervision on the job;

(m) The placement of an apprentice under an apprenticeship agreement as required by KRS Chapter 343 and 803 Chapter 1. The agreement shall directly, or by reference, incorporate the standards of the program as part of the agreement;

(n) The required minimum qualifications for persons entering an apprenticeship program, with an eligible starting age to be not less than sixteen (16) years;

(o) Recognition for successful completion of apprenticeship evidenced by an appropriate certificate issued by the registration agency;

(p) Program standards that utilize the competency-based or hybrid approach for progression through an apprenticeship and that choose to issue interim credentials shall clearly identify the interim credentials, demonstrate how these credentials link to the components of the apprenticeable occupation, and establish the process for assessing an individual apprentice's demonstration of competency associated with the particular interim credential. Further, interim credentials shall only be issued for recognized components of an apprenticeable occupation, thereby linking interim credentials specifically to the knowledge, skills, and abilities associated with those components of the apprenticeable occupation;

(q) Identification of the registration agency;

(r)[~~(q)~~] Name and address of the appropriate authority under

the program to receive, process, and make disposition of complaints;

(s)[~~(r)~~] Recording and maintenance of all records concerning apprenticeship as may be required by the state apprenticeship agency or other applicable law; and

(t)[~~(s)~~] Provision that all controversies or differences shall be resolved in accordance with KRS 343.050(8).

Section 4. Program Performance Standards. (1) Every registered apprenticeship program shall have at least one (1) registered apprentice, except for the following specified periods of time, which shall not exceed one (1) year:

(a) Between the date when a program is registered and the date of registration for its first apprentice; or

(b) Between the date that a program graduates an apprentice and the date of registration for the next apprentice in the program.

(2) Registration agencies shall evaluate performance of registered apprenticeship programs.

(a) The tools and factors to be used shall include, but are not limited to quality assurance assessments, equal employment opportunity (EEO) compliance reviews, and completion rates.

(b) Any additional tools and factors used by the registration agency in evaluating program performance shall adhere to the goals and policies of the department articulated in this administrative regulation and in guidance issued by the Office of Apprenticeship.

(3) In order to evaluate completion rates, the registration agency shall review a program's completion rates in comparison to the national average for completion rates. Based on the review, the registration agency shall provide technical assistance to programs with completion rates lower than the national average.

(4) Cancellation of apprenticeship agreements during the probationary period shall not have an adverse impact on a sponsor's completion rate.

Section 5. The apprenticeship agreement shall contain explicitly:

(1) The information required by KRS 343.050;

(2) The signatures required by KRS 343.060;

(3) Name and address of the program sponsor and registration agency;

(4) A reference incorporation as part of the agreement standards of the apprenticeship program as it exists on the date of the agreement and as it may be amended during the period of the agreement; and

(5) A statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, national origin, sex, or age.

Section 6.[~~5.~~] Deregistration of a program may be initiated upon the voluntary action of the sponsor by request for cancellation of the registration, or upon a finding of good and sufficient reason by the supervisor instituting formal deregistration proceedings in accordance with the provisions of this section.

(1) Request by sponsor. The supervisor may cancel the registration of an apprenticeship program for good and sufficient reason by written acknowledgment of the request stating, but not limited to, the following matters:

(a) The registration is cancelled at sponsor's request, the reason for the cancellation, and effective date; and

(b) That, within fifteen (15) days of the date of the acknowledgment, the sponsor shall notify all apprentices:

1. Of the cancellation, the reason for the cancellation, and the effective date;

2. That the cancellation automatically deprives the apprentice of individual registration; and

3. That the deregistration of the program removes the apprentice from coverage for state and federal purposes; and

4. That all apprentices are referred to the registration agency for information about potential transfer to other registered apprenticeship programs.

(2) Deregistration by the registration agency upon reasonable cause. Formal deregistration. Deregistration proceedings may be undertaken if the apprenticeship program is not conducted, operated, and administered in accordance with the registered provisions or the requirements of this administrative regulation, except that deregistration proceedings for violation of equal opportunity requirements shall be processed in accordance with the provisions in the Kentucky State Plan for equal employment opportunity in apprenticeship.

(a) If it appears the program is not being operated in accordance with the registered standards or this administrative regulation, the supervisor shall so notify the program sponsor in writing. The notice shall be sent by certified mail, with return receipt requested. The notice shall state the violations and the remedy required, and that a determination of reasonable cause for deregistration will be made unless corrective action is effected within fifteen (15) days. Upon request by the sponsor for good cause, the fifteen (15) day term may be extended by the supervisor. During the period for correction, the sponsor shall be assisted in every reasonable way to achieve conformity. If the required correction is not effected within the allotted time, the supervisor shall send a notice to the sponsor, by certified mail, return receipt requested, stating the following:

1. The notice is sent pursuant to this section;

2. Certain deficiencies (stating them) were called to sponsor's attention and remedial measures requested, with dates of the occasions and letters; and that the sponsor has failed or refused to effect correction; and

3. Based upon the stated deficiencies and failure of remedy, a determination of reasonable cause has been made and the program may be deregistered unless, within fifteen (15) days of the receipt of this notice, the sponsor requests a hearing.

(b) If a request for a hearing is not made, the supervisor shall issue a determination with respect to deregistration of the program.

(c) If the sponsor has not requested a hearing, the supervisor shall file his determination with the commissioner[~~executive director~~]. This determination shall contain all pertinent facts and circumstances concerning the nonconformity, including the findings and copies of all relevant documents and records.

(d) The supervisor's determination shall become final in accordance with KRS 343.070.

(e) If the sponsor requests a hearing, the commissioner[~~executive director~~] shall convene a hearing after due notice to the parties and shall make a final decision on the basis of the record before him.

(f) Any party to the dispute aggrieved by the order or decision of the commissioner[~~executive director~~] may appeal in accordance with KRS 343.070.

Section 7. The commissioner shall accord reciprocal approval for federal purposes to apprentices, apprenticeship programs, and standards that are registered in other states by the Office of Apprenticeship or a registration agency if reciprocity is requested by the apprenticeship program sponsor. Program sponsors seeking reciprocal approval shall meet the wage and hour provisions and apprentice ration standards of the reciprocal state[~~6. Any apprenticeship programs and standards of employers and unions in other than the building and construction industry, which jointly form a sponsoring entity on a multistate basis and are registered pursuant to all requirements of this administrative regulation by any recognized state apprenticeship agency or by the bureau, shall be accorded registration or approved reciprocity by the supervisor if this reciprocity is requested by the sponsoring entity~~].

ANTHONY RUSSELL, Commissioner

APPROVED BY AGENCY: October 15, 2014

FILED WITH LRC: October 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held November 24, 2014, at 10:00 a.m. eastern standard time, at 1047 U.S. HWY 127 South Frankfort, Kentucky in Conference Room Bay 3. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of

their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 1, 2014. 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: E.H. "Chip" Smith, IV, 1047 US HWY 127 S, Frankfort, Kentucky 40601, phone 502-564-3281, fax 502-564-5484.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: E.H. "Chip" Smith, IV.

(1) Provide a brief summary of:

(a) What this administrative regulation does: It establishes standards for the registration of apprenticeship and training programs for the safety of the apprentice, promoting apprenticeship opportunities, and providing policies and procedures to ensure safe and acceptable apprenticeship programs. It builds incentives for apprenticeship training, to assure the quality of the training provided, and create a workforce of well-trained tradespeople.

(b) The necessity of this administrative regulation: Authorizes the Commissioner to carry out the apprenticeship training program, thereby producing highly skilled workers who are able to meet the demands of employers who are competing in a highly competitive environment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Establishes standards for the registration of apprenticeship programs which provide safety for the apprentice, promotes apprenticeship opportunities, and provides for safe and acceptable apprenticeship programs which will produce skilled craftsmen and tradesmen.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Authorizes the Commissioner to establish registration standards that meet federal and state standards for the safety of apprentices in the apprenticeship training 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: Amendment primarily updates the regulation which will incorporate name changes due to Governor Beshear's issuance of Executive Order 2008-472 elevating the Labor Department to the Labor Cabinet. (i.e., "Executive Director" to "Commissioner")

(b) The necessity of the amendment to this administrative regulation: Due to the Labor Department being elevated to the Labor Cabinet, substantive changes regarding names and titles were required to be made. Additional safeguards regarding the registration of apprenticeship programs have been added to ensure all programs meet the federal and state standards.

(c) How the amendment conforms to the content of the authorizing statutes: Establishes registration standards for apprenticeship training and programs for the safety of the apprentice, for promoting apprenticeship opportunities, and for establishing safe and acceptable apprenticeship programs which will produce skilled craftsmen and tradesmen.

(d) How the amendment will assist in the effective administration of the statutes: Authorizes the Commissioner to carry out the apprenticeship training program, thereby producing highly skilled workers who are able to meet the demands of employers who are competing in a highly competitive environment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Federal government and Kentucky state government. Employers, employer associations, apprentices and journeyworkers in the following sectors: construction, manufacturing, telecommunications, information technology/networking, service and retail industries, health care, public utilities, and public sector.

(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: Same as previously with the addition of the following: Section 2(c) which provides for individual registration of apprentices under a registered program; Section 2(d) which establishes certification of person in probationary employment to the state apprenticeship agency; Section 3(b) establishes a time-based approach, competency-based approach, and a blend of the time-based approach and competency-based approach—hybrid approach to the measure a term of apprenticeship; and Section 4 which provides program performance standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The program sponsors will pay most of the training costs while also progressively increasing wages to their apprentices as they gain skills.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For employers: Skilled workers trained to industry/employer specifications to produce quality results; reduced turnover; increased productivity; industry's need to remain competitive by investing in the development and continuous upgrade of the skills of its workforce; reduced worker compensation costs due to an emphasis on safety training; and compliance with federal and state equal opportunity requirements facilitated. For apprentices and journeyworkers: Jobs that usually pay higher wages; higher quality of life and skills versatility; portable credentials recognized nationally and often globally; and opportunity for college credit and future degrees. For Kentucky: Highly skilled workforce; increased competitive edge in a global economy; system to contribute to and sustain economic growth; and decreased need to import skilled workers.

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

(a) Initially: Employers or groups of employers and unions finance apprenticeship programs regardless of whether the programs are registered with the Commonwealth. Staff is already in place to administer the program. No additional costs are anticipated.

(b) On a continuing basis: As these changes are limited to regulatory criteria for administration, no additional costs are anticipated beyond funds in the current budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Employers or groups of employers and unions finance registered apprenticeship programs. The program sponsors will pay most of the training costs while also progressively increasing wages to their apprentices as they gain skills.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The Cabinet currently has two staff working to oversee the current statutory regime. No increased fees or funding will be necessary as the changes requested are limited to registration requirements for recognition.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied as registration of apprenticeship programs and receipt of associated benefits is voluntary. If an entity does not wish to have its apprenticeship program recognized by the Kentucky Labor Cabinet, it does not have to comply with the regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

regulation will be implemented by the Labor Cabinet but no state or local government entities currently maintain employer provided apprenticeship programs to their employees. No impact is expected to units, parts, or divisions of state or local government.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 343.020, KRS 336.015, KRS 336.040, KRS 343.010-343.090

(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 effect of the amendment upon state and local government agency expenditures is expected to be negligible.

(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 directly, but the efficient and effective enforcement of payment of wages could have an indeterminable positive effect on potential payroll taxes and reduction in public assistance benefits paid out.

(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 directly, but the efficient and effective enforcement of payment of wages would have an impact upon payroll taxes collected.

(c) How much will it cost to administer this program for the first year? The amendments should have a negligible change in cost to administer the program.

(d) How much will it cost to administer this program for subsequent years? The amendments should have a negligible change in cost to administer the program.

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

Revenues (+/-): There should be negligible change in revenues generated based upon the amendment to the administrative regulation. It is foreseeable some employers in the building and specialty trades will elect to increase their workforce size due to reduced wage costs for apprentices registered in a recognized apprenticeship program. To that extent, there could be indeterminable positive effect on potential payroll taxes

Expenditures (+/-): There should be negligible change in expenditures based upon the amendment to the administrative regulation. It is foreseeable some employers in the building and specialty trades will elect to increase their workforce size due to reduced wage costs for apprentices registered in a recognized apprenticeship program. To that extent, there could be indeterminable positive effect on expenditures as more citizens enter the workforce.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 29 C.F.R. 28

2. State compliance standards. KRS Chapter 343

3. Minimum or uniform standards contained in the federal mandate. Registration program standards are established in federal law and mirrored in this 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 the requirements are the same.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation was reviewed by the Federal Department of Labor to ensure it matched standards established by Federal requirements contained in 29 C.F.R. § 29. The Commonwealth's regulations were found to meet minimum requirements. Federal DOL has requested the Commonwealth amend 803 KAR 1:010 to incorporate more detailed information about program registration requirements, responsible stakeholders, provisional approval of new programs, methodologies for measuring apprentice progress through apprenticeship programs, transfer of time between apprenticeship programs, methods for delivery of apprenticeship education, instructor qualifications, and reciprocal recognition of apprenticeship programs. As these changes were suggested to bring the Commonwealth into compliance with existing Federal Department of Labor regulations, incorporation of the requested amendments to 803 KAR 1:010 will not impose stricter requirements or responsibilities on regulated entities than those required by Federal DOL.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 1:028. Disciplinary measures and penalties.

RELATES TO: KRS 230.215, 230.260, 230.265, 230.290, 230.300, 230.320, 230.361

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(8) authorizes the commission to promulgate necessary and reasonable administrative regulations under which racing shall be conducted in Kentucky. This administrative regulation establishes the penalty structure for rule violations and also establishes disciplinary powers and duties of the stewards and the commission.

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that the other person or entity would care for or train a horse or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license denied or suspended or revoked for thirty (30) or more days pursuant to 810 KAR Chapter 1 or KRS Chapter 230.

(8) "NSAID" means a non-steroidal anti-inflammatory drug.

(9) "Primary threshold" means the thresholds for phenylbutazone, flunixin, and ketoprofen provided in 810 KAR 1:018, Section 8(1)(a), (b), and (c), respectively.

(10) "Schedule" means the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 810 KAR 1:040.

(11) "Secondary threshold" means the thresholds for phenylbutazone and flunixin provided in 810 KAR 1:018, Section 8(3)(b) and (c), respectively.

(12) "Withdrawal guidelines" means the Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbreds, Quarter Horse, Appaloosa and Arabians as provided in 810 KAR 1:040.

Section 2. General Provisions. (1) An alleged violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or

810 KAR Chapter 1 shall be adjudicated in accordance with 810 KAR 1:029, KRS Chapter 230, and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a pre-race or post-race sample or possessed or used by a licensee at a location under the jurisdiction of the commission that is not classified in the schedule, the commission may establish a classification after consultation with either or both of the Association of Racing Commissioners International and the Racing and Medication Testing Consortium or their respective successors.

(3) The stewards and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. A licensee may provide evidence to the stewards or the commission that the licensee complied fully with the withdrawal guidelines as a mitigating factor.

(4)[~~The commission may suspend or revoke the commission-issued license of an owner, trainer, veterinarian, or other licensee.~~

~~(5)~~] A licensee whose license has been suspended or revoked in any racing jurisdiction or a horse that has been deemed ineligible to race in any racing jurisdiction, shall be denied access to locations under the jurisdiction of the commission during the term of the suspension or revocation.

(5)[~~(6)~~] A suspension or revocation shall be calculated in Kentucky racing days, unless otherwise specified by the stewards or the commission in a ruling or order.

(6)[~~(7)~~] A person assessed any penalty, including a written warning, pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the commission and the Association of Racing Commissioners International, or its successor. If an appeal is pending, that fact shall be so noted.

(7)[~~(8)~~] A horse administered a substance in violation of 810 KAR 1:018 may be required to pass a commission-approved examination as determined by the stewards pursuant to 810 KAR 1:012, Section 10, or be placed on the veterinarian's list pursuant to 810 KAR 1:018, Section 18.

(8)[~~(9)~~](a) A claimed horse may be tested for the presence of prohibited substances if the claimant completes the Request for Post-Race Testing of Claimed Horse form and includes the form in the claim envelope, which is[~~requests the test when the claim form is completed and~~] deposited in the association's claim box. The request shall not be valid if the form is not filled out completely and included in the claim envelope. The claimant shall bear the costs of the test. The results of the test shall be reported to the chief state steward.

(b) A person who claims a horse may void the claim if the post-race or TCO2 test indicates a Class A, B, or C drug violation, or a total carbon dioxide (TC02) level exceeding 37.0 millimoles per liter. If the claim is voided, the person claiming the horse shall then be entitled to reimbursement from the previous owner of all reasonable costs associated with the claiming process and the post-race or TCO2 testing, including the costs of transportation, board, training, veterinary or other medical services, testing, and any other customary or associated costs or fees.

(c) While awaiting test results, a claimant:

1. Shall exercise due care in maintaining and boarding a claimed horse; and

2. Shall not materially alter a claimed horse.

(9)[~~(10)~~] To protect the racing public and ensure the integrity of racing in Kentucky, a trainer whose penalty for a Class A violation or for a Class B third offense violation has not been fully and finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the stewards require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association, and the cost shall be borne by the trainer.

(10) In addition to the penalties contained in Section 4 of this administrative regulation for the trainer and owner, any other person who administers, is a party to, facilitates, or is found to be responsible for any violation of 810 KAR 1:018 shall be subject to the relevant penalty as provided for the trainer or other penalty as may be appropriate based upon the violation.

(11) A veterinarian who administers,[~~or~~] is a party to,[~~or~~] facilitates[~~the administration of~~], or is found to be responsible for any[~~the administration of a Class A drug to a horse, in~~] violation of KRS Chapter 230 or 810 KAR Chapter 1[~~1:018, or who has engaged in prohibited practices in violation of 810 KAR 1:018,~~] shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing Board of Veterinary Medicine by the stewards.

(12) An administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(13) If a person is charged with committing multiple or successive overages involving a Class C or D drug, the stewards or the commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing the overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the stewards or the commission.

(14) If a penalty for a medication violation requires a horse to be placed on the stewards' list for a period of time, the stewards may waive this requirement if ownership of the horse was legitimately transferred prior to the trainer's notification by the commission of the positive test result.

Section 3. Prior Offenses. A prior offense occurring in Kentucky or any other racing jurisdiction shall be considered by the stewards and by the commission in assessing penalties. The stewards shall attach to a penalty judgment a copy of the offender's prior record containing violations that were committed both inside and outside of Kentucky.

Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations. (1) Class A drug.

(a) TRAINER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
One (1) to three (3) year suspension; AND $10,000 to $25,000 fine.	Three (3) to five (5) year suspension; AND $25,000 to $50,000 fine.	Five (5) year suspension to a lifetime ban; AND $50,000 to $100,000 fine.

(b) OWNER

First offense	Second lifetime offense in any racing jurisdiction in a horse owned by the same owner	Third lifetime offense in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse; AND Horse shall be placed on the stewards' list for sixty (60) days and may be required to pass a commission-approved examination before	Disqualification and loss of purse; AND Horse shall be placed on the stewards' list for 120 days and may be required to pass a commission-approved examination before	Disqualification and loss of purse; AND Ninety (90) day suspension; AND $50,000 fine; AND

being eligible to enter as determined by the stewards.	being eligible to enter as determined by the stewards.	Horse shall be placed on the stewards' list for 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

(2) Class B drug.
(a) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Thirty (30) to sixty (60) day suspension; AND $500 to $1,000 fine.	Sixty (60) to 180 day suspension; AND $1,000 to $2,500 fine.	180 to 365 day suspension; AND $2,500 to $5,000 fine.

(b) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner	Third offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND Horse shall be placed on the stewards' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

(3)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to a Class C drug violation and an overage of permitted NSAIDs as follows:
1. Phenylbutazone in a concentration greater than 5.0 mcg/ml;
2. Flunixin in a concentration greater than 100 ng/ml; and
3. Ketoprofen in a concentration greater than 50 ng/ml.

(b) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Zero to ten (10) day suspension; AND $500 to $1,500 fine.	Ten (10) to thirty (30) day suspension; AND $1,500 to $2,500 fine.	Thirty (30) to sixty (60) day suspension; AND $2,500 to $5,000 fine.

(c) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND $5,000 fine; AND If same horse as first and second offenses, horse shall be placed on the stewards' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

(4)(a)The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:
1. Overage of permitted NSAIDs as follows:
a. Phenylbutazone in a concentration of 2-5 mcg/ml;
b. Flunixin in a concentration of 21-99 ng/ml; and
c. Ketoprofen in a concentration of 11-49 ng/ml;
2. Overage of furosemide in a concentration greater than 100 ng/ml; and
3. Furosemide not identified when notice made that the horse would run on furosemide.
(b) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Written warning to a $500 fine.	Written warning to a $750 fine.	$500 to $1,000 fine.

(c) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	If same horse as first and second offenses, disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

(d) If a furosemide violation occurs due solely to the actions or inactions of the commission veterinarian, then the trainer and owner shall not be penalized.

(5) Multiple NSAIDs. Overage of two (2) permitted NSAIDs phenylbutazone, flunixin, and ketoprofen.

(a) TRAINER

	Concentrations of both permitted NSAIDs above the primary threshold.	Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.	Concentrations of both permitted NSAIDs below primary threshold and above secondary threshold.
First offense	Zero to sixty (60) day suspension; AND $500 to $1,000 fine.	Zero to fifteen (15) day suspension; AND $250 to $750 fine.	Zero to five (5) day suspension; AND $250 to $500 fine.
Second offense within a 365-day period in any racing jurisdiction	Sixty (60) to 180 day suspension; AND $1,000 to $2,500 fine.	Fifteen (15) to thirty (30) day suspension; AND $750 to $1,500 fine.	Five (5) to ten (10) day suspension; AND $500 to $1,000 fine.
Third offense within a 365-day period in any racing jurisdiction	180 to 365 day suspension; AND $2,500 to $5,000 fine.	Thirty (30) to sixty (60) day suspension; AND $1,500 to $3,000 fine.	Ten (10) to fifteen (15) day suspension; AND $1,000 to $2,500 fine.

(b) OWNER

	Concentrations of both permitted NSAIDs above the primary threshold.	Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.	Concentrations of both permitted NSAIDs below primary threshold and above secondary threshold.
First offense	Disqualification and loss of purse.	Disqualification and loss of purse.	
Second offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.	Disqualification and loss of purse.	
Third offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.	Disqualification and loss of purse.	

(6) Class D Drug.

(a) The penalties established in paragraph (b) of this subsection shall apply to a Class D drug violation.

(b) TRAINER

One (1) to four (4) offenses within a 365-day period in any racing jurisdiction	Five (5) or more offenses within a 365-day period in any racing jurisdiction
Zero to five (5) day suspension; AND $250 to $500 fine.	Five (5) to ten (10) day suspension; AND $500 to $1,000 fine.

Section 5. TCO2 Penalties. Penalties for violations of 810 KAR 1:018, Section 20(6), (7), (8) shall be as follows:

(1) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction	Subsequent offenses within a 365-day period in any racing jurisdiction
Zero to ninety (90) day suspension; AND $1,000 to $1,500 fine.	Ninety (90) to 180 day suspension; AND $1,500 to $3,000 fine.	180 to 365 day suspension; AND $3,000 to $5,000 fine.	One (1) year suspension to lifetime ban.

(b) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction	Subsequent offenses within a 365-day period in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first and second offenses, horse shall be placed on the stewards' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first, second, and third offenses, horse shall be placed on the stewards' list from 180 to 365 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

Section 6. Shock Wave Machine and Blood Gas Machine Penalties. Penalties for violations of 810 KAR 1:018, Section 20(5), (9), or (10), shall be as follows:

(1) TRAINER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
Thirty (30) to sixty (60) day suspension; AND $1,000 to $5,000 fine.	Sixty (60) to 180 day suspension; AND $5,000 to $10,000 fine.	180 to 365 day suspension; AND $10,000 to $20,000 fine.

(2) OWNER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first and second offenses, horse shall be placed on the stewards' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

Section 7. Out-of-Competition Testing. The penalties established in 810 KAR 1:110, Section 8, shall apply to violations involving the prohibited substances and practices described in Section 2 of that administrative regulation.[~~Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations. (1) Class A drug. A horse that tests positive for a Class A drug shall be disqualified and listed as unplaced and all purse money shall be forfeited. In addition, a licensee who administers, or is a party to or responsible for administering a Class A drug to a horse shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~(a) For a first offense:~~

~~1. A minimum one (1) year suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a three (3) year suspension or revocation. Section 8 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $5,000 to $10,000.~~

~~(b) For a second lifetime offense in any racing jurisdiction:~~

~~1. A minimum three (3) year suspension or revocation, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a five (5) year suspension or revocation. Section 8 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $10,000 to $20,000.~~

~~(c) For a third lifetime offense in any racing jurisdiction:~~

~~1. A minimum five (5) year suspension or revocation, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a lifetime revocation. Section 8 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $20,000 to $50,000.~~

~~(d) Horse ineligible. A horse that tests positive for a Class A drug shall be ineligible to race in Kentucky as follows:~~

~~1. For a first offense, the horse shall be ineligible from zero days to sixty (60) days;~~

~~2. For a second offense in a horse owned by the same owner, the horse shall be ineligible from sixty (60) days to 180 days; and~~

~~3. For a third offense in a horse owned by the same owner, the horse shall be ineligible from 180 to 240 days.~~

~~(2) Class B drug. A horse that tests positive for a Class B drug shall be disqualified and listed as unplaced and all purse money shall be forfeited. In addition, a licensee who administers, or is a party to or responsible for administering a Class B drug to a horse shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~(a) For a first offense:~~

~~1. A minimum fifteen (15) day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a sixty (60) day suspension or revocation. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $500 to $1,000.~~

~~(b) For a second offense within a 365-day period in any racing jurisdiction:~~

~~1. A minimum sixty (60) day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a 180 day suspension. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $1,000 to $2,500.~~

~~(c) For a third offense within a 365-day period in any racing jurisdiction:~~

~~1. A minimum 180 day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a one (1) year suspension. Section 8 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $2,500 to $5,000.~~

~~(d) Horse ineligible. A horse that tests positive for a Class B drug shall be ineligible to race in Kentucky as follows:~~

~~1. For a first offense, the horse shall be ineligible from zero days to sixty (60) days;~~

~~2. For a second offense in a horse owned by the same owner, the horse shall be ineligible from sixty (60) days to 180 days; and~~

~~3. For a third offense in a horse owned by the same owner, the horse shall be ineligible from 180 days to 240 days.~~

~~(3) Class C drug or overage of either permitted NSAID flunixin or ketoprofen.~~

~~(a)The following licensees shall be subject to the penalties in paragraphs (b) through (d) of this subsection as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~1. A licensee who administers, or is a party to or responsible for administering a Class C drug to a horse, in violation of 810 KAR 1:018; and~~

~~2. A licensee who is responsible for an overage of either permitted NSAID flunixin or ketoprofen in the following concentrations in violation of 810 KAR 1:018:~~

~~a. Flunixin, greater than 100 ng/ml; or~~

~~b. Ketoprofen, greater than 50 ng/ml.~~

~~(b) For a first offense:~~

~~1. A suspension or revocation of licensing privileges from zero days to ten (10) days;~~

~~2. Payment of a fine of $250 to $500; and~~

~~3. Forfeiture of purse money won.~~

~~(c) For a second offense within a 365-day period:~~

~~1. A suspension or revocation of licensing privileges from ten (10) days to thirty (30) days;~~

~~2. Payment of a fine of $500 to $1,000; and~~

~~3. Forfeiture of purse money won.~~

~~(d) For a third offense within a 365-day period:~~

~~1. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days;~~

~~2. Payment of a fine of $1,000 to $2,500; and~~

~~3. Forfeiture of purse money won.~~

~~(e) Notwithstanding paragraphs (a) through (d) of this subsection, a licensee who administers, or is a party to or responsible for an overage of either permitted NSAID flunixin or ketoprofen in the following concentrations shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~1. Flunixin (21-99 ng/ml); or~~

~~2. Ketoprofen (11-49ng/ml).~~

~~a. For a first offense:~~

~~(i) A suspension or revocation of licensing privileges from zero days to five (5) days; and~~

~~(ii) Payment of a fine of $250 to $500.~~

~~b. For a second offense within a 365-day period:~~

~~(i) A suspension or revocation of licensing privileges from five (5) days to ten (10) days; and~~

~~(ii) Payment of a fine of $500 to $1,000.~~

~~c. For a third offense within a 365-day period:~~

~~(i) A suspension or revocation of licensing privileges from ten (10) days to fifteen (15) days.~~

~~(ii) Payment of a fine of $1,000 to $2,500; and~~

~~(iii) Forfeiture of purse money won.~~

~~(4) Overage of Permitted NSAID Phenylbutazone.~~

~~(a) A licensee who administers, or is a party to or responsible for an overage of the permitted NSAID phenylbutazone in a concentration of greater than 2.0 mcg/ml and less than 5.1 mcg/ml shall be subject the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~1. For a first offense:~~

~~a. Minimum penalty of a written warning up to a maximum penalty of a $500 fine; and~~

~~b. The horse may not be eligible to enter until it has been approved for racing by the commission veterinarian.~~

~~2. For a second offense within a 365-day period:~~

~~a. Minimum penalty of a written warning up to a maximum penalty of a $750 fine; and~~

~~b. The horse shall not be eligible to enter until it has been approved for racing by the commission veterinarian.~~

~~3. For a third offense within a 365-day period:~~

~~a. A fine of $500 to $1,000;~~

~~b. Forfeiture of purse money won;~~

~~c. The horse shall be disqualified and listed as unplaced; and~~

~~d. The horse shall not be eligible to enter until it has been approved for racing by the commission veterinarian.~~

~~(b) A licensee who administers, or is a party to or responsible for an overage of the permitted NSAID Phenylbutazone in a concentration of greater than 5.0 mcg/ml shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~1. For a first offense, payment of a fine from $1,000 to $1,500; and~~

~~2. For a second offense within a 365-day period:~~

~~a. Payment of a fine from $1,500 to $2,500;~~

~~b. A suspension of licensing privileges for fifteen (15) days, unless the stewards or the commission finds mitigating circumstances;~~

~~c. Forfeiture of purse money won; and~~

~~d. The horse shall be disqualified and listed as unplaced.~~

~~3. For a third offense within a 365-day period:~~

~~a. A fine of $2,500 to $5,000;~~

~~b. A suspension of licensing privileges for thirty (30) days, unless the stewards or the commission finds mitigating circumstances;~~

~~c. Forfeiture of purse money won; and~~

~~d. The horse shall be disqualified and listed as unplaced.~~

~~(5) Furosemide Violations.~~

~~(a) The following licensees shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~1. A licensee who administers, or is party to or responsible for administering an overage of furosemide in a concentration greater than 100 ng/ml; and~~

~~2. A licensee who has not administered furosemide when notice has been made that the horse shall race on furosemide pursuant to 810 KAR 1:018, Section 7.~~

~~(b) For a first offense:~~

~~1. A suspension or revocation of licensing privileges from zero days to five (5) days; and~~

~~2. Payment of a fine of $250 to $500.~~

~~(c) For a second offense within a 365-day period:~~

~~1. A suspension or revocation of licensing privileges from five (5) days to ten (10) days; and~~

~~2. Payment of a fine of $500 to $1,000.~~

~~(d) For a third offense within a 365-day period:~~

~~1. A suspension or revocation of licensing privileges from ten (10) days to fifteen (15) days;~~

~~2. Payment of a fine of $1,000 to $2,500; and~~

~~3. Forfeiture of purse money won.~~

~~(6) Multiple NSAIDs. A licensee who is responsible for an overage of two (2) of the permitted NSAIDs flunixin, ketoprofen, or phenylbutazone shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~(a) For violations where the concentrations of both of the two (2) permitted NSAIDs is above the primary thresholds:~~

~~1. For a first offense:~~

~~a. A suspension or revocation of licensing privileges from zero days to sixty (60) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been~~

~~suspended or revoked;~~

~~b. Payment of a fine of $500 to $1,000; and~~

~~c. Forfeiture of purse money won.~~

~~2. For a second offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from sixty (60) days to 180 days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $1,000 to $2,500; and~~

~~c. Forfeiture of purse money won.~~

~~3. For a third offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from 180 days to one (1) year. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $2,500 to $5,000; and~~

~~c. Forfeiture of purse money won.~~

~~(b) For violations where the concentration of one (1) of the two (2) permitted NSAIDs is above the primary threshold and one (1) of the two (2) permitted NSAIDs is above the secondary threshold:~~

~~1. For a first offense:~~

~~a. A suspension or revocation of licensing privileges from zero days to fifteen (15) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $250 to $750; and~~

~~c. Forfeiture of purse money won.~~

~~2. For a second offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from fifteen (15) days to thirty (30) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $750 to $1,500; and~~

~~c. Forfeiture of purse money won.~~

~~3. For a third offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $1,500 to $3,000; and~~

~~c. Forfeiture of purse money won.~~

~~(c) For violations where the concentrations of both of the two (2) permitted NSAIDs are below the primary threshold and both of the two (2) permitted NSAIDs are above the secondary threshold:~~

~~1. For a first offense:~~

~~a. A suspension or revocation of licensing privileges from zero days to five (5) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and~~

~~b. Payment of a fine of $250 to $500.~~

~~2. For a second offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from five (5) days to ten (10) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and~~

~~b. Payment of a fine of $500 to $1,000.~~

~~3. For a third offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from ten (10) days to fifteen (15) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and~~

~~b. Payment of a fine of $1,000 to $2,500.~~

~~(7) Class D Drug.~~

~~(a) The penalty for a first violation involving a Class D drug shall be a written warning to the trainer and owner.~~

~~(b) For multiple violations involving a Class D drug the licensee may be subject to a suspension of licensing privileges from zero days to five (5) days and a fine of no more than $250 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.~~

~~Section 5. Out-of-Competition Testing. The penalties established in 810 KAR 1:110, Section 8, shall apply to violations involving the prohibited substances and practices described in Section 2 of that administrative regulation.~~

~~Section 6. TCO2 penalties. A person who violates or causes the violation of 810 KAR 1:018, Section 20(6), (7), or (8) shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~(1) For a first offense:~~

~~(a) A suspension or revocation of licensing privileges from zero days to three (3) months;~~

~~(b)Payment of a fine of $1,000 to $1,500; and~~

~~(c) Forfeiture of purse money won.~~

~~(2) For a second offense:~~

~~(a) A suspension or revocation of licensing privileges from three (3) months to six (6) months;~~

~~(b)Payment of a fine of $1,500 to $3,000; and~~

~~(c) Forfeiture of purse money won.~~

~~(3) For a third offense:~~

~~(a) A suspension or revocation of licensing privileges from six (6) months to one (1) year;~~

~~(b)Payment of a fine of $3,000 to $5,000; and~~

~~(c) Forfeiture of purse money won.~~

~~(4) For subsequent offenses:~~

~~(a) A suspension or revocation of licensing privileges from one (1) year up to a lifetime license revocation; and~~

~~(b) Forfeiture of purse money won.~~

~~(5) Horse ineligible. A horse that registers a TCO2 level in violation of 810 KAR 1:018, Section 20(6), (7), or (8) shall be ineligible to race in Kentucky as follows:~~

~~(a) For a first offense, no period of ineligibility;~~

~~(b) For a second offense in the same horse, the horse shall be ineligible from fifteen (15) days to sixty (60) days;~~

~~(c) For a third offense in the same horse, the horse shall be ineligible from sixty (60) days to 180 days; and~~

~~(d) For a fourth offense in the same horse, the horse shall be ineligible from 180 days to one (1) year.~~

~~Section 7. Shock Wave Machine and Blood Gas Machine Penalties. A person who violates or causes the violation of 810 KAR 1:018, Section (5), (9), or (10), shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.~~

~~(1) For a first offense:~~

~~(a) A suspension or revocation of licensing privileges from one (1) month to three (3) months;~~

~~(b) Payment of a fine of $1,000 to $5,000; and~~

~~(c) Forfeiture of purse money won.~~

~~(2) For a second offense:~~

~~(a) A suspension or revocation of licensing privileges from three (3) months to six (6) months;~~

~~(b) Payment of a fine of $5,000 to $10,000; and~~

~~(c) Forfeiture of purse money won.~~

~~(3) For a third offense:~~

~~(a) A suspension or revocation of licensing privileges from six (6) months to one (1) year;~~

~~(b) Payment of a fine of $10,000 to $20,000; and~~

~~(c) Forfeiture of purse money won.~~]

Section 8. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. The partners in a veterinary practice may provide services to horses if the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the commission;

(b) Complete an entry form for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or

(c) Pay or advance an entry fee for a race to be held in

Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission.

(4) A person who is responsible for the care, training, or veterinarian services provided to a horse formerly under the care, training, or veterinarian services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for the expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 9. Other Disciplinary Measures. (1) A person who violates 810 KAR 1:018, Section 20(2), shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission after consultation with the Equine Drug Research Council.

(2) A person who violates 810 KAR 1:018, Section 20(3), shall be treated the same as a person who has committed a Class A drug violation.

Section 10. Disciplinary Measures by Stewards. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or 810 KAR Chapter 1, if not otherwise provided for in this administrative regulation, the stewards may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case;

(3) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of horse racing to be excluded or ejected from association grounds or from a portion of association grounds; or

(4) Payment of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case.

Section 11. Disciplinary measures by the commission. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or 810 KAR Chapter 1, if not otherwise provided for in this administrative regulation, the commission may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the commission in keeping with the seriousness of the violation;

(3) Eject or exclude persons from association grounds for a length of time the commission deems necessary; or

(4) Payment of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

ROBERT M. BECK, JR., Chairman
LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: October 1, 2014

FILED WITH LRC: October 2, 2014 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2014 at 10:00 AM, at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by November 17, 2014, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 1, 2014. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Susan B. Speckert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes penalties for violations of 810 KAR 1:018 and other regulations and statutes thereby giving licensees and other participants' notice of consequences of violations.

(b) The necessity of this administrative regulation: This regulation is necessary to fulfill the statutory mandates found in KRS 230.215(2) and KRS 230.240(2). KRS 230.215(2) states that, [I]t is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth…KRS 230.240(2) states, The racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. Without this administrative regulation, the commission would be unable to fulfill the statutory mandates set forth above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and

wagering thereon is conducted in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations. Along with 810 KAR 1:018, this regulation allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." See KRS 230.215.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215 articulates the commission's statutory mandate to regulate horse racing in Kentucky "free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240 requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and 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: The amendments make the penalty rule more consistent with the Model Rules issued by the Association of Racing Commissioners International, the umbrella organization for horse racing regulators in North America. To make the regulation clearer and more user-friendly, the penalties are presented in a chart. If a penalty for a medication violation requires a horse to be placed on the stewards' list, the stewards may waive this requirement if the ownership of the horse was legitimately transferred prior to the trainer's notification by the commission of the positive test result. The amendments create a new form and require claimants who choose to have a claimed horse tested to complete the form and include the form in the claim envelope. The form must be filled out completely and included in the claim envelope in order for the request to be valid.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to ensure that our penalties are appropriate and clear. The amendments help provide a fair and effective mechanism for enforcing KHRC rules and regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.

(d) How the amendment will assist in the effective administration of the statutes: This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all participants in horse racing in Kentucky, including owners, trainers, jockeys, and the commission.

(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 amendments to this regulation will not require any particular action on the part of regulated entities. It provides notice to those entities of the potential penalties associated with a rule or regulation violation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not costs associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments establish a fair penalty structure consistent with the Model Rules and presents the penalties in a clear and easy-to-understand format. This regulation provides notice to participants of the potential penalties associated with a rule or regulation violation

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

(a) Initially: There are no costs associated with implementing this administrative regulation.

(b) On a continuing basis: There are no costs associated with implementing this administrative regulation.

(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: No increase in fees or funding will be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

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 Horse Racing Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statutes 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320.

(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 estimated change in expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There are no costs associated with this administrative regulation.

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

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

811 KAR 1:095. Disciplinary measures and penalties.

RELATES TO: KRS 230.215, 230.260, 230.265, 230.290, 230.300, 230.320
STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320
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 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the disciplinary powers and duties of the judges and the commission.

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that the other person or entity would care for or train a horse, or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license denied or suspended or revoked for thirty (30) or more days pursuant to 811 KAR Chapter 1 or KRS Chapter 230.

(8) "NSAID" means a non-steroidal anti-inflammatory drug.

(9) "Primary threshold" means the thresholds for phenylbutazone, flunixin, and ketoprofen provided in 811 KAR 1:090, Section 8(2)(c), (3)(c), and (4)(c), respectively.

(10) "Schedule" means the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 811 KAR 1:093.

(11) "Secondary threshold" means the thresholds for phenylbutazone and flunixin provided in 811 KAR 1:090, Section 8(6)(b) and (c).

(12) "Withdrawal guidelines" means the Kentucky Horse Racing Commission Withdrawal Guidelines Standardbreds as provided in 811 KAR 1:093.

Section 2. General Provisions. (1) An alleged violation of 811 KAR 1:090 shall be adjudicated in accordance with this administrative regulation, and with 811 KAR 1:100, 811 KAR 1:105, and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a pre-race or post-race sample or possessed or used by a licensee at a location under the jurisdiction of the commission that is not classified in the schedule, the commission may establish a classification after consultation with either or both of the Association of Racing Commissioners International and the Racing and Medication Consortium or their respective successors.

(3) The judges and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. Evidence of full compliance with the withdrawal guidelines shall be considered by the judges and the commission as a mitigating factor to be used in determining violations and penalties.

(4)[~~Pursuant to KRS 230.320, the commission may suspend or revoke the commission-issued license of an owner, trainer, veterinarian, or other licensee.~~

~~(5)~~] A licensee whose license has been suspended or revoked in any racing jurisdiction or a horse that has been deemed ineligible to race in any racing jurisdiction shall be denied access to locations under the jurisdiction of the commission during the term of the suspension or revocation.

(5)[~~(6)~~] A suspension or revocation shall be calculated in calendar days, unless otherwise specified by the judges or the commission in a ruling or order.

(6)[~~(7)~~] Written or printed notice of the assessment of a penalty, including a written warning, shall be made to the person penalized. The notice shall be posted immediately at the office of the association and sent to the commission, the United States Trotting Association, and the Association of Racing Commissioners International, or their successors, to be posted on their respective official Web sites. If an appeal is pending, that fact shall be so noted.

(7)[~~(8)~~] A horse administered a substance in violation of 811 KAR 1:090 may be required to pass a commission-approved examination as determined by the judges pursuant to 811 KAR 1:020, Section 5, or be placed on the veterinarian's list pursuant to 811 KAR 1:090, Section 18.

(8)[~~(9)~~] A person who claims a horse may void the claim if the post-race test indicates a Class A, B, or C drug violation, or a TCO2 level exceeding thirty-seven (37.0) millimoles per liter and receive reimbursement for reasonable costs associated with the claim as provided in 811 KAR 1:035, Section 3(14)(a)(3).

(9)[~~(10)~~] To protect the racing public and ensure the integrity of racing in Kentucky, a trainer whose penalty for a prior Class A violation or for a prior Class B third offense violation under this administrative regulation has not been finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the judges require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association and the cost shall be borne by the trainer.

(10) In addition to the penalties contained in Section 5 of this administrative regulation for the trainer and owner, any other person who administers, is a party to, facilitates, or is found to be responsible for any violation of 811 KAR 1:090 shall be subject to the relevant penalty as provided for the trainer or other penalty as may be appropriate based upon the violation.

(11) A veterinarian who administers, is a party to, facilitates, or is found responsible for any violation of KRS Chapter 230 or 811 KAR Chapter 1[~~has engaged in prohibited practices in violation of 811 KAR 1:090~~] shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing board of veterinary medicine by the judges.

(12) An administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(13) If a person is charged with committing multiple or successive overages involving a Class C or Class D drug, medication, or substance, the judges or the commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing the overages were unavailable to the person charged. In this case, the

person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the judges or the commission.

(14) If a penalty for a medication violation requires a horse to be placed on the judges' list for a period of time, the judges may waive this requirement if ownership of the horse was legitimately transferred prior to the trainer's notification by the commission of the positive result.

(15) Any person who has been fined under this administrative regulation shall be suspended until the fine has been paid in full.

(16)[~~(15)~~] A fine shall not be paid directly or indirectly by a person other than the person upon whom it is imposed and any payment made shall not serve to abate or satisfy any penalty imposed.

(17) Written or printed notice of the assessment of a penalty shall be made to the person penalized, notice shall be posted immediately at the office of the association, and notice shall be forwarded immediately to the office of the commission, the United States Trotting Association, and the Association of Racing Commissioners International by the presiding judge or clerk of the course.

(18)[~~(16)~~] If the penalty is for a driving violation and does not exceed in time a period of five (5) days, the driver may complete the engagement of all horses declared in before the penalty becomes effective. The driver may drive in stake, futurity, early closing and feature races, during a suspension of five (5) days or less, but the suspension shall be extended one (1) day for each date the driver drives in a race.

(19)[~~(17)~~] A horse shall not have the right to compete while owned or controlled wholly or in part by a person whose license has been suspended or revoked. An entry made by or for a licensee whose license has been suspended or revoked or for a horse which has been suspended shall be held liable for the entrance fee without the right to compete unless the penalty is removed.

(20)[~~(18)~~] An association shall not willfully allow a person whose license has been suspended or revoked to drive in a race, or a suspended or disqualified horse to start in a race or a performance against time.

(21)[~~(19)~~] An association shall not willfully allow the use of its track or grounds by a licensee whose license has been suspended or revoked, or a horse that has been suspended.

(22)[~~(20)~~] If a person is excluded from a pari-mutuel association by the association, the commission shall be notified.

(23)[~~(21)~~] A person subject to current suspension, revocation, or expulsion shall not act as an officer of an association. An association shall not, after receiving notice of the penalty, employ or retain in its employ an expelled, suspended, disqualified, or excluded person at or on the track during the progress of a race meeting.

(24)[~~(22)~~] A licensee that has been suspended shall serve any suspension imposed:

(a) During the current race meet, if there are enough remaining days to serve out the suspension;

(b) During the next regularly scheduled race meet at the operating race track where the infraction took place if there are not enough remaining days to serve out the suspension; or

(c) During a race meet at another operating track in this state where the licensee seeks to engage in the activity for which he or she is licensed if the track where the infraction took place closes before another race meet is held at that track.

(25)[~~(23)~~] A penalty imposed by the United States Trotting Association or the racing commission, or other governing body, of any racing jurisdiction shall be recognized and enforced by the commission unless application is made for a hearing before the commission, during which the applicant shall show cause as to why the penalty should not be enforced against him in Kentucky.

Section 3. Prior Offenses. A prior offense occurring in Kentucky or any other racing jurisdiction shall be considered by the judges and by the commission in assessing penalties. The judges shall attach to a penalty judgment a copy of the offender's prior record listing violations that were committed both inside and outside of Kentucky.

Section 4. Penalties for Violations Not Related To Drugs or Medications. (1) A licensee who commits a violation classified as a Category 1 violation shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) A suspension or revocation of licensing privileges from zero days to thirty (30) days; and

(b) Payment of a fine not to exceed $5,000.

(2) A licensee who commits a violation classified as a Category 2 violation shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days; and

(b) Payment of a fine not to exceed $10,000.

(3) A licensee who commits a violation classified as a Category 3 violation shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) A suspension or revocation of licensing privileges from sixty (60) days to permanent suspension or revocation; and

(b) Payment of a fine up to $50,000.

(4) A violation of 811 KAR Chapter 1 not otherwise specifically addressed shall be a Category 1 violation and shall be subject to the penalties set forth in subsection (1) of this section.

Section 5. Penalties for Violations Relating to Class A, B, C, or D Drugs. (1) Class A drug.

(a) TRAINER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
One (1) to three (3) year suspension; AND $10,000 to $25,000 fine.	Three (3) to five (5) year suspension; AND $25,000 to $50,000 fine.	Five (5) year suspension to a lifetime ban; AND $50,000 to $100,000 fine.

(b) OWNER

First offense	Second lifetime offense in any racing jurisdiction in a horse owned by the same owner	Third lifetime offense in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse; AND Horse shall be placed on the judges' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.	Disqualification and loss of purse; AND Horse shall be placed on the judges' list for 120 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.	Disqualification and loss of purse; AND Ninety (90) day suspension; AND $50,000 fine; AND Horse shall be placed on the judges' list for 180 days and may be required to pass a commission-

		approved examination before being eligible to enter as determined by the judges.

(2) Class B drug.
(a) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Thirty (30) to sixty (60) day suspension; AND $500 to $1,000 fine.	Sixty (60) to 180 day suspension; AND $1,000 to $2,500 fine.	180 to 365 day suspension; AND $2,500 to $5,000 fine.

(b) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner	Third offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.	Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.	Disqualification and loss of purse; AND Horse shall be placed on the judges' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.

(3)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to a Class C drug violation and an overage of permitted NSAIDs as follows:
1. Phenylbutazone in a concentration greater than 5.0 mcg/ml;
2. Flunixin in a concentration greater than 100 ng/ml; and
3. Ketoprofen in a concentration greater than 50 ng/ml.
(b) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Zero to ten (10) day suspension; AND $500 to $1,500 fine.	Ten (10) to thirty (30) day suspension; AND $1,500 to $2,500 fine.	Thirty (30) to sixty (60) day suspension; AND $2,500 to $5,000 fine.

(c) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the judges' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.	Disqualification and loss of purse; AND $5,000 fine; AND If same horse as first and second offenses, horse shall be placed on the judges' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.

(4)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:
1. Overage of permitted NSAIDs as follows:
a. Phenylbutazone in a concentration of 2-5 mcg/ml;
b. Flunixin in a concentration of 21-99 ng/ml; and
c. Ketoprofen in a concentration of 11-49 ng/ml.
(b) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Written warning to a $500 fine.	Written warning to a $750 fine.	$500 to $1,000 fine.

(c) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.	Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.	If same horse as first and second offenses, disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.

(5) Multiple NSAIDs. Overage of two (2) permitted NSAIDs phenylbutazone, flunixin, and ketoprofen.

(a) TRAINER

	Concentrations of both permitted NSAIDs above the primary threshold.	Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.	Concentrations of both permitted NSAIDs below primary threshold and above secondary threshold.
First offense	Zero to sixty (60) day suspension; AND $500 to $1,000 fine.	Zero to fifteen (15) day suspension; AND $250 to $750 fine.	Zero to five (5) day suspension; AND $250 to $500 fine.
Second offense within a 365-day period in any racing jurisdiction	Sixty (60) to 180 day suspension; AND $1,000 to $2,500 fine.	Fifteen (15) to thirty (30) day suspension; AND $750 to $1,500 fine.	Five (5) to ten (10) day suspension; AND $500 to $1,000 fine.
Third offense within a 365-day period in any racing jurisdiction	180 to 365 day suspension; AND $2,500 to $5,000 fine.	Thirty (30) to sixty (60) day suspension; AND $1,500 to $3,000 fine.	Ten (10) to fifteen (15) day suspension; AND $1,000 to $2,500 fine.

(b) OWNER

	Concentrations of both permitted NSAIDs above the primary threshold.	Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.	Concentrations of both permitted NSAIDs below primary threshold and above secondary threshold.
First offense	Disqualification and loss of purse.	Disqualification and loss of purse.	
Second offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.	Disqualification and loss of purse.	
Third offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.	Disqualification and loss of purse.	

(6) Class D drug.

(a) The penalties established in paragraph (b) of this subsection shall apply to a Class D drug violation.

(b) TRAINER

One (1) to four (4) offenses within a 365-day period in any racing jurisdiction	Five (5) or more offenses within a 365-day period in any racing jurisdiction
Zero to five (5) day suspension; AND $250 to $500 fine.	Five (5) to ten (10) day suspension; AND $500 to $1,000 fine.

Section 6. TCO2 penalties. In any instance of a positive pre-race TCO2 result, the horse shall be scratched. In addition, penalties for violations of 811 KAR 1:090, Section 20(6), (7), or (8) shall be as follows:

(1) TRAINER

First offense involving a pre-race test result	First offense involving a post-race test result	Second offense within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result	Third offense within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result	Subsequent offenses within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result
Zero to five (5) day suspension; AND $250 to $500 fine.	Zero to ninety (90) day suspension; AND $1,000 to $1,500 fine.	Ninety (90) to 180 day suspension; AND $1,500 to $3,000 fine.	180 to 365 day suspension; AND $3,000 to $5,000 fine.	One (1) year suspension to lifetime ban.

(2) OWNER

First offense involving a pre-race test result	First offense involving a post-race test result	Second offense within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result	Third offense within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result	Subsequent offenses within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result
		Disqualification and loss of purse; AND If same horse as first offense, horse shall be ineligible from fifteen (15) to sixty	Disqualification and loss of purse; AND If same horse as first and second offenses, horse shall be ineligible from sixty	Disqualification and loss of purse; AND If same horse as first, second, and third offenses, horse shall be ineligible

		(60) days.	(60) to 180 days.	from 180 to 365 days.

Section 7. Shock Wave Machine and Blood Gas Machine Penalties. Penalties for violations of 811 KAR 1:090, Section 20(5), (9), or (10) shall be as follows:

(1) TRAINER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
Thirty (30) to sixty (60) day suspension; AND $1,000 to $5,000 fine.	Sixty (60) to 180 day suspension; AND $5,000 to $10,000 fine.	180 to 365 day suspension; AND $10,000 to $20,000 fine.

(2) OWNER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.	Disqualification and loss of purse; AND If same horse as first and second offenses, horse shall be placed on the judges' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.

Section 8. Out-of-Competition Testing. The penalties established in 811 KAR 1:240, Section 8, shall apply to violations involving the prohibited substances and practices described in Section 2 of that administrative regulation.[~~(1) Class A drug. A horse that tests positive for a Class A drug shall be disqualified and listed as unplaced and all purse money shall be forfeited. In addition, a licensee who administers, or is a party to or responsible for administering a Class A drug to a horse, shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~(a) For a first offense:~~

~~1. A minimum one (1) year suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a three (3) year suspension or revocation. Section 9 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $5,000 to $10,000.~~

~~(b) For a second offense:~~

~~1. A minimum three (3) year suspension or revocation, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a five (5) year suspension or revocation. Section 9 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $10,000 to $20,000.~~

~~(c) For a third lifetime offense in any racing jurisdiction:~~

~~1. A minimum five (5) year suspension or revocation, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a lifetime revocation. Section 9 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $20,000 to $50,000.~~

~~(d) Horse ineligible. A horse that tests positive for a Class A drug shall be ineligible to race in Kentucky as follows:~~

~~1. For a first offense, the horse shall be ineligible from zero days to sixty (60) days;~~

~~2. For a second offense in a horse owned by the same owner, the horse shall be ineligible from sixty (60) days to 180 days; and~~

~~3. For a third offense in a horse owned by the same owner, the horse shall be ineligible from 180 days to 240 days.~~

~~(2) Class B drug. A horse that tests positive for a Class B drug shall be disqualified and listed as unplaced and all purse money shall be forfeited. In addition a licensee who administers, or is a party to or is responsible for administering a Class B drug to a horse shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~(a) For a first offense:~~

~~1. A minimum fifteen (15) day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a sixty (60) day suspension. Section 9 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $500 to $1,000.~~

~~(b) For a second offense within a 365-day period in any racing jurisdiction:~~

~~1. A minimum sixty (60) day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a 180 day suspension. Section 9 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $1,000 to $2,500.~~

~~(c) For a third offense within a 365-day period in any racing jurisdiction:~~

~~1. A minimum 180 day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a one (1) year suspension. Section 9 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $2,500 to $5,000.~~

~~(d) Horse ineligible. A horse that tests positive for a Class B drug shall be ineligible to race in Kentucky as follows:~~

~~1. For a first offense, the horse shall be ineligible from zero days to sixty (60) days;~~

~~2. For a second offense in a horse owned by the same owner, the horse shall be ineligible from sixty (60) days to 180 days; and~~

~~3. For a third offense in a horse owned by the same owner, the horse shall be ineligible from 180 days to 240 days.~~

~~(3) Class C drug or overage of either permitted NSAID flunixin or ketoprofen.~~

~~(a) The following licensees shall be subject to the penalties in paragraphs (b) through (d) of this subsection as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~1. A licensee who administers, or is a party to or responsible for administering a Class C drug to a horse, in violation of 810 KAR 1:090; and~~

~~2. A licensee who is responsible for an overage of either permitted NSAID flunixin or ketoprofen in the following concentrations in violation of 811 KAR 1:090:~~

~~a. Flunixin, greater than 100 ng/ml; or~~

~~b. Ketoprofen, greater than fifty (50) ng/ml.~~

~~(b) For a first offense:~~

~~1. A suspension or revocation of licensing privileges from zero days to ten (10) days;~~

~~2. Payment of a fine of $250 to $500; and~~

~~3. Forfeiture of purse money won.~~

~~(c) For a second offense within a 365-day period:~~

~~1. A suspension or revocation of licensing privileges from ten (10) days to thirty (30) days;~~

~~2. Payment of a fine of $500 to $1,000; and~~

~~3. Forfeiture of purse money won.~~

~~(d) For a third offense within a 365-day period:~~

~~1. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days;~~

~~2. Payment of a fine of $1,000 to $2,500; and~~

~~3. Forfeiture of purse money won.~~

~~(e)1. Notwithstanding paragraphs (a) through (d) of this subsection, a licensee who administers, or is a party to or responsible for an overage of either permitted NSAID flunixin or ketoprofen in the following concentrations shall be subject to the penalties in subparagraphs 2 through 4 of this paragraph as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~a. Flunixin (21-99 ng/ml); or~~

~~b. Ketoprofen (11-49 ng/ml).~~

~~2. For a first offense:~~

~~a. A suspension or revocation of licensing privileges from zero days to five (5) days; and~~

~~b. Payment of a fine of $250 to $500.~~

~~3. For a second offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from five (5) days to ten (10) days; and~~

~~b. Payment of a fine of $500 to $1,000.~~

~~4. For a third offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from ten (10) days to fifteen (15) days.~~

~~b. Payment of a fine of $1,000 to $2,500; and~~

~~c. Forfeiture of purse money won.~~

~~(4) Overage of Permitted NSAID Phenylbutazone.~~

~~(a) A licensee who administers, or is a party to or responsible for an overage of the permitted NSAID phenylbutazone in a concentration of greater than two (2.0) mcg/ml and less than 5.1 mcg/ml shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~1. For a first offense:~~

~~a. Minimum penalty of a written warning up to a maximum penalty of a $500 fine; and~~

~~b. The horse may not be eligible to enter until it has been approved for racing by the commission veterinarian.~~

~~2. For a second offense within a 365-day period:~~

~~a. Minimum penalty of a written warning up to a maximum penalty of a $750 fine; and~~

~~b. The horse shall not be eligible to enter until it has been approved for racing by the commission veterinarian.~~

~~3. For a third offense within a 365-day period:~~

~~a. A fine of $500 to $1,000;~~

~~b. Forfeiture of purse money won;~~

~~c. The horse shall be disqualified and listed as unplaced; and~~

~~d. The horse shall not be eligible to enter until it has been approved for racing by the commission veterinarian.~~

~~(b) A licensee who administers, or is a party to or responsible for an overage of the permitted NSAID Phenylbutazone in a concentration of greater than five (5.0) mcg/ml shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~1. For a first offense, payment of a fine from $1,000 to $1,500.~~

~~2. For a second offense within a 365-day period:~~

~~a. Payment of a fine from $1,500 to $2,500;~~

~~b. A suspension of licensing privileges for fifteen (15) days, unless the stewards or the commission finds mitigating circumstances;~~

~~c. Forfeiture of purse money won; and~~

~~d. The horse shall be disqualified and listed as unplaced.~~

~~3. For a third offense within a 365-day period:~~

~~a. A fine of $2,500 to $5,000;~~

~~b. A suspension of licensing privileges for thirty (30) days, unless the stewards or the commission finds mitigating circumstances;~~

~~c. Forfeiture of purse money won; and~~

~~d. The horse shall be disqualified and listed as unplaced.~~

~~(5) Multiple NSAIDs. A licensee who is responsible for an overage of two (2) of the permitted NSAIDs flunixin, ketoprofen, or phenylbutazone shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~(a) For violations where the concentrations of both of the two (2) permitted NSAIDs is above the primary thresholds:~~

~~1. For a first offense:~~

~~a. A suspension or revocation of licensing privileges from zero days to sixty (60) days. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $500 to $1,000; and~~

~~c. Forfeiture of purse money won.~~

~~2. For a second offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from sixty (60) days to 180 days. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $1,000 to $2,500; and~~

~~c. Forfeiture of purse money won.~~

~~3. For a third offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from 180 days to one (1) year. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $2,500 to $5,000; and~~

~~c. Forfeiture of purse money won.~~

~~(b) For violations where the concentration of one (1) of the two (2) permitted NSAIDs is above the primary threshold and one (1) of the two (2) permitted NSAIDs is above the secondary threshold:~~

~~1. For a first offense:~~

~~a. A suspension or revocation of licensing privileges from zero days to fifteen (15) days. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $250 to $750; and~~

~~c. Forfeiture of purse money won.~~

~~2. For a second offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from fifteen (15) days to thirty (30) days. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $750 to $1,500; and~~

~~c. Forfeiture of purse money won.~~

~~3. For a third offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $1,500 to $3,000; and~~

~~c. Forfeiture of purse money won.~~

~~(c) For violations where the concentrations of both of the two (2) permitted NSAIDs are below the primary threshold and both of the two (2) permitted NSAIDs are above the secondary threshold:~~

~~1. For a first offense:~~

~~a. A suspension or revocation of licensing privileges from zero to five (5) days. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and~~

~~b. Payment of a fine of $250 to $500.~~

~~2. For a second offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from five (5) days to ten (10) days. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and~~

~~b. Payment of a fine of $500 to $1,000.~~

~~3. For a third offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from ten (10) days to fifteen (15) days. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have~~

~~been suspended or revoked; and~~

~~b. Payment of a fine of $1,000 to $2,500.~~

~~(6) Class D drug.~~

~~(a) The penalty for a violation involving a Class D drug shall be a written warning to the trainer and owner.~~

~~(b) Multiple violations involving a Class D drug may result in the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~1. A suspension of licensing privileges from zero days to five (5) days; and~~

~~2. Payment of a fine of not more than $250.~~

~~Section 6. Out-of-Competition Testing. The penalties established in 811 KAR 1:240, Section 8, shall apply to violations involving the prohibited substances and practices described in Section 2 of that administrative regulation.~~

~~Section 7. TCO2 penalties. A person who violates or causes the violation of 811 KAR 1:090, Section 20(6), (7), or (8), shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~(1) For a first offense involving a positive pre-race test result, the licensee shall be issued a warning.~~

~~(2) For a first offense involving a positive post-race test result:~~

~~(a) A suspension or revocation of licensing privileges from zero days to ninety (90) days. Section 9 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and~~

~~(b) Payment of a fine of $1,000 to $1,500.~~

~~(3) For a second offense involving a positive pre-race or post-race test result:~~

~~(a) A suspension or revocation of licensing privileges from three (3) months to six (6) months. Section 9 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked;~~

~~(b) Payment of a fine of $1,500 to $3,000; and~~

~~(c) Forfeiture of purse money won.~~

~~(4) For a third offense involving a positive pre-race or post-race test result:~~

~~(a) A suspension or revocation of licensing privileges from six (6) months to one (1) year. Section 9 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked;~~

~~(b) Payment of a fine of $3,000 to $5,000; and~~

~~(c) Forfeiture of purse money won.~~

~~(5) Subsequent offenses:~~

~~(a) A suspension or revocation of licensing privileges from one (1) year up to a lifetime license revocation; and~~

~~(b) Forfeiture of purse money won.~~

~~(6) Horse ineligible. A horse that registers a TCO2 level in violation of 811 KAR 1:090 shall be ineligible to race in Kentucky as follows:~~

~~(a) For a first offense, no period of ineligibility;~~

~~(b) For a second offense, the horse shall be ineligible from fifteen (15) days to sixty (60) days;~~

~~(c) For a third offense, the horse shall be ineligible from sixty (60) days to 180 days; and~~

~~(d) For a fourth offense, the horse shall be ineligible from 180 days to one (1) year.~~

~~(7) In any instance of a positive pre-race TCO2 test result, the horse shall be scratched.~~

~~Section 8. Shock Wave Machine and Blood Gas Machine Penalties. A person who violates or causes a violation of 811 KAR 1:090, Section 20(5), (9), or (10), regarding a shock wave machine or blood gas machine shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~(1) For a first offense:~~

~~(a) A suspension or revocation of licensing privileges from thirty (30) days to ninety (90) days;~~

~~(b) Payment of a fine of $1,000 to $5,000; and~~

~~(c) Forfeiture of purse money won.~~

~~(2) For a second offense:~~

~~(a) A suspension or revocation of licensing privileges from ninety (90) days to 180 days;~~

~~(b) Payment of a fine of $5,000 to $10,000; and~~

~~(c) Forfeiture of purse money won.~~

~~(3) For a third offense:~~

~~(a) A suspension or revocation of licensing privileges from 180 days to one (1) year;~~

~~(b) Payment of a fine of $10,000 to $20,000; and~~

~~(c) Forfeiture of purse money won.~~]

Section 9. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. The partners in a veterinary practice may provide services to horses if the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the commission;

(b) Complete an entry form for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or

(c) Pay or advance an entry fee for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinary work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission.

(4) A person who is responsible for the care, training or veterinary services provided to a horse formerly under the care, training or veterinary services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training and racing of the horse from a separate and independent checking account. Copies of the invoices for the expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 10. Other Disciplinary Measures. (1) A person who violates 811 KAR 1:090, Section 6, regarding furosemide on race day shall be treated the same as a person who has committed a Class C drug violation.

(2) A person who violates 811 KAR 1:090, Section 8(6), for administering a non-steroidal anti-inflammatory drug other than phenylbutazone or flunixin shall be treated the same as a person who has committed a Class C drug violation.

(3) A person who violates 811 KAR 1:090, Section 20(2), shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission after consultation with the Equine Drug Research Council.

(4) A person who violates 811 KAR 1:090, Section 20(3), shall

be treated the same as a person who has committed a Class A drug violation.

(5) An association in violation of Section 2(19), (20), (21), or (22) of this administrative regulation shall, together with its officers, be subject to a suspension or revocation of licensing privileges for up to thirty (30) days and payment of a fine up to $5,000 in keeping with the seriousness of the violation and the facts of the case.

Section 11. Disciplinary Measures by Judges. Upon finding a violation or an attempted violation of 811 KAR Chapter 1 or KRS Chapter 230, if not otherwise provided for in this administrative regulation, the judges may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or a licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation and the facts of the case;

(3) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the judges to be inconsistent with maintaining the honesty and integrity of the sport of horse racing, to be excluded or ejected from association grounds or from a portion of association grounds; and

(4) Payment of a fine in an amount not to exceed $50,000 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

Section 12. Disciplinary Measures by the Commission. (1) Upon finding a violation or an attempted violation of 811 KAR Chapter 1 or KRS Chapter 230, if not otherwise provided for in this administrative regulation, the commission may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensed person ineligible to race or disqualify a horse or a licensed person in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation;

(c) Cause a person found to have interfered with or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the commission to be inconsistent with maintaining the honesty and integrity of horse racing, to be excluded or ejected from association grounds or a portion of association grounds; and

(d) Payment of a fine of up to $50,000 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

(2) Upon appeal of a matter determined by the judges the commission may:

(a) Order a hearing de novo of a matter determined by the judges; and

(b) Reverse or revise the judges' ruling in whole or in part, except as to findings of fact by the judges' ruling regarding matters that occurred during or incident to the running of a race and as to the extent of disqualification fixed by the judges for a foul in a race.

ROBERT M. BECK, JR., Chairman
LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: October 1, 2014

FILED WITH LRC: October 2, 2014 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2014 at 10:00 AM, at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by November 17, 2014, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 1, 2014. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Susan B. Speckert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes penalties for violations of 811 KAR 1:090 and other regulations and statutes thereby giving licensees and other participants notice of consequences of violations.

(b) The necessity of this administrative regulation: This regulation is necessary to fulfill the statutory mandates found in KRS 230.215(2) and KRS 230.240(2). KRS 230.215(2) states that, [I]t is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth…KRS 230.240(2) states, The racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. Without this administrative regulation, the commission would be unable to fulfill the statutory mandates set forth above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations. Along with 811 KAR 1:090, this regulation allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." See KRS 230.215.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215 articulates the commission's statutory mandate to regulate horse racing in Kentucky "free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240 requires the commission to promulgate administrative regulations

restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and 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: The amendments make the penalty rule more consistent with the Model Rules issued by the Association of Racing Commissioners International, the umbrella organization for horse racing regulators in North America. To make the regulation clearer and more user-friendly, the penalties are presented in a chart. If a penalty for a medication violation requires a horse to be placed on the stewards' list, the stewards may waive this requirement if the ownership of the horse was legitimately transferred prior to the trainer's notification by the commission of the positive test result. The amendments create a new form and require claimants who choose to have a claimed horse tested to complete the form and include the form in the claim envelope. The form must be filled out completely and included in the claim envelope in order for the request to be valid.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to ensure that our penalties are appropriate and clear. The amendments help provide a fair and effective mechanism for enforcing KHRC rules and regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.

(d) How the amendment will assist in the effective administration of the statutes: This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all participants in horse racing in Kentucky, including owners, trainers, jockeys, and the commission.

(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 amendments to this regulation will not require any particular action on the part of regulated entities. It provides notice to those entities of the potential penalties associated with a rule or regulation violation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not costs associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments establish a fair penalty structure consistent with the Model Rules and presents the penalties in a clear and easy-to-understand format. This regulation provides notice to participants of the potential penalties associated with a rule or regulation violation

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

(a) Initially: There are no costs associated with implementing this administrative regulation.

(b) On a continuing basis: There are no costs associated with implementing this administrative regulation.

(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: No increase in fees or funding will be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

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 Horse Racing Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statutes 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320.

(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 estimated change in expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There are no costs associated with this administrative regulation.

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

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

811 KAR 2:100. Disciplinary measures and penalties.

RELATES TO: KRS 230.215, 230.260, 230.265, 230.290, 230.300, 230.320, 230.361

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(8) authorizes the commission to promulgate necessary and reasonable administrative regulations under which racing shall be conducted in Kentucky. This administrative regulation establishes the penalty structure for rule violations and also establishes disciplinary powers and duties of the stewards and the commission.

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member,

employer, employee, agent, partnership, partner, corporation, or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that the other person or entity would care for or train a horse or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license denied or suspended or revoked for thirty (30) or more days pursuant to 811 KAR Chapter 2 or KRS Chapter 230.

(8) "NSAID" means a non-steroidal anti-inflammatory drug.

(9) "Primary threshold" means the thresholds for phenylbutazone, flunixin, and ketoprofen provided in 811 KAR 2:096, Section[~~Sections~~] 8(1)(a), (b), and (c), respectively.

(10) "Schedule" means the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 811 KAR 2:093.

(11) "Secondary threshold" means the thresholds for phenylbutazone and flunixin provided in 811 KAR 2:096, Section 8(3)(b) and (c), respectively.

(12) "Withdrawal guidelines" means the Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred, Quarter Horse, Appaloosa and Arabians as provided in 811 KAR 2:093.

Section 2. General Provisions. (1) An alleged violation of the provisions of KRS Chapter 230 relating to Quarter Horse, Appaloosa and Arabian racing or 811 KAR Chapter 2 shall be adjudicated in accordance with 811 KAR 2:105, KRS Chapter 230, and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a pre-race or post-race sample or possessed or used by a licensee at a location under the jurisdiction of the commission that is not classified in the schedule, the commission may establish a classification after consultation with either or both of the Association of Racing Commissioners International and the Racing and Medication Testing Consortium or their respective successors.

(3) The stewards and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. A licensee may provide evidence to the stewards or the commission that the licensee complied fully with the withdrawal guidelines as a mitigating factor.

(4)[~~The commission may suspend or revoke the commission-issued license of an owner, trainer, veterinarian, or other licensee.~~

~~(5)~~] A licensee whose license has been suspended or revoked in any racing jurisdiction or a horse that has been deemed ineligible to race in any racing jurisdiction, shall be denied access to locations under the jurisdiction of the commission during the term of the suspension or revocation.

(5)[~~(6)~~] A suspension or revocation shall be calculated in Kentucky racing days, unless otherwise specified by the stewards or the commission in a ruling or order.

(6)[~~(7)~~] A person assessed any penalty, including a written warning, pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the commission and the Association of Racing Commissioners International, or its successor. If an appeal is pending, that fact shall be so noted.

(7)[~~(8)~~] A horse administered a substance in violation of 811 KAR 2:096 may be required to pass a commission-approved examination as determined by the stewards pursuant to 811 KAR 2:065, Section 10, or be placed on the veterinarian's list pursuant to 811 KAR 2:096, Section 18.

(8)[~~(9)~~](a) A claimed horse may be tested for the presence of prohibited substances if the claimant completes the Request for Post-Race Testing of Claimed Horse form and includes the form in the claim envelope, which is[~~requests the test when the claim form is completed and~~] deposited in the association's claim box. The request shall not be valid if the form is not filled out completely and included in the claim envelope. The claimant shall bear the costs of the test. The results of the test shall be reported to the chief state steward.

(b) A person who claims a horse may void the claim if the post-race or TCO2 test indicates a Class A, B, or C drug violation, or a total carbon dioxide (TC02) level exceeding 37.0 millimoles per liter. If the claim is voided, the person claiming the horse shall then be entitled to reimbursement from the previous owner of all reasonable costs associated with the claiming process and the post-race or TCO2 testing, including the costs of transportation, board, training, veterinary or other medical services, testing, and any other customary or associated costs or fees.

(c) While awaiting test results, a claimant:

1. Shall exercise due care in maintaining and boarding a claimed horse; and

2. Shall not materially alter a claimed horse.

(9)[~~(10)~~] To protect the racing public and ensure the integrity of racing in Kentucky, a trainer whose penalty for a Class A violation or for a Class B third offense violation has not been fully and finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the stewards require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association, and the cost shall be borne by the trainer.

(10) In addition to the penalties contained in Section 4 of this administrative regulation for the trainer and owner, any other person who administers, is a party to, facilitates, or is found to be responsible for any violation of 811 KAR 2:096 shall be subject to the relevant penalty as provided for the trainer or other penalty as may be appropriate based upon the violation.

(11) A veterinarian who administers,[~~or~~] is a party to,[~~or~~] facilitates[~~the administration of~~], or is found to be responsible for any[~~the administration of a Class A drug to a horse, in~~] violation of KRS Chapter 230 or 811 KAR Chapter 2[~~2:096, or who has engaged in prohibited practices in violation of 811 KAR 2:096,~~] shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing Board of Veterinary Medicine by the stewards.

(12) An administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(13) If a person is charged with committing multiple or successive overages involving a Class C or D drug, the stewards or the commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing the overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the stewards or the commission.

(14) If a penalty for a medication violation requires a horse to be placed on the stewards' list for a period of time, the stewards may waive this requirement if ownership of the horse was legitimately transferred prior to the trainer's notification by the commission of the positive test result.

Section 3. Prior Offenses. A prior offense occurring in Kentucky or any other racing jurisdiction shall be considered by the stewards and by the commission in assessing penalties. The stewards shall attach to a penalty judgment a copy of the offender's prior record containing violations that were committed

both inside and outside of Kentucky.

Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations. (1) Class A drug.

(a) TRAINER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
One (1) to three (3) year suspension; AND $10,000 to $25,000 fine.	Three (3) to five (5) year suspension; AND $25,000 to $50,000 fine.	Five (5) year suspension to a lifetime ban; AND $50,000 to $100,000 fine.

(b) OWNER

First offense	Second lifetime offense in any racing jurisdiction in a horse owned by the same owner	Third lifetime offense in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse; AND Horse shall be placed on the stewards' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND Horse shall be placed on the stewards' list for 120 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND Ninety (90) day suspension; AND $50,000 fine; AND Horse shall be placed on the stewards' list for 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

(2) Class B drug.

(a) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Thirty (30) to sixty (60) day suspension; AND $500 to $1,000 fine.	Sixty (60) to 180 day suspension; AND $1,000 to $2,500 fine.	180 to 365 day suspension; AND $2,500 to $5,000 fine.

(b) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner	Third offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND Horse shall be placed on the stewards' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

(3)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to a Class C drug violation and an overage of permitted NSAIDs as follows:

1. Phenylbutazone in a concentration greater than 5.0 mcg/ml;
2. Flunixin in a concentration greater than 100 ng/ml; and
3. Ketoprofen in a concentration greater than 50 ng/ml.

(b) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Zero to ten (10) day suspension; AND $500 to $1,500 fine.	Ten (10) to thirty (30) day suspension; AND $1,500 to $2,500 fine.	Thirty (30) to sixty (60) day suspension; AND $2,500 to $5,000 fine.

(c) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to	Disqualification and loss of purse; AND $5,000 fine; AND If same horse as first and second offenses, horse shall be placed on the stewards' list for sixty (60) days and may be required to

	enter as determined by the stewards.	pass a commission-approved examination before being eligible to enter as determined by the stewards.

(4)(a)The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

1. Overage of permitted NSAIDs as follows:

a. Phenylbutazone in a concentration of 2-5 mcg/ml;

b. Flunixin in a concentration of 21-99 ng/ml; and

c. Ketoprofen in a concentration of 11-49 ng/ml;

2. Overage of furosemide in a concentration greater than 100 ng/ml; and

3. Furosemide not identified when notice made that the horse would run on furosemide.

(b) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Written warning to a $500 fine.	Written warning to a $750 fine.	$500 to $1,000 fine.

(c) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	If same horse as first and second offenses, disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

(d) If a furosemide violation occurs due solely to the actions or inactions of the commission veterinarian, then the trainer and owner shall not be penalized.

(5) Multiple NSAIDs. Overage of two (2) permitted NSAIDs phenylbutazone, flunixin, and ketoprofen.

(a) TRAINER

	Concentrations of both permitted NSAIDs above the primary threshold.	Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.	Concentrations of both permitted NSAIDs below primary threshold and above secondary threshold.
First offense	Zero to sixty (60) day suspension; AND $500 to $1,000 fine.	Zero to fifteen (15) day suspension; AND $250 to $750 fine.	Zero to five (5) day suspension; AND $250 to $500 fine.
Second offense within a 365-day period in any racing jurisdiction	Sixty (60) to 180 day suspension; AND $1,000 to $2,500 fine.	Fifteen (15) to thirty (30) day suspension; AND $750 to $1,500 fine.	Five (5) to ten (10) day suspension; AND $500 to $1,000 fine.
Third offense within a 365-day period in any racing jurisdiction	180 to 365 day suspension; AND $2,500 to $5,000 fine.	Thirty (30) to sixty (60) day suspension; AND $1,500 to $3,000 fine.	Ten (10) to fifteen (15) day suspension; AND $1,000 to $2,500 fine.

(b) OWNER

	Concentrations of both permitted NSAIDs above the primary threshold.	Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.	Concentrations of both permitted NSAIDs below primary threshold and above secondary threshold.
First offense	Disqualification and loss of purse.	Disqualification and loss of purse.	
Second offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.	Disqualification and loss of purse.	
Third offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.	Disqualification and loss of purse.	

(6) Class D Drug.

(a) The penalties established in paragraph (b) of this

subsection shall apply to a Class D drug violation.

(b) TRAINER

One (1) to four (4) offenses within a 365-day period in any racing jurisdiction	Five (5) or more offenses within a 365-day period in any racing jurisdiction
Zero to five (5) day suspension; AND $250 to $500 fine.	Five (5) to ten (10) day suspension; AND $500 to $1,000 fine.

Section 5. TCO2 Penalties. Penalties for violations of 811 KAR 2:096, Section 20(6), (7), (8) shall be as follows:

(1) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction	Subsequent offenses within a 365-day period in any racing jurisdiction
Zero to ninety (90) day suspension; AND $1,000 to $1,500 fine.	Ninety (90) to 180 day suspension; AND $1,500 to $3,000 fine.	180 to 365 day suspension; AND $3,000 to $5,000 fine.	One (1) year suspension to lifetime ban.

(2) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction	Subsequent offenses within a 365-day period in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first and second offenses, horse shall be placed on the stewards' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first, second, and third offenses, horse shall be placed on the stewards' list from 180 to 365 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

Section 6. Shock Wave Machine and Blood Gas Machine Penalties. Penalties for violations of 811 KAR 2:096, Section 20(5), (9), or (10), shall be as follows:

(1) TRAINER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
Thirty (30) to sixty (60) day suspension; AND $1,000 to $5,000 fine.	Sixty (60) to 180 day suspension; AND $5,000 to $10,000 fine.	180 to 365 day suspension; AND $10,000 to $20,000 fine.

(2) OWNER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first and second offenses, horse shall be placed on the stewards' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

Section 7. Out-of-Competition Testing. The penalties established in 811 KAR 2:150, Section 8, shall apply to violations involving the prohibited substances and practices described in Section 2 of that administrative regulation.[~~Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations. (1) Class A drug. A horse that tests positive for a Class A drug shall be disqualified and listed as unplaced and all purse money shall be forfeited. In addition, a licensee who administers, or is a party to or responsible for administering a Class A drug to a horse shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~(a) For a first offense:~~

~~1. A minimum one (1) year suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a three (3) year suspension or revocation. Section 8 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $5,000 to $10,000.~~

~~(b) For a second lifetime offense in any racing jurisdiction:~~

~~1. A minimum three (3) year suspension or revocation, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a five (5) year suspension or revocation. Section 8 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $10,000 to $20,000.~~

~~(c) For a third lifetime offense in any racing jurisdiction:~~

~~1. A minimum five (5) year suspension or revocation, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a lifetime revocation. Section 8 of this administrative regulation shall apply to the person whose~~

~~licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $20,000 to $50,000.~~

~~(d) Horse ineligible. A horse that tests positive for a Class A drug shall be ineligible to race in Kentucky as follows:~~

~~1. For a first offense, the horse shall be ineligible from zero days to sixty (60) days;~~

~~2. For a second offense in a horse owned by the same owner, the horse shall be ineligible from sixty (60) days to 180 days; and~~

~~3. For a third offense in a horse owned by the same owner, the horse shall be ineligible from 180 days to 240 days.~~

~~(2) Class B drug. A horse that tests positive for a Class B drug shall be disqualified and listed as unplaced and all purse money shall be forfeited. In addition, a licensee who administers, or is a party to or responsible for administering a Class B drug to a horse shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~(a) For a first offense:~~

~~1. A minimum fifteen (15) day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a sixty (60) day suspension or revocation. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $500 to $1,000.~~

~~(b) For a second offense within a 365-day period in any racing jurisdiction:~~

~~1. A minimum sixty (60) day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a 180 day suspension. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $1,000 to $2,500.~~

~~(c) For a third offense within a 365-day period in any racing jurisdiction:~~

~~1. A minimum 180 day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a one (1) year suspension. Section 8 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked; and~~

~~2. Payment of a fine of $2,500 to $5,000.~~

~~(d) Horse ineligible. A horse that tests positive for a Class B drug shall be ineligible to race in Kentucky as follows:~~

~~1. For a first offense, the horse shall be ineligible from zero days to sixty (60) days;~~

~~2. For a second offense in a horse owned by the same owner, the horse shall be ineligible from sixty (60) days to 180 days; and~~

~~3. For a third offense in a horse owned by the same owner, the horse shall be ineligible from 180 days to 240 days.~~

~~(3) Class C drug or overage of either permitted NSAID flunixin or ketoprofen.~~

~~(a)The following licensees shall be subject to the penalties in paragraphs (b) through (d) of this subsection as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~1. A licensee who administers, or is a party to or responsible for administering a Class C drug to a horse, in violation of 811 KAR 2:096; and~~

~~2. A licensee who is responsible for an overage of either permitted NSAID flunixin or ketoprofen in the following concentrations in violation of 811 KAR 2:096:~~

~~a. Flunixin, greater than 100 ng/ml; or~~

~~b. Ketoprofen, greater than 50 ng/ml.~~

~~(b) For a first offense:~~

~~1. A suspension or revocation of licensing privileges from zero days to ten (10) days;~~

~~2. Payment of a fine of $250 to $500; and~~

~~3. Forfeiture of purse money won.~~

~~(c) For a second offense within a 365-day period:~~

~~1. A suspension or revocation of licensing privileges from ten (10) days to thirty (30) days;~~

~~2. Payment of a fine of $500 to $1,000; and~~

~~3. Forfeiture of purse money won.~~

~~(d) For a third offense within a 365-day period:~~

~~1. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days;~~

~~2. Payment of a fine of $1,000 to $2,500; and~~

~~3. Forfeiture of purse money won.~~

~~(e) Notwithstanding paragraphs (a) through (d) of this subsection, a licensee who administers, or is a party to or responsible for an overage of either permitted NSAID flunixin or ketoprofen in the following concentrations shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~1. Flunixin (21-99 ng/ml); or~~

~~2. Ketoprofen (11-49ng/ml).~~

~~a. For a first offense:~~

~~(i) A suspension or revocation of licensing privileges from zero days to five (5) days; and~~

~~(ii) Payment of a fine of $250 to $500.~~

~~b. For a second offense within a 365-day period:~~

~~(i) A suspension or revocation of licensing privileges from five (5) days to ten (10) days; and~~

~~(ii) Payment of a fine of $500 to $1,000.~~

~~c. For a third offense within a 365-day period:~~

~~(i) A suspension or revocation of licensing privileges from ten (10) days to fifteen (15) days.~~

~~(ii) Payment of a fine of $1,000 to $2,500; and~~

~~(iii) Forfeiture of purse money won.~~

~~(4) Overage of permitted NSAID phenylbutazone.~~

~~(a) A licensee who administers, or is a party to or responsible for an overage of the permitted NSAID phenylbutazone in a concentration of greater than 2.0 mcg/ml and less than 5.1 mcg/ml shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~1. For a first offense:~~

~~a. Minimum penalty of a written warning up to a maximum penalty of a $500 fine; and~~

~~b. The horse may not be eligible to enter until it has been approved for racing by the commission veterinarian.~~

~~2. For a second offense within a 365-day period:~~

~~a. Minimum penalty of a written warning up to a maximum penalty of a $750 fine; and~~

~~b. The horse shall not be eligible to enter until it has been approved for racing by the commission veterinarian.~~

~~3. For a third offense within a 365-day period:~~

~~a. A fine of $500 to $1,000;~~

~~b. Forfeiture of purse money won;~~

~~c. The horse shall be disqualified and listed as unplaced; and~~

~~d. The horse shall not be eligible to enter until it has been approved for racing by the commission veterinarian.~~

~~(b) A licensee who administers, or is a party to or responsible for an overage of the permitted NSAID phenylbutazone in a concentration of greater than 5.0 mcg/ml shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~1. For a first offense, payment of a fine from $1,000 to $1,500; and~~

~~2. For a second offense within a 365-day period:~~

~~a. Payment of a fine from $1,500 to $2,500;~~

~~b. A suspension of licensing privileges for fifteen (15) days, unless the stewards or the commission finds mitigating circumstances;~~

~~c. Forfeiture of purse money won; and~~

~~d. The horse shall be disqualified and listed as unplaced.~~

~~3. For a third offense within a 365-day period:~~

~~a. A fine of $2,500 to $5,000;~~

~~b. A suspension of licensing privileges for thirty (30) days, unless the stewards or the commission finds mitigating circumstances;~~

~~c. Forfeiture of purse money won; and~~

~~d. The horse shall be disqualified and listed as unplaced.~~

~~(5) Furosemide violations.~~

~~(a) The following licensees shall be subject to the following~~

~~penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~1. A licensee who administers, or is party to or responsible for administering an overage of furosemide in a concentration greater than 100 ng/ml; and~~

~~2. A licensee who has not administered furosemide when notice has been made that the horse shall run on furosemide pursuant to 811 KAR 2:096, Section 7.~~

~~(b) For a first offense:~~

~~1. A suspension or revocation of licensing privileges from zero days to five (5) days; and~~

~~2. Payment of a fine of $250 to $500.~~

~~(c) For a second offense within a 365-day period:~~

~~1. A suspension or revocation of licensing privileges from five (5) days to ten (10) days; and~~

~~2. Payment of a fine of $500 to $1,000.~~

~~(d) For a third offense within a 365-day period:~~

~~1. A suspension or revocation of licensing privileges from ten (10) days to fifteen (15) days;~~

~~2. Payment of a fine of $1,000 to $2,500; and~~

~~3. Forfeiture of purse money won.~~

~~(6) Multiple NSAIDs. A licensee who is responsible for an overage of two (2) of the permitted NSAIDs flunixin, ketoprofen, or phenylbutazone shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~(a) For violations where the concentrations of both of the two (2) permitted NSAIDs is above the primary thresholds:~~

~~1. For a first offense:~~

~~a. A suspension or revocation of licensing privileges from zero days to sixty (60) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $500 to $1,000; and~~

~~c. Forfeiture of purse money won.~~

~~2. For a second offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from sixty (60) days to 180 days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $1,000 to $2,500; and~~

~~c. Forfeiture of purse money won.~~

~~3. For a third offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from 180 days to one (1) year. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $2,500 to $5,000; and~~

~~c. Forfeiture of purse money won.~~

~~(b) For violations where the concentration of one (1) of the two (2) permitted NSAIDs is above the primary threshold and one (1) of the two (2) permitted NSAIDs is above the secondary threshold:~~

~~1. For a first offense:~~

~~a. A suspension or revocation of licensing privileges from zero days to fifteen (15) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $250 to $750; and~~

~~c. Forfeiture of purse money won.~~

~~2. For a second offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from fifteen (15) days to thirty (30) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $750 to $1,500; and~~

~~c. Forfeiture of purse money won.~~

~~3. For a third offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;~~

~~b. Payment of a fine of $1,500 to $3,000; and~~

~~c. Forfeiture of purse money won.~~

~~(c) For violations where the concentrations of both of the two (2) permitted NSAIDs are below the primary threshold and both of the two (2) permitted NSAIDs are above the secondary threshold:~~

~~1. For a first offense:~~

~~a. A suspension or revocation of licensing privileges from zero days to five (5) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and~~

~~b. Payment of a fine of $250 to $500.~~

~~2. For a second offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from five (5) days to ten (10) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and~~

~~b. Payment of a fine of $500 to $1,000.~~

~~3. For a third offense within a 365-day period:~~

~~a. A suspension or revocation of licensing privileges from ten (10) days to fifteen (15) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and~~

~~b. Payment of a fine of $1,000 to $2,500.~~

~~(7) Class D Drug.~~

~~(a) The penalty for a first violation involving a Class D drug shall be a written warning to the trainer and owner.~~

~~(b) For multiple violations involving a Class D drug the licensee may be subject to a suspension of licensing privileges from zero days to five (5) days and a fine of no more than $250 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.~~

~~Section 5. Out-of-Competition Testing. The penalties established in 811 KAR 2:150, Section 8, shall apply to violations involving the prohibited substances and practices described in Section 2 of that administrative regulation.~~

~~Section 6. TCO2 penalties. A person who violates or causes the violation of 811 KAR 2:096, Section 20(6), (7), or (8), shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~(1) For a first offense:~~

~~(a) A suspension or revocation of licensing privileges from zero days to three (3) months;~~

~~(b)Payment of a fine of $1,000 to $1,500; and~~

~~(c) Forfeiture of purse money won.~~

~~(2) For a second offense:~~

~~(a) A suspension or revocation of licensing privileges from three (3) months to six (6) months;~~

~~(b)Payment of a fine of $1,500 to $3,000; and~~

~~(c) Forfeiture of purse money won.~~

~~(3) For a third offense:~~

~~(a) A suspension or revocation of licensing privileges from six (6) months to one (1) year;~~

~~(b)Payment of a fine of $3,000 to $5,000; and~~

~~(c) Forfeiture of purse money won.~~

~~(4) For subsequent offenses:~~

~~(a) A suspension or revocation of licensing privileges from one (1) year up to a lifetime license revocation; and~~

~~(b) Forfeiture of purse money won.~~

~~(5) Horse ineligible. A horse that registers a TCO2 level in violation of 811 KAR 2:096, Section 20(6), (7), or (8), shall be ineligible to race in Kentucky as follows:~~

~~(a) For a first offense, no period of ineligibility;~~

~~(b) For a second offense in the same horse, the horse shall be ineligible from fifteen (15) days to sixty (60) days;~~

~~(c) For a third offense in the same horse, the horse shall be ineligible from sixty (60) days to 180 days; and~~

~~(d) For a fourth offense in the same horse, the horse shall be ineligible from 180 days to one (1) year.~~

~~Section 7. Shock Wave Machine and Blood Gas Machine Penalties. A person who violates or causes the violation of 811 KAR 2:096, Section (5), (9), or (10), shall be subject to the~~

~~following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.~~

~~(1) For a first offense:~~

~~(a) A suspension or revocation of licensing privileges from one (1) month to three (3) months;~~

~~(b) Payment of a fine of $1,000 to $5,000; and~~

~~(c) Forfeiture of purse money won.~~

~~(2) For a second offense:~~

~~(a) A suspension or revocation of licensing privileges from three (3) months to six (6) months;~~

~~(b) Payment of a fine of $5,000 to $10,000; and~~

~~(c) Forfeiture of purse money won.~~

~~(3) For a third offense:~~

~~(a) A suspension or revocation of licensing privileges from six (6) months to one (1) year;~~

~~(b) Payment of a fine of $10,000 to $20,000; and~~

~~(c) Forfeiture of purse money won.~~]

Section 8. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. The partners in a veterinary practice may provide services to horses if the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the commission;

(b) Complete an entry form for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or

(c) Pay or advance an entry fee for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission.

(4) A person who is responsible for the care, training, or veterinarian services provided to a horse formerly under the care, training, or veterinarian services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for the expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 9. Other Disciplinary Measures. (1) A person who violates 811 KAR 2:096, Section 20(2), shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission after consultation with the Equine Drug Research Council.

(2) A person who violates 811 KAR 2:096, Section 20(3), shall be treated the same as a person who has committed a Class A drug violation.

Section 10. Disciplinary Measures by Stewards. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to Quarter Horse, Appaloosa and Arabian racing or 811 KAR Chapter 2, if not otherwise provided for in this administrative regulation, the stewards may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case;

(3) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of horse racing to be excluded or ejected from association grounds or from a portion of association grounds; or

(4) Payment of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case.

Section 11. Disciplinary measures by the commission. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to Quarter Horse, Appaloosa and Arabian racing or 811 KAR Chapter 2, if not otherwise provided for in this administrative regulation, the commission may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the commission in keeping with the seriousness of the violation;

(3) Eject or exclude persons from association grounds for a length of time the commission deems necessary; or

(4) Payment of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

ROBERT M. BECK, JR., Chairman
LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: October 1, 2014

FILED WITH LRC: October 2, 2014 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2014 at 10:00 AM, at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by November 17, 2014, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 1, 2014. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax

(859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes penalties for violations of 811 KAR 2:096 and other regulations and statutes thereby giving licensees and other participants notice of consequences of violations.

(b) The necessity of this administrative regulation: This regulation is necessary to fulfill the statutory mandates found in KRS 230.215(2) and KRS 230.240(2). KRS 230.215(2) states that, [I]t is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth…KRS 230.240(2) states, The racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. Without this administrative regulation, the commission would be unable to fulfill the statutory mandates set forth above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which Quarter Horse, Appaloosa and Arabian racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations. Along with 811 KAR 2:096, this regulation allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." See KRS 230.215.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215 articulates the commission's statutory mandate to regulate horse racing in Kentucky "free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240 requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and 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: The amendments make the penalty rule more consistent with the Model Rules issued by the Association of Racing Commissioners International, the umbrella organization for horse racing regulators in North America. To make the regulation clearer and more user-friendly, the penalties are presented in a chart. If a penalty for a medication violation requires a horse to be placed on the stewards' list, the stewards may waive this requirement if the ownership of the horse was legitimately transferred prior to the trainer's notification by the commission of the positive test result. The amendments create a new form and require claimants who choose to have a claimed horse tested to complete the form and include the form in the claim envelope. The form must be filled out completely and included in the claim envelope in order for the request to be valid.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to ensure that our penalties are appropriate and clear. The amendments help provide a fair and effective mechanism for enforcing KHRC rules and regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which Quarter Horse, Appaloosa and Arabian racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.

(d) How the amendment will assist in the effective administration of the statutes: This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all participants in horse racing in Kentucky, including owners, trainers, jockeys, and the commission.

(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 amendments to this regulation will not require any particular action on the part of regulated entities. It provides notice to those entities of the potential penalties associated with a rule or regulation violation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not costs associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments establish a fair penalty structure consistent with the Model Rules and presents the penalties in a clear and easy-to-understand format. This regulation provides notice to participants of the potential penalties associated with a rule or regulation violation

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

(a) Initially: There are no costs associated with implementing this administrative regulation.

(b) On a continuing basis: There are no costs associated with implementing this administrative regulation.

(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: No increase in fees or funding will be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected

parties.

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 Horse Racing Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statutes 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320.

(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 estimated change in expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There are no costs associated with this administrative regulation.

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

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(Amendment)

815 KAR 7:120. Kentucky Building Code.

RELATES TO: KRS 132.010[~~(9), (10)~~], 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990, 227.300, 227.550(7)

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) and 198B.050 require the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform statewide building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation establishes the Kentucky Building Code's general provisions.

Section 1. Definitions. (1) "Board of Housing" or "board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) "Commissioner" is defined by KRS 198B.010(9).

(4) "Department" is defined by KRS 198B.010(11).

(5) "Farm" means property:

(a) Located outside the corporate limits of a municipality on at least ten (10) acres;

(b) Used for purposes established in the definitions of "agricultural land" and "horticultural land", established in KRS 132.010(9) and (10), respectively; and

(c) Qualified by and registered with the property valuation administrator in that county.

(6) "Fire Code Official" means the State Fire Marshal, fire chief, or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety as established in 815 KAR 10:060.

(7) "Industrialized building system" or "building system" is defined by KRS 198B.010(16).

(8) "KBC" means the Kentucky Building Code as established in this administrative regulation.

(9) "Kentucky Residential Code" means the International Residential Code as incorporated by reference and amended for application in Kentucky by 815 KAR 7:125.

(10) "Kentucky Standards of Safety" means the requirements established in 815 KAR 10:060, which serve as the fire prevention code for existing buildings as well as a supplement to this code.

(11) "Manufactured home" is defined by KRS 227.550(7).

(12) "Modular home" means an industrialized building system, which is designed to be used as a residence and that is not a manufactured or mobile home.

(13) "Ordinary repair" is defined by KRS 198B.010(19).

(14) "Single-family dwelling" or "one (1) family dwelling" means a single unit that:

(a) Provides complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) Is not connected to another unit or building.

(15) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(16) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

Section 2. Administration and Enforcement of the Building Code. (1) Notwithstanding the requirements of the 2012 International Building Code, the Kentucky amendments established in the 2013 Kentucky Building Code shall be mandatory and shall supersede any conflicting provision of the international code.

(2)(a) Except as provided in paragraph (b) and (c) of this subsection and as superseded by the provisions of this administrative regulation and the 2013 Kentucky Building Code, the 2012 International Building Code, shall be the mandatory state building code for all buildings constructed in Kentucky.

(b) One (1) and two (2) family dwellings and townhouses shall be governed by 815 KAR 7:125.

(c) Manufactured homes shall be governed by KRS 227.550 through 227.665.

Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the department. (1) Fast track elective.

(a) A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee.

(b) The additional fifty (50) percent fee shall not be less than $400 and not more than $3,000.

(c) The entire fee shall be paid with the initial plan submission.

(2) New buildings.

(a) The department's inspection fees shall be calculated by:

1. Multiplying the total building area under construction by the cost per square foot of each occupancy type as listed in subsection (3) of this section; and

2. Computing the square footage by the outside dimensions of the building.

(b) The fee for a building with multiple or mixed occupancies shall be calculated using the cost per square foot multiplier of the predominant use.

(c) The minimum fee for review of plans pursuant to this subsection shall be $285.

(3) Table 121.3.1, Basic Department Fee Schedule. The basic plan review or inspection fee shall be:

(a) Assembly occupancies, sixteen (16)[~~fourteen (14)~~] cents;

(b) Business occupancies, fifteen (15)[~~thirteen (13)~~] cents;
(c) Day care centers, fifteen (15)[~~thirteen (13)~~] cents;
(d) Educational occupancies, fifteen (15)[~~thirteen (13)~~] cents;
(e) High hazard occupancies, sixteen (16)[~~twelve (12)~~] cents;
(f) Industrial factories, fifteen (15)[~~twelve (12)~~] cents;
(g) Institutional occupancies, sixteen (16)[~~fourteen (14)~~] cents;
(h) Mercantile occupancies, fifteen (15)[~~thirteen (13)~~] cents;
(i) Residential occupancies, fifteen (15)[~~thirteen (13)~~] cents;
(j) Storage, fifteen (15)[~~eleven (11)~~] cents; or
(k) Utility and miscellaneous, thirteen (13)[~~eleven (11)~~] cents.
(4) Additions to existing buildings.
(a) Plan review fees for additions to existing buildings, which shall not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with the schedule listed in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition.
(b) The minimum fee for review of plans pursuant to this subsection shall be $285[~~$250~~].
(5) Change in use.
(a) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in subsection (3) of this section by using the total square footage of the entire building or structure pursuant to the new occupancy type as determined by the outside dimensions.
(b) The minimum fee for review of plans pursuant to this subsection shall be $285[~~$250~~].
(6) Alterations and repairs.
(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of:
1. Multiplying the cost for the alterations or repairs by 0.0030[~~0.0025~~]; or
2. Multiplying the total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.
(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.
(c) The minimum fee for review of plans pursuant to this subsection shall be $285[~~$275~~].
(7) Specialized fees. In addition to the fees established by subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:
(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule:
1. An inspection of four (4) through twenty-five (25) sprinklers shall be a fee of $150;
2. An inspection of twenty-six (26) through 100 sprinklers shall be a fee of $200;
3. An inspection of 101 through 200 sprinklers shall be a fee of $250;
4. An inspection of 201 through 300 sprinklers shall be a fee of $275;
5. An inspection of 301 through 400 sprinklers shall be a fee of $325;
6. An inspection of 401 through 750 sprinklers shall be a fee of $375; and
7. An inspection of over 750 sprinklers shall be a fee of $375 plus thirty (30) cents per sprinkler over 750.
(b) Fire detection system review fee:
1. Zero through 20,000 square feet shall be $275; and
2. Over 20,000 square feet shall be $275 plus thirty (30) dollars for each additional 10,000 square feet in excess of 20,000 square feet.
(c) The standpipe plan review fee shall be $275. The combination stand pipe and riser plans shall be reviewed pursuant to the automatic sprinkler review fee schedule.
(d) Carbon dioxide suppression system review fee:
1. One (1) through 200 pounds of agent shall be $275; and
2. Over 200 pounds of agent shall be $275 plus five (5) cents per pound in excess of 200 pounds.
(e) Clean agent suppression system review fee:
1.a. Up to thirty-five (35) pounds of agent shall be $275; and
b. Over thirty-five (35) pounds shall be $275 plus ten (10) cents per pound in excess of thirty-five (35) pounds; and
2. The fee for gaseous systems shall be ten (10) cents per cubic foot and not less than $150.
(f) Foam suppression system review fee.
1. The fee for review of a foam suppression system shall be fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.
2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed pursuant to the automatic sprinkler review fee schedule.
3. The fee for review of plans pursuant to subparagraph 1. of this paragraph shall not be less than $275 or more than $1,500.
(g) The commercial range hood review fee shall be $225 per hood.
(h) Dry chemical systems review fee (except range hoods). The fee for review of:
1. One (1) through thirty (30) pounds of agent shall be $275; and
2. Over thirty (30) pounds of agent shall be $275 plus twenty-five (25) cents per pound in excess of thirty (30) pounds.
(i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be $100 for the first tank, plus fifty (50) dollars for each additional tank and $100 per piping system including valves, fill pipes, vents, leak detection, spill and overfill detection, cathodic protection, or associated components.
(j) Boiler and unfired pressure vessel fees. Plan review fees of boiler and unfired pressure vessel installations shall be in accordance with 815 KAR 15:027.

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "2012 International Building Code", First Edition, International Code Council, Inc.; and
(b) "2013 Kentucky Building Code", Third[~~Second~~] Edition, August[~~February~~] 2014.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m.
AMBROSE WILSON IV, Commissioner
LARRY R. BOND, Acting Secretary
APPROVED BY AGENCY: October 10, 2014
FILED WITH LRC: October 13, 2014 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 1, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:
CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the uniform Kentucky Building Code as required pursuant to KRS 198B.050.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to adopt the Kentucky Building Code as required pursuant to KRS 198B.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation utilizes the International Building Code as the basis for construction standards and allows the Board of Housing, Buildings and Construction to make amendments unique to Kentucky after due consideration of equivalent safety measures as required by KRS 198B.050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth standards authorized by the statute for the enforcement of the uniform state building code, incorporating all applicable laws into its processes.

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

(a) How the amendment will change this existing administrative regulation: Updates the 2013 Kentucky Building Code to increase the basic plan review and inspection fee for each type of building occupancy by approximately fourteen (14) percent; increase the cost multiplier for calculating the review and inspection fee for alterations or repairs from 0.0025 to 0.0030; and revise the minimum plan review fee from $250 to $285.

(b) The necessity of the amendment to this administrative regulation: The primary reason for the proposed fee increases is significantly increased expenditures beyond agency control, including those associated with Actuarially-Required Retirement Contributions (ARC), the Commonwealth Office of Technology (COT), enacted employee raises, and rising employee healthcare costs. In addition, the Division of Building Code Enforcement is already no longer generating sufficient revenue to sustain its existing fixed expenditures necessary to maintain a minimum level and quality of statewide service. The additional revenue generated from the proposed fee increases will be used to support the existing plan review and inspection program

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.050 mandates the Board of Housing, Buildings and Construction to establish a uniform Kentucky Building Code, and KRS 198B.080 authorizes the Board to amend the Code at any time. KRS 198B.060 authorizes the Department to establish a schedule of fees for the functions performed under KRS Chapter 198B. These fee increases were unanimously approved for amendment by the Board on August 21, 2014.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the Kentucky Building Code is necessary to generate the revenue required for the Division of BCE to maintain its current level of services and sustain its statutorily-mandated plan review and inspection program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All construction projects subject to plan review and inspection under the Kentucky Building Code will be affected by the amendments to this regulation; architects; engineers; contractors; project managers; businesses; and local government.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment does not require new action by building industry tradespersons. It merely updates the existing fees required for the Division's plan review and inspection program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals or contractor entities engaged in building construction and related activities subject to state plan review and inspection will have to pay the appropriate fee from this amended schedule, which sum will vary depending upon the type of occupancy and size of the project

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include continued ability to obtain plan approval and inspections at the current time intervals and level of service.

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

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the agency. Any agency costs resulting from these administrative amendments will be met with existing agency funds, including receipts from the amended fees proposed herein.

(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 amendment increases the existing schedule of fees for building plan review and inspection. These increases are necessary to cover significantly increased expenditures beyond agency control, including those associated with Actuarially-Required Retirement Contributions (ARC), the Commonwealth Office of Technology (COT), enacted employee raises, and rising employee healthcare costs. OSBD has increased projected Current Receipts for FY15 and FY16 in anticipation of these proposed increases so that expenditures could be covered. In addition, even without these increased expenses, the Division already no longer generates sufficient revenue to sustain its existing expenditures necessary to maintain a minimum level and quality of statewide service. The additional revenue generated from the proposed fee increases will be used to support existing programs with no increase in staffing levels and will more closely bring revenues in line with existing expenditures to cover the agency's current level of service and actual costs to administer its statutorily-mandated plan review and inspection program.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: See #7 above.

(9) TIERING: Is tiering applied? Tiering is not applied as all builders, contractors, local governments and owners will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction and local jurisdiction inspection and plan review programs.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.040(7), 198B.050, 198B.060(18) and 198B.080.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is anticipated to generate additional annual revenues for the agency of approximately $338,357, for total projected revenue for FY15 of $2,755,188.

(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 is not anticipated to generate annual revenues consistent with the first year as described above.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment.

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

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

Revenues (+/-): Increase.

Expenditures (+/-): Neutral.

Other Explanation: Neutral.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(Amendment)

815 KAR 8:010. Master heating, ventilation, and air conditioning (HVAC) contractor licensing requirements.

RELATES TO: KRS 198B.650, 198B.654, 198B. 656, 198B.658, 198B.659, 198B.660,[~~198B.662,~~] 198B.664, 198B.668, 198B.672, 198B.676[~~, EO 2009-535~~]

STATUTORY AUTHORITY: KRS 198B.654(1), 198B.658[~~198B.658~~], 198B.660(1), (2), 198B.664(1),(3), 198B.676(1), 198B.684[~~, EO 2009-535~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689. KRS 198B.658 requires the board to establish qualifications for licensure and certification. KRS 198B.660(1) and (2) require[~~requires~~] the board to establish examination requirements. KRS 198B.664 requires[~~(1) and (3) require~~] the board to establish requirements for license renewal and inactive licenses. KRS 198B.684 authorizes the board to promulgate an administrative regulation with standards for continuing education for licensees and certificate holders.[~~EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department.~~] KRS 198B.676(1) requires the board to establish fees by administrative regulation. This administrative regulation establishes the licensure requirements for HVAC contractors.

Section 1. General Requirements. (1) Continuing education.

(a) Each master HVAC contractor licensee shall complete eight (8) hours of continuing education prior to renewal of the license.

(b)[~~The~~] Continuing education shall be conducted in accordance with 815 KAR 8:050.

(2) Supervision. The master HVAC contractor shall supervise and be primarily responsible for all HVAC work performed by the employees and subcontractors of the licensee or the company that the licensee represents, whichever is applicable[~~license~~].

(3) Company license.

(a) A licensee who is an employee of a company and whose license represents the company shall notify the board, in writing, if the licensee ceases to represent the company or if the name of the company changes.

(b) A licensee providing the notice established in paragraph (a) of this subsection shall request[~~, requesting~~] a change of information on that license.

(c) A licensee requesting a change of information as established in paragraph (b) of this subsection shall pay[~~and paying~~] the change of information fee established[~~listed~~] in Section 7(5) of this administrative regulation.

Section 2. Initial Application Requirements. (1) Filing the application.

(a) An applicant seeking a master HVAC contractor license shall submit to the board:

1. A completed and notarized Master HVAC Contractor License Application on Form HVAC 1;

2. An initial license application fee of $250 for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month;

3. Proof of satisfactory completion of the examination required by Section 4 of this administrative regulation;

4. Proof of the applicant's experience as established[~~required~~] by KRS 198B.658(1)(c)[~~(b)~~] and this administrative regulation;

5. A[~~recent~~] passport-sized, color photograph of the applicant taken within the past six (6) months; and

6. Proof of insurance as required by KRS 198B.668.

(b) If the applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted.

(b) At the end of one (1) year, the application shall be void.

Section 3. Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform HVAC work while the license is inactive.

(2) A master HVAC contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.668 or provide proof to the Department of Housing, Buildings and Construction of compliance with workers' compensation laws.

(3) A certified HVAC inspector may be licensed as a master HVAC contractor, but shall place the license in inactive status while having an active HVAC inspector certification.

(4) Performing HVAC work while holding an inactive license shall be grounds for revocation or suspension of all HVAC licenses and certifications held by the licensee.

Section 4. Examination Requirements. An applicant shall take and pass the examination administered in compliance with this section.

(1)[~~A completed Master HVAC Contractor License Examination Application on Form HVAC 6 shall be submitted to the Division of HVAC.~~

~~(2)~~] The examination shall be a two (2) part examination and shall test the applicant's knowledge of:

(a) Codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of all types of HVAC systems; and

(b) Law and regulation relating to HVAC business.

(2)[~~(3) An applicant who fails a portion of the examination may reapply within one (1) year to repeat the failed portion of the examination.~~

~~(4) An applicant who fails re-examination shall be required to sit for the full examination.~~

~~(5)~~] Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request.

(3)[~~(6)~~] Except as provided in subsection (8)[~~(11)~~] of this section, an applicant shall complete with a passing score of at least seventy (70) percent the examination known as the [~~"~~]Kentucky Master HVAC Contractor Examination[~~"~~], which is developed, administered, and scored by the board or its designee.

(4)[~~(7)~~](a) A request to sit for the examination shall be made directly to the testing facilities approved by the board.

(b) A list of facilities and contact information shall be provided to applicants upon request[~~following receipt of the examination application~~].

(5)[(8)] The examination fee shall not exceed $160 for the Kentucky Master HVAC Contractor Examination.

(6)[(9)] The examination shall be provided as set forth in KRS 198B.660[198B.060].

(7)[(10)] A passing score on the examination shall be valid for a period of two (2) years.

(8)[(11)] Upon application by a testing agency, a national code group, or by an applicant for licensure, the department shall recognize another examination as equivalent to the examinations administered by the board if the person or group submitting the examination demonstrates that the examination covers the same material and requires the same level of knowledge as the board's examination.

Section 5. Experience Requirements. An applicant for licensure shall meet the[experience] requirements of this section. (1) Minimum experience. An applicant shall have the experience required by KRS 198B.658(1)(c)[(b)].

(2) Records of experience. An applicant's experience shall be listed on the application form.

(a) Proof of listed experience shall be provided by:

1. A W-2 form;

2.[W-2s or] An affidavit by a master HVAC contractor who directed and supervised the applicant;

3. A copy of a current master HVAC contractor license, or equivalent, held by the applicant in a state other than Kentucky, if the state requires licensure or the equivalent;

4. Verifiable documentation demonstrating the nature and extent of HVAC contracting work performed in a state other than Kentucky, if the state does not require licensure or the equivalent; or

5. Department of Defense Form DD 214.

(b) Additional proof of experience shall[may] be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

(3) One (1) year of HVAC experience shall consist minimally of 1,500 hours of HVAC work in a contiguous twelve (12) month period.

Section 6. Renewal, Restoration, Reinstatement, and Reactivation Requirements and Procedures. (1) Filing for renewal. A master HVAC contractor shall submit to the department:

(a) A completed renewal application card;

(b) A renewal fee of $250 made payable to the Kentucky State Treasurer; and

(c) Proof of annual continuing education attendance in accordance with Section 1 of this administrative regulation; and

(d) Proof of insurance as required by KRS 198B.668[Completed continuing provider evaluation forms for each continuing education class attended].

(2)(a) Except for a license placed in inactive status in accordance with subsection (6) of this section and Section 7(2) of this administrative regulation, application for license renewal shall be filed by each licensee no later than the last day of the licensee's birth month.

(b) A license[Licenses] shall be renewed each year.

(c) A license that is not timely renewed shall immediately expire.

(3)(a) The[A] renewal fee[of $250] shall be paid prior to renewal.

(b) The department shall send a renewal application card[cards] to each licensee each year to be returned with the required fee.

(4) A renewal application card[cards] filed late, but no more than sixty (60)[ninety (90)] days after the expiration of the license[last day of the licensee's birth month], shall be accepted, but a restoration fee, as established in[in accordance with] Section 7(1) of this administrative regulation, shall be added to the renewal fee.

(5)(a) A former licensee whose license has terminated as established in KRS 198B.664(3) may have his or her license reinstated if the licensee satisfies the application requirements for renewal as established in Section 6(1) of this administrative regulation and submits a reinstatement fee as established in Section 7(6) of this administrative regulation no later than three (3) years from the date the former license was terminated[Failure to renew ninety-one (91) days after the last day of the licensee's birth month shall void the license, and the applicant shall comply with all requirements for a new license pursuant to Section 2 of this administrative regulation].

(b) A former licensee seeking licensure under this administrative regulation, but whose terminated license was not timely reinstated as established in paragraph (a) of this subsection, shall be required to satisfy all requirements applicable to new applicants for initial licensure as established in this administrative regulation.

(6)(a) A license that is[has been placed] in inactive status shall be exempt from annual renewal.

(b) An inactive license shall be reactivated upon payment of the annual renewal fee, the reactivation fee, and upon compliance with the continuing education requirements established in 815 KAR 8:050.

(7) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis.

(8) The application for renewal, restoration, reinstatement, or reactivation of a licensed master HVAC contractor shall be denied if the applicant fails to:

(a) Pay any applicable department fee[the fees required for renewal, reactivation, and restoration, if applicable];

(b) Comply with the continuing education requirements established in Section 1(1) of this administrative regulation; or

(c) Provide the current insurance certificate required by KRS 198B.668.

(9) A licensee who has not previously provided a passport-sized color photograph shall provide one (1) with the licensee's next[renewal] application for renewal.

Section 7. Special Service Fees. In addition to the other fees required by this administrative regulation, the [following] special fees established in this section shall also be applied.[:]

(1) Restoration fee. The fee for restoration[renewal] of an expired license[licenses] shall be $125[fifty (50) dollars].

(2) Inactive status fee.

(a) A licensee may place the license in inactive status. The fee to place a license into inactive status shall be[upon payment of] twenty (20) dollars.

(b) Inactive status shall be maintained upon annual payment of the inactive status fee by the last day of the licensee's birth month.

(c) Inactive status shall be maintained in accordance with this subsection until the licensee requests reactivation in accordance with Section 6(6)(b) of this administrative regulation.

(d) An inactive license that is not maintained in accordance with this subsection or reactivated in accordance with Section 6(6)(b) of this administrative regulation shall immediately terminate.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be[A license shall be reactivated upon payment of a fee of] twenty (20) dollars[and compliance with Section 5(6) of this administrative regulation].

(4) Duplicate license fee. A[verified] lost or destroyed license shall be replaced upon payment of a twenty (20)[ten (10)] dollar fee.

(5) Change of information fee. The fee for the change of information required by Section 1(3) of this administrative regulation shall be twenty (20)[fifteen (15)] dollars. If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

(6) Reinstatement fee. The fee for reinstatement of a terminated license shall be $250 for each twelve (12) month period, or additional fraction thereof, following the date the license was terminated, not to exceed $750.

Section 8. Revocation or Suspension of License[Licenses]. A license issued pursuant to this administrative regulation shall be subject to suspension or revocation[may be suspended or revoked] by the board for any of the reasons stated in KRS 198B.672.

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

~~(a)~~]Form HVAC-1[~~HVAC 1~~], Master HVAC Contractor License Application", July 2014, is incorporated by reference[~~,January 2010; and~~

~~(b) Form HVAC 6, Master HVAC Contractor License Examination Application, January 2010~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, HVAC Division, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412[~~5405~~], Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner
LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: October 10, 2014

FILED WITH LRC: October 14, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 1, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application, examination and renewal requirements and fees for master HVAC contractors.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement KRS Chapter 198B.650 to 198B.689; specifically, the licensing requirements of KRS 198B.656, qualification requirements of KRS 198B.658 and 198B.659, the examination requirements of KRS 198B.660 and the renewal, restoration, reinstatement and reactivation requirements of KRS 198B.664.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.654(1) requires the board of HVAC to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689; KRS 198B.658 establishes qualifications for licensure and requires the Board to prescribe licensing examinations and promulgate licensing fees; KRS 198B.664 establishes renewal, restoration, reactivation and inactive requirements, requires the board to promulgate fees associated therewith, and authorizes the board to establish additional qualifications and requirements by administrative regulation; KRS 198B.684 authorizes the board to promulgate an administrative regulation with standards for continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation directly implements the authorizing statutes and establishes the licensing, examination and renewal requirements for master HVAC contractors to be administered by the Division of HVAC.

(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 implements recently-enacted 13 RS HB 337 GA, which expanded the qualifications for licensure of master HVAC contractors and journeyman HVAC mechanics and amended renewal requirements to allow a sixty (60)-day grace period before the termination of a license as well as a limited means to reinstate a terminated license without having to reapply for a new license and examination. This amendment also deletes now-outdated and unused language regarding application to the Division of HVAC for licensing examinations, which are now administered by approved third party testing facilities. Finally, this amendment establishes the reinstatement fee required by KRS 198B.664(4) and increases the existing fees associated with the issuance of duplicate licenses, restoration of expired licenses, and the processing of changes of information.

(b) The necessity of the amendment to this administrative regulation: To comply with 13 RS HB 337 GA, conform the regulation to the Division of HVAC's current examination program, and generate sufficient revenue to sustain the division's existing expenditures necessary to maintain a minimum level and quality of statewide service without an increase in staffing levels.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment directly implements the new provisions of 13 RS HB 337 GA, which relates to the qualifications for HVAC licensure, examination, renewal, restoration and reinstatement. This amendment also directly conforms to existing statutory authority to establish reasonable fees for the services and functions performed by the division pursuant to this administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to implement 13 RS HB 337 GA, which has expanded HVAC licensing and renewal qualifications beyond the current scope of this administrative regulation. Additionally, the fees established or increased by this amendment will provide the necessary funding for the Division of HVAC to maintain its current level of services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals and entities engaged in the HVAC trade as a master contractor within the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This regulation does not require new action by HVAC tradespersons. Rather, the identified entities will now be able to rely on appropriate out-of-state or military work experience to satisfy the requirements for licensure, and will have a longer period of time after the expiration of a license to reinstate the license without having to submit to a new examination. However, regulated entities will be required to observe the revised fees reflected in this amendment if applicable.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities are not anticipated to incur any substantial new expenses with respect to the newly expanded work experience qualifications. However, with respect to license reinstatement, the affected entities will be required to pay the associated fees, which are equivalent to what would have already been required to maintain timely renewal of licensure under existing provisions. Additionally, licensees seeking duplicate licenses, changes to their information, or to restore an expired license will be subject to the revised fee reflected in this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include increased opportunities to obtain licensure, increased opportunities to regain licensure, and the continued availability of the Division's current

level of service.

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

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the agency. Any agency costs resulting from these administrative amendments will be met with existing agency funds, including those generated by this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees is necessary to cover significantly increased expenditures beyond agency control, including those associated with Actuarially-Required Retirement Contributions (ARC), the Commonwealth Office of Technology (COT), enacted employee raises, and rising employee healthcare costs. OSBD has increased projected Current Receipts for FY15 and FY16 in anticipation of these proposed increases so that expenditures could be covered while maintaining a minimum level and quality of statewide service. The additional revenue generated from the proposed fee increases will be used to support existing programs with no increase in staffing levels and will more closely bring revenues in line with existing expenditures to cover the agency's current level of service and actual costs to administer its statutorily-mandated permitting, inspection and enforcement program.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: 13 RS HB 337 GA newly establishes an optional process for license reinstatement upon payment of a reinstatement fee, which has not previously been established. Accordingly, this amendment establishes that fee, which merely equates to what the existing annual renewal fee would have been had the licensee maintained his or her license in a timely fashion in accordance with existing requirements. See also #7 above.

(9) TIERING: Is tiering applied? Tiering is not applied as all master HVAC licensees will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of HVAC.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.654, 198B.658 and 198B.664.

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? Based on historical data on the number of restored licenses and duplicate licenses issued, and changes of information processed, in FY2014, this amendment is anticipated to generate approximately $27,100 in additional revenues for the agency annually, which will be used to support existing programs with no increase in staffing levels and assist the division in bringing revenues more closely in line with existing expenditures to maintain the agency's current level of service.

(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 is anticipated to generate approximately $27,100 in additional revenues for the agency in subsequent years.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment.

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

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

Revenues (+/-): Increase.

Expenditures (+/-): Neutral.

Other Explanation: Neutral.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(Amendment)

815 KAR 8:020. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements.

RELATES TO: KRS 198B.650, 198B.654, 198B.656, 198B.658, 198B.659, 198B.660,[~~198B.662,~~] 198B.664, 198B.672, 198B.676[~~, EO 2009-535~~]

STATUTORY AUTHORITY: KRS 198B.654(1), 198B.658, 198B.660(1), (2), 198B.664(1), (3), 198B.676(1), 198B.684[~~, EO 2009-535~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689. KRS 198B.658 requires the board to establish qualifications for licensure and certification. KRS 198B.660(1) and (2) require[~~requires~~] the board to establish examination requirements. KRS 198B.664 requires[~~(1) and (3) require~~] the board to establish requirements for license renewal and inactive licenses. KRS 198B.684 authorizes the board to promulgate an administrative regulation with standards for continuing education for licensees and certificate holders.[~~EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department.~~] KRS 198B.676(1) requires the board to establish fees by administrative regulation. This administrative regulation establishes the licensure requirements for journeyman HVAC mechanics.

Section 1. General Requirements. (1) Continuing education.

(a) Each journeyman licensee shall complete eight (8) hours of continuing education prior to renewal of the license.

(b)[~~The~~] Continuing education shall be conducted in accordance with 815 KAR 8:050.

(2) Supervision. The journeyman shall:

(a) Be physically on site;

(b)[~~shall~~] Personally observe and be responsible for each apprentice assigned to the journeyman in carrying out the installation, alteration, and repair of HVAC systems; and

(c)[~~shall~~] Otherwise operate under the general direction and supervision of the master HVAC contractor.

Section 2. Initial Application Requirements. (1) Filing the application. An applicant seeking a journeyman HVAC mechanic license shall submit to the board:

(a) A completed and notarized Journeyman HVAC Mechanic [~~HVAC~~] License Application on Form HVAC 2;

(b) An initial license application fee of fifty (50) dollars for a twelve (12) month license.

1. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months.

2. The initial license[~~and~~] shall expire on the final day of the applicant's birth month;

(c) Proof of satisfactory completion of the examination required

by Section 4[~~3~~] of this administrative regulation;

(d) Proof of the applicant's experience as established[~~required~~] by KRS 198B.658(2)(c)[~~(b)~~] and[~~Section 4 of~~] this administrative regulation; and

(e) A[~~recent~~] passport-sized, color photograph of the applicant taken within the past six (6) months.

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted.

(b) At the end of one (1) year, the application shall be void.

Section 3. Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform HVAC work while the license is inactive.

(2) A certified HVAC inspector may be licensed as a journeyman HVAC mechanic, but shall place the license in inactive status while having an active HVAC inspector certification.

(3) Performing HVAC work while holding an inactive license shall be grounds for revocation or suspension of all HVAC licenses and certifications held by the licensee.

Section 4. Examination Requirements. An applicant shall take and pass the examination administered in compliance with this section.

(1)[~~A completed Journeyman HVAC Mechanic License Examination Application on Form HVAC 7 shall be submitted to the division;~~

~~(2)~~] The examination shall test the applicant's basic knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of HVAC systems.

(2)[~~(3)~~] Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request.

(3)[~~(4)~~] Except as provided by subsection (7)[~~(8)~~] of this section, an applicant shall successfully complete with a passing score of at least seventy (70) percent the examination known as the ["]Kentucky Journeyman HVAC Mechanic Examination["], which is developed, administered, and scored by the board or its designee.

(4)[~~(5)~~](a) A request to sit for the examination shall be made directly to the testing facilities approved by the board.

(b) A list of facilities and contact information shall be provided to applicants upon request[~~following receipt of the examination application~~].

(5)[~~(6)~~] The examination fee[~~cost~~] shall not exceed $100 for the Kentucky Journeyman HVAC Mechanic Examination.

(6)[~~(7)~~] A passing score on the examination shall be valid for a period of two (2) years.

(7)[~~(8)~~] Upon application by a testing agency, a national code group, or by an applicant for licensure, the department shall recognize another examination as equivalent to the examinations administered by the board if the person or group submitting the examination demonstrates that the examination covers[~~examinations cover~~] the same material and requires[~~require~~] the same level of knowledge as the board's examination[~~examinations~~].

Section 5.[~~4.~~] Experience Requirements. An applicant for licensure shall meet the [~~experience~~] requirements of this section. (1) Minimum experience. An applicant shall have the experience required by KRS 198B.658(2)(c)[~~(b)~~].

(2) Records of experience. An applicant's experience shall be listed on the application form.

(a) Proof of listed experience shall be provided by:

1. A W-2 form;

2.[~~W-2s or~~] An affidavit from a master HVAC contractor who directed and supervised the applicant;

3. A copy of a current journeyman HVAC mechanic license, or equivalent, held by the applicant in a state other than Kentucky, if the state requires licensure or the equivalent;

4. Verifiable documentation demonstrating the nature and extent of journeyman HVAC mechanic work performed in a state other than Kentucky, if the state does not require licensure or the equivalent; or

5. Department of Defense Form DD 214[~~or the equivalent~~].

(b) Additional proof of experience shall[~~may~~] be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

(3) One (1) year of HVAC experience shall consist minimally of 1,500 hours of HVAC work in a contiguous twelve (12) month period[~~A minimum of 3,000 work hours shall be completed as part of the two (2) years experience requirement of subsection (1) of this section~~].

Section 6.[~~5.~~] Renewal, Restoration, Reinstatement, and Reactivation Requirements and Procedures. (1) Filing for renewal. A journeyman HVAC mechanic shall submit to the department:

(a) A completed renewal application card;

(b) A renewal fee of fifty (50) dollars made payable to the Kentucky State Treasurer; and

(c) Proof of annual continuing education attendance in accordance with Section 1 of this administrative regulation[~~; and~~

~~(d) Completed continuing provider evaluation forms for each continuing education class attended~~].

(2)(a) Except for a license placed in inactive status in accordance with subsection (6) of this section and Section 7(2) of this administrative regulation, application for license renewal shall be filed by each licensee no later than the last day of the licensee's birth month.

(b) A license shall be renewed each year.

(c) A license that is not timely renewed shall immediately expire.

(3)(a) The[~~A~~] renewal fee[~~of fifty (50) dollars~~] shall be paid prior to renewal.

(b)[~~(a)~~] The department shall send a renewal application card[~~cards~~] to each licensee each year to be returned with the required fee[~~no later than the last day of the licensee's birth month.~~

~~(b) Licenses shall be renewed each year~~].

(4)[~~(3)~~] A[~~journeyman HVAC license~~] renewal application card filed late, but no more than sixty (60)[~~ninety (90)~~] days after the expiration of the license[~~last day of the licensee's birth month~~], shall be accepted, but a restoration fee, as established in[~~accordance with~~] Section 7[~~6~~](1) of this administrative regulation, shall be added to the renewal fee.

(5)(a) A former licensee whose license has terminated as established in KRS 198B.664(3) may have his or her license reinstated if the licensee satisfies the application requirements for renewal as established in Section 6(1) of this administrative regulation and submits a reinstatement fee as established in Section 7(5) of this administrative regulation no later than three (3) years from the date the former license was terminated[~~(4) Failure to renew ninety-one (91) days after the last day of the licensee's birth month shall void the license, and the applicant shall comply with all requirements for a new license pursuant to Section 2 of this administrative regulation~~].

(b) A former licensee seeking licensure under this administrative regulation, but whose terminated license was not timely reinstated as established in paragraph (a) of this subsection, shall be required to satisfy all requirements applicable to new applicants for initial licensure as established in this administrative regulation.

(6)(a) A license that is in inactive status shall be exempt from annual renewal.

(b) An inactive license shall be reactivated upon payment of the annual renewal fee, the reactivation fee, and upon compliance with the continuing education requirements established in 815 KAR 8:050.

(7) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis.

(8) The application[~~(5) A request~~] for renewal, restoration, reinstatement, or reactivation of a licensed journeyman HVAC mechanic shall be denied if the applicant fails to:

(a) Pay any applicable department fee[~~the fees required for~~

~~renewal and restoration, if applicable~~]; or

(b) Comply with the continuing education requirements established in Section 1(1) of this administrative regulation.

(9)[~~(6)~~] A licensee who has not previously provided a passport-sized[~~,~~] color photograph shall provide one (1) with the licensee's next application for renewal.

(10)[~~(7)~~] Continuing education requirements shall not be required for a licensee's first renewal if[~~provided~~] the initial license was issued within twelve (12) months of renewal.

Section 7.[~~6.~~] Special Service[~~Services and~~] Fees. In addition to the other fees required by this administrative regulation[~~the initial license application fee, examination fee, and renewal fee~~], the [~~following~~] special fees established in this section shall also be applied.[~~:~~]

(1) Restoration fee. The fee for restoration[~~renewal~~] of an expired license[~~licenses, pursuant to Section 5(2) of this administrative regulation,~~] shall be twenty-five (25) dollars.

(2) Inactive status fee.

(a) A licensee may place the license in inactive status. The fee to place a license into inactive status shall be twenty (20) dollars.

(b) Inactive status shall be maintained upon annual payment of the inactive status fee by the last day of the licensee's birth month.

(c) Inactive status shall be maintained in accordance with this subsection until the licensee requests reactivation in accordance with Section 6(6)(b) of this administrative regulation.

(d) An inactive license that is not maintained in accordance with this subsection or reactivated in accordance with Section 6(6)(b) of this administrative regulation shall immediately terminate.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be twenty (20) dollars.

(4) Duplicate license fee. A[~~verified~~] lost or destroyed license[~~licenses~~] shall be replaced upon payment of a twenty (20)[~~ten (10)~~] dollar fee.

(5) Reinstatement fee. The fee for reinstatement of a terminated license shall be fifty (50) dollars for each twelve (12) month period, or additional fraction thereof, following the date the license was terminated, not to exceed $150.

Section 8.[~~7.~~] Revocation or Suspension of License. A license issued pursuant to this administrative regulation shall be subject to suspension or revocation[~~may be suspended or revoked~~] by the board for any of the reasons stated in KRS 198B.672.

Section 9.[~~8.~~] Incorporation by Reference. (1) "[~~The following material is incorporated by reference:~~

~~(a)~~]Form HVAC-2[~~HVAC 2~~], Journeyman HVAC Mechanic[~~HVAC~~] License Application," July 2014, is incorporated by reference[~~January 2010; and~~

~~(b) Form HVAC 7, Journeyman HVAC Mechanic License Examination Application, January 2010~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, HVAC Division, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412[~~5405~~], Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner
LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: October 10, 2014

FILED WITH LRC: October 14, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 1, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application, examination and renewal requirements and fees for journeyman HVAC mechanics.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement KRS Chapter 198B.650 to 198B.689; specifically, the licensing requirements of KRS 198B.656, qualification requirements of KRS 198B.658 and 198B.659, the examination requirements of KRS 198B.660 and the renewal, restoration, reinstatement and reactivation requirements of KRS 198B.664.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.654(1) requires the board of HVAC to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689; KRS 198B.658 establishes qualifications for licensure and requires the board to prescribe licensing examinations and promulgate licensing fees; KRS 198B.664 establishes renewal, restoration, reactivation and inactive requirements, requires the board to promulgate fees associated therewith, and authorizes the board to establish additional qualifications and requirements by administrative regulation; KRS 198B.684 authorizes the board to promulgate an administrative regulation with standards for continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation directly implements the authorizing statutes and establishes the licensing, examination and renewal requirements for journeyman HVAC mechanics to be administered by the Division of HVAC.

(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 implements recently-enacted 13 RS HB 337 GA, which expanded the qualifications for licensure of master HVAC contractors and journeyman HVAC mechanics and amended renewal requirements to allow a sixty (60)-day grace period before the termination of a license as well as a limited means to reinstate a terminated license without having to reapply for a new license and examination. This amendment also deletes now-outdated and unused language regarding application to the Division of HVAC for licensing examinations, which are now administered by approved third party testing facilities. In addition, this amendment extends to a journeyman HVAC mechanic the same option to place his or her license into inactive status as is currently afforded to master HVAC contractors, for the same fee as is applicable to that existing service. Finally, this amendment establishes the reinstatement fee required by KRS 198B.664(4) as well as the inactive status fee, and increases the existing fee associated with the issuance of a duplicate license.

(b) The necessity of the amendment to this administrative regulation: To comply with 13 RS HB 337 GA, conform the regulation to the Division of HVAC's current examination program, provide greater uniformity between HVAC licensing options, and generate sufficient revenue to sustain the administrative cost of the associated services being provided and still maintain a minimum level and quality of statewide service without an increase in staffing

levels.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment directly implements the new provisions of 13 RS HB 337 GA, which relates to the qualifications for HVAC licensure, examination, renewal, restoration and reinstatement. This amendment also directly conforms to existing statutory authority to establish reasonable fees for the services and functions performed by the division pursuant to this administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to implement 13 RS HB 337 GA, which has expanded HVAC licensing and renewal qualifications beyond the current scope of this administrative regulation. Additionally, the fees established or increased by this amendment will provide the necessary funding for the Division of HVAC to perform the new administrative services associated with the fee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the HVAC trade as a journeyman mechanic within the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This regulation does not require new action by HVAC tradespersons. Rather, the identified entities will now be able to rely on appropriate out-of-state or military work experience to satisfy the requirements for licensure, will have a longer period of time after the expiration of a license to reinstate the license without having to submit to a new examination, and the option to avoid the need for restoration or reinstatement by voluntarily placing the license in inactive status. However, regulated entities will be required to observe the revised fees reflected in this amendment if applicable to the voluntary service they are requesting.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities are not anticipated to incur any substantial new expenses with respect to the newly expanded work experience qualifications. However, with respect to license reinstatement, the affected entities will be required to pay the associated fees, which are equivalent to what would have already been required to maintain timely renewal of licensure under existing provisions. In addition, affected entities choosing to place the license in inactive status will be expected to pay the applicable inactive fee and, if applicable, reactivation fee, and a person seeking to replace a lost or destroyed license will be expected to pay the revised fee for that service.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include increased opportunities to obtain licensure as well as increased opportunities to preserve or regain licensure.

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

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the agency. Any agency costs resulting from these administrative amendments will be met with existing 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: This amendment increases the existing fee for issuance of a duplicate license from ten (10) dollars to twenty (20) dollars. This increase is necessary to offset the actual administrative costs of the service and thereby minimize the effect of significantly increased expenditures beyond agency control, including those associated with Actuarially-Required Retirement Contributions (ARC), the Commonwealth Office of Technology (COT), enacted employee raises, and rising employee healthcare costs. OSBD has increased projected Current Receipts for FY15 and FY16 in anticipation of this and other HVAC-related proposed increases so that expenditures could be covered while maintaining a minimum level and quality of statewide service. The additional revenue generated from the proposed fee increases will be used to support the actual costs of the existing service without drawing from other division revenues, and thereby contribute toward the division's efforts to more closely bring revenues in line with existing expenditures to administer its statutorily-mandated permitting, inspection and enforcement program.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: 13 RS HB 337 GA newly establishes an optional process for license reinstatement upon payment of a reinstatement fee, as well as makes inactive status newly available to journeyman mechanics, for neither of which has a fee been previously established. Accordingly, this amendment establishes those fees, which in the case of reinstatement merely equates to what the existing annual renewal fee would have been had the licensee maintained his or her license in a timely fashion in accordance with existing requirements, and in the case of inactivity merely mirrors the inactive and reactivation fees applicable to master HVAC contractors. See also #7 above.

(9) TIERING: Is tiering applied? Tiering is not applied as all journeyman HVAC licensees will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of HVAC.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.654 and 198B.658.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not anticipated to generate significant additional revenues for the agency; rather; this amendment is anticipated to result in a loss of journeyman license renewal revenue to the extent of those existing licensees who choose to inactivate the license for the lower fee.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not anticipated to generate significant additional revenues for the agency; rather; this amendment is anticipated to result in a loss of journeyman license renewal revenue to the extent of those existing licensees who choose to inactivate the license for the lower fee.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment.

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

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

Revenues (+/-): Decrease.

Expenditures (+/-): Neutral.

Other Explanation: Neutral.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(Amendment)

815 KAR 8:060. Requirements for approval of continuing education courses and providers.

RELATES TO: KRS 198B.658, 198B.660, 198B.664, 198B.672, 198B.684

STATUTORY AUTHORITY: KRS 198B.654(1), 198B.684

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689. KRS 198B.684 authorizes the board to promulgate an administrative regulation to establish requirements for approval of continuing education courses and providers. This administrative regulation establishes the requirements for approval of continuing education courses and providers.

Section 1. Requirements for Continuing Educational Provider Approval. (1) A continuing education provider[~~Providers~~] shall either be a:

(a) Trade Association with affiliation to the HVAC trade;

(b) Trade school;

(c) College;

(d) Technical school;

(e) Business dedicated solely to providing continuing education and that provides at least one (1) HVAC course in each of Kentucky's congressional districts quarterly;

(f) HVAC company that employs full-time training personnel to conduct continuing education programs providing continuing education for journeymen only; or

(g) HVAC manufacturer or distributor that employs full-time training personnel to conduct continuing education programs providing continuing education for journeymen only.

(2)(a) A[~~Each~~] continuing education course provider shall be approved and registered[~~register~~] with the department as required by subsection (3) of this section before submitting course materials for department approval.

(b) Registration shall be valid for two (2) years from the date of issuance.

(3) A course provider[~~providers~~] shall apply for registration[~~register~~] on Form HVAC-8[~~HVAC 8~~], Application for Approval as a Continuing Education Course Provider for HVAC Licensure, provided by the department and shall include the provider's[~~the following~~]:

(a) Company name;

(b) Contact person;

(c) Mailing address;

(d) Email address;

(e) Telephone number; and

(f) Fax number.

(4) Each continuing education course provider shall pay a $125 registration fee to the department, which shall be submitted with the Application for Approval as a Continuing Education Course Provider for HVAC Licensure.

(5) The department shall maintain a list of approved continuing education course providers.

(6) A[~~(5) Each~~] course provider shall report to the department any change to the information submitted in the initial application within thirty (30) days after the change takes effect.

(7)[~~(6)~~] For each course approved, the provider shall distribute a questionnaire to each applicant in attendance for the purpose of rating the course.

Section 2. Continuing Education Course Approval. (1) A separate application for approval shall be submitted to the department on Form HVAC-9, Application for Continuing Education Course for HVAC Licensure, for each course offered by the course provider.

(2)(a) The[~~An~~] Application for[~~Approval as a~~] Continuing Education Course[~~Provider~~] for HVAC Licensure shall be submitted only by an approved provider registered with the department.

(b) An application[~~Applications~~] shall be submitted at least thirty (30) days prior to the course's offering.

(3) A continuing education course shall provide instruction in at least one (1) of the subject areas specified in 815 KAR 8:050, Section 1(3)(a) through (d) and Section 2(3)(a) through (d).

(4) The course application shall include[~~the following~~]:

(a) The name of the course;

(b) The name and registration number of the provider;

(c) A course syllabus;

(d) The name of the instructor or presenter along with his or her qualifications;

(e) The amount of actual time needed to present the course;

(f) The objectives of the course; and

(g) A statement of the practicality of the course to the HVAC trade.

(5) Content changes made to the course shall require a subsequent submission to the department for review and approval.

(6) Course approval shall be valid for two (2) years from the date of department approval.

(7)(a) The department shall issue a course number for each approved course.

(b) The course number and the provider's number shall appear on all advertisements and certificates for the course.

(8) A provider shall submit to the department a quarterly schedule including dates and locations of courses by January 1, April 1, July 1, and October 1 annually.

(9) A provider[~~Providers~~] may submit additional courses to its[~~their~~] quarterly schedule if done at least thirty (30) days prior to the course offerings.

(10) Notification of a scheduling change shall be delivered to the department by fax or e-mail to the director of the Division of HVAC[~~shall receive notification of scheduling changes~~] at least ten (10) working days prior to the originally scheduled course date[~~by fax or e-mail to the Director of the Division of HVAC~~].

(11) Cancellations.

(a) The provider shall give notice of cancellation to registrants no less than five (5) working days prior to the scheduled date of the class[~~classes~~] unless the governor declares a state of emergency or other conditions exist that would preclude a five (5) day notification of cancellation.

(b) If a scheduled class is cancelled, the registrant shall have the option to attend a rescheduled class or receive a full refund for the cancelled class from the provider.

(c) A registrant who notifies a provider of registration cancellation no less than[~~prior to~~] five (5) working days prior to the[~~of a~~] scheduled date of the course may choose either a full refund or to attend a subsequent course.

(d) A provider[~~Providers~~] shall not cancel a course with ten (10) or more registrants[~~,~~] unless it is the result of an emergency.

Section 3. Continuing Education Course Records. (1) For each approved course, a[~~Each~~] registered course provider shall establish and maintain for three (3) years[~~the following records for each approved course~~]:

(a) A copy of each certificate[~~Certificates~~] of completion required by[~~as provided in~~] subsection (2) of this section;

(b) The[~~An~~] attendance sign-in and sign-out sheet; and

(c) The[~~A~~] course syllabus.

(2) Certificates of completion.

(a) A[~~Each~~] registered course provider shall issue a certificate of completion to[~~for~~] each participant who enrolled and completed an approved continuing education course.

(b) A certificate of completion shall contain[~~the following information about the individual participant~~]:

1. The name of the individual participant;

2. The address of the individual participant;

3. The license number of the individual participant;

4. The date of attendance; and

5. The name of the course completed.

(c) One (1) copy of the certificate of completion shall be:

1. Sent to the department electronically;

2. Retained on file by the provider in compliance with subsection (1) of this section; and

3. Given to the participant upon completion of the course.

Section 4. Course Audits. (1) Records requested in writing by the department shall be delivered to the department within ten (10) days of the date of the request[~~requesting date~~].

(2) Representatives of the department may attend an approved continuing education course to ensure that the course meets the stated objectives and that applicable requirements are being met.

Section 5. Disciplinary Action. Provider approval shall be denied or revoked if the department determines that the provider:

(1) Obtains, or attempts to obtain, registration or course approval through fraud, false statements, or misrepresentation;

(2) Does not provide complete and accurate information in either the initial registration or in notification of changes to the information;

(3) Advertises a course as being approved by the department prior to receiving approval; or

(4) Fails to comply with the requirements of this administrative regulation.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form HVAC-8[~~HVAC 8~~], "Application for Approval as a Continuing Education Course Provider for HVAC Licensure", July 2014[~~January 2010~~]; and

(b) Form HVAC-9[~~HVAC 9~~], "Application for Continuing Education Course for HVAC Licensure", July 2014[~~January 2010~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, HVAC Division, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412[~~5405~~], Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner
LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: October 10, 2014

FILED WITH LRC: October 14, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 1, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for continuing education provider registration and course approval.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement KRS Chapter 198B.650 to 198B.689; specifically, the regulatory authority of the Board of HVAC Contractors over continuing education requirements for HVAC licensees and certificate holders established in KRS 198B.684.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.684 authorizes the Board to promulgate administrative regulations governing the standards for continuing education for HVAC licensees and certificate holders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation directly implements the authorizing statutes and establishes the continuing education requirements for licensees and certificate holders authorized by KRS 198B.684.

(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 a continuing education provider registrations fee necessary to offset the administrative costs associated with processing such applications and implementing the continuing education program.

(b) The necessity of the amendment to this administrative regulation: The new fee is calculated to generate sufficient revenue to sustain the administrative cost of the associated services being provided and still maintain a minimum level and quality of statewide service without an increase in staffing levels.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment implements the fee approved by the board consistent with the board's mandate in KRS 198B.684.

(d) How the amendment will assist in the effective administration of the statutes: The fee established by this amendment will provide the necessary funding for the Division of HVAC to continue performing the administrative services associated with the fee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals and entities engaged in providing HVAC continuing education for Kentucky licensees and certificate holders.

(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 comply with this administrative regulation or amendment: This regulation does not require new action by HVAC continuing education providers. It merely establishes a registration fee to cover the administrative costs to the Division of HVAC in managing the existing registration program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each continuing education course provider will be required to pay a $125 registration fee with each registration. Per 815 KAR 8:060, Section 1(2)(b), the registration is valid for two (2) years. The fee must be submitted with each new registration.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The primary benefit of the new fee will be the ability to the Division of HVAC to continue managing the provider registration program as required by this regulation.

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

(a) Initially: There are no anticipated additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this regulatory amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to require any additional funding other than the fee proposed herein. This

amendment will serve as the additional source of funding for maintaining the Division of HVAC's current level of service regarding registration of continuing education providers. It is not anticipated that any other source of funding will be required for implementation and enforcement.

(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 amendment establishes a new registration fee in order to fund the current Division of HVAC administrative functions implemented by this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes a new registration fee of $125 applicable to all HVAC continuing education providers. This increase is necessary to offset the actual administrative costs of the service and thereby minimize the effect of significantly increased expenditures beyond agency control, including those associated with Actuarially-Required Retirement Contributions (ARC), the Commonwealth Office of Technology (COT), enacted employee raises, and rising employee healthcare costs. OSBD has increased projected Current Receipts for FY15 and FY16 in anticipation of this and other HVAC-related proposed increases so that expenditures could be covered while maintaining a minimum level and quality of statewide service. The additional revenue generated from the proposed fee increases will be used to support the actual costs of the existing service without drawing from other division revenues, and thereby contribute toward the division's efforts to more closely bring revenues in line with existing expenditures to administer its statutorily-mandated permitting, inspection and enforcement program.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals registering as HVAC continuing education providers will be subject to the new fee.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of HVAC.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.684.

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, as amended, is expected to generate approximately $6,250 during the first year. There are approximately 100 continuing education providers registered with the Division of HVAC. Their registrations are valid for two (2) years, and expire throughout the year based on their registration anniversary. The Division of HVAC anticipates revenues from this new fee in the amount of $12,500 over a two (2) year period.

(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? See 3(a) above. Approximately $12,500 will be generated every two (2) years by this administrative regulation, or $6,250 allocated annually.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment.

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

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

Revenues (+/-): Increase.
Expenditures (+/-): Neutral.
Other Explanation: N/A.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(Amendment)

815 KAR 8:070. Installation permits.

RELATES TO: KRS 198B.654, 198B.6673, 198B.6678[~~, EO 2009-535~~]

STATUTORY AUTHORITY: KRS 198B.654, 198B.6671, 198B.6672, 198B.6673, 198B.6674, 198B.6675, 198B.6676, 198B.6677, 198B.6678[~~, EO 2009-535~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations for the enforcement, administration and coordination of KRS 198B.650 through 198B.689. KRS 198B.6673 requires the board to establish a reasonable schedule of fees and charges to be paid for HVAC installation permits and inspections.[~~EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department.~~] This administrative regulation establishes the fees and charges for HVAC installation permits in Kentucky.

Section 1. Issuance of Permits. (1) A permit[~~Permits~~] to construct, install, or alter a heating, ventilation, or air conditioning system shall only be issued to a licensed master heating, ventilation, and air conditioning contractor, except as provided by subsection (3) of this section.

(2) A journeyman HVAC mechanic shall not construct, install, or alter a heating, ventilation, or air conditioning system unless the work is performed under the supervision of a licensed master HVAC contractor.

(3) A permit to construct, install, or alter a heating, ventilation, or air conditioning system shall be issued to a homeowner who installs a heating, ventilation, or air conditioning system in the homeowner's legal residence or in a home constructed by a homeowner for personal residential use, if all the [~~following~~] requirements of this subsection are met.[:]

(a) Application shall be made on the HVAC Construction Permit Application: One & Two Family Dwellings, for the permit prior to the initiation of the HVAC work.[;]

(b) The homeowner shall file with the application:

1. An affidavit stating that the homeowner shall abide by the terms of this administrative regulation;

2. Proof of adequate sizing of heating, ventilation, or air conditioning system to be installed; and

3. A complete design plan of all related duct and piping of system.[;]

(c) All work shall be performed in compliance with the Kentucky Residential Code and the Kentucky Building Code.

(d) All the work shall be personally performed by the owner.

(4) Only one (1) homeowner permit for construction of a new home shall be issued to an individual within a five (5) year period.

Section 2. Permit Required. (1) An application shall be made for a permit prior to installation on one (1) of the following forms:

(a) HVAC Construction Permit Application: Commercial Buildings;

(b) HVAC Construction Permit Application: Multi-family Dwellings; or

(c) HVAC Construction Permit Application: One & Two Family Dwellings.

(2) An HVAC installation permit shall be required for the initial heating, ventilation, or air conditioning system:

(a) For all new construction installations of heating, ventilation,

or air conditioning systems;

(b) For construction additions in which an additional heating, ventilation, or air conditioning system is installed;

(c) For all existing buildings in which the first heating, ventilation, or air conditioning system is being installed; and

(d) For projects in which a contractor assumes responsibility to:

1. Make corrections;

2. Test an installation performed by another contractor; or

3. Install a system for which another master contractor has obtained a permit.

Section 3. A permit shall be issued and inspections performed upon request for the replacement of the following:

(1) Furnaces;

(2) Condensing units;

(3) Heat pumps;

(4) Fan coil units;

(5) Chiller systems; or

(6) Heating boiler systems not covered by KRS Chapter 236.

Section 4. HVAC Installation Permit Fees. (1) One- and Two-Family Dwelling Installations. The fee for each heating, ventilation, or air conditioning system installation permit for one- and two-family dwellings shall be $105[~~seventy-five (75) dollars~~] for the first system plus fifty (50) dollars for each additional system.

(2) Multi-Family Dwelling Installations. The fee for each heating, ventilation, or air conditioning system installation permit for multi-family dwellings other than duplexes, shall be $105[~~seventy-five (75) dollars~~] for the first system plus fifty (50)[~~twenty-five (25)~~] dollars for each additional system.

(3) Commercial installations.

(a) The fee for each heating, ventilation, or air conditioning system installation permit other than one (1), two (2), and multi-family dwellings shall be based upon the total dollar value of each HVAC installation, either actual or estimated.

(b) 1. It shall be the obligation of the installing contractor to supply the complete value of the installation, including labor and material costs regardless of the purchaser.

2. Except as provided in subparagraph 3b of this paragraph, an exact figure does not need to be quoted or divulged to the HVAC inspector or department.

3. The permit application shall include a statement signed by the applicant affirming[~~an affirmative, signed statement~~] that the true value of the installation lies within certain limits, as listed in the left column of the table in clause c of this subparagraph and as established in clause d of this subparagraph.

a. The fees for heating, ventilation, or air conditioning system installation are listed in the right column of the table.

b. The department may request documented proof of costs from the permit applicant if the true value is in question.

c.

Amount in dollars	Permit fee
$2,000 or less	$125[~~$75~~]
$2,001 to $10,000	$180[~~$150~~]
$10,001 to $25,000	$270[~~$225~~]
$25,001 to $50,000	$330[~~$275~~]
$50,001 to $75,000	$390[~~$325~~]
$75,001 to $100,000	$500[~~$435~~]
$100,001 to $150,000	$630[~~$550~~]
$150,001 to $200,000	$760[~~$660~~]
$200,001 to $250,000	$885[~~$770~~]
$250,001 to $300,000	$1,025[~~$890~~]
$300,001 to $400,000	$1,150[~~$1,000~~]
$400,001 to $500,000	$1,500[~~$1,350~~]
$500,001 to $600,000	$1,725[~~$1,500~~]
$600,001 to $700,000	$1,900[~~$1,650~~]
$700,001 to $800,000	$2,125[~~$1,850~~]
$800,001 to $900,000	$2,355[~~$2,050~~]
$900,001 to $1,000,000	$2,590[~~$2,250~~]
$1,000,001 to $1,100,000	$2,820[~~$2,450~~]
$1,100,001 to $1,200,000	$3,050[~~$2,650~~]
$1,200,001 to $1,300,000	$3,280[~~$2,850~~]
$1,300,001 to $1,400,000	$3,510[~~$3,050~~]
$1,400,001 to $1,500,000	$3,735[~~$3,250~~]
$1,500,001 to $1,600,000[~~and above~~]	$3,965[~~$3,450~~]

d. The permit for a commercial installation valued over $1,600,000 shall be calculated at the cost of $3,965 plus $200 per $100,000 or fraction thereof in excess of $1,600,000.

(4) Correction and Testing Permits. The permit fee shall be the base fee of seventy-five (75) dollars if the application for permit does not include any new installation, but is to make corrections or provide testing for an installation made by someone else.

Section 5. Inspection Fees. (1) Each heating, ventilation, or air conditioning system permit shall include three (3) heating, ventilation, or air conditioning system inspections at no additional cost.

(2)(a) A[~~All~~] heating, ventilation, or air conditioning system inspection[~~inspections~~] in excess of the three (3) provided with purchase of permit shall be performed at the rate of fifty (50) dollars per inspection.

(b) Payment shall be received by the inspecting authority prior to the final inspection approval being granted.

Section 6. Expiration of Permits. (1) A[~~All~~] heating, ventilation, or air conditioning system installation permit[~~permits~~] issued under this administrative regulation shall expire six (6) months after the date of issuance unless the permitted work has begun.

(2) If construction begins within six (6) months of permit issuance:

(a) The permit shall be effective until completion of the planned heating, ventilation, or air conditioning system inspection; or

(b) If the work ceases on a permitted project for a period exceeding twelve (12) months, the permit shall be void.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) HVAC-27, "HVAC Construction Permit Application: Commercial Buildings", September 2014[~~April 2010~~];

(b) HVAC-28, "HVAC Construction Permit Application: Multi-family Dwellings", September 2014[~~April 2010~~]; and

(c) HVAC-29, "HVAC Construction Permit Application: One & Two Family Dwellings", September 2014[~~April 2010~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412[~~5405~~], Monday through Friday, 8:30 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner
LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: October 10, 2014

FILED WITH LRC: October 14, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 1, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero

Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the permit and inspection fees for HVAC installations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement KRS Chapter 198B.650 to 198B.689; specifically, the permit requirements of KRS 198B.6671 and the fee requirements of KRS 198B.6673.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.654(1) requires the Board of HVAC to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689; KRS 198B.6671 requires permits prior to the installation an initial HVAC system; KRS 198B.6673 requires the Board to establish a reasonable schedule of fees to implement the HVAC permitting and inspection program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation directly implements the authorizing statutes and establishes the schedule of fees required by KRS 198B.6673.

(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 HVAC initial system installation permit fees applicable to one (1) or two (2)-family dwellings, multifamily dwellings, and commercial buildings, as well as the additional system permit fee for multifamily dwellings.

(b) The necessity of the amendment to this administrative regulation: The new fees are calculated to generate sufficient revenue to sustain the administrative cost of the HVAC Division's permitting, inspection and enforcement programs still maintain a minimum level and quality of statewide service without an increase in staffing levels.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment implements the fees approved by the Board consistent with the Board's mandate in KRS 198B.6673.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to generate the revenue required for the Division of HVAC to maintain its current level of services and maintain its statutorily-mandated permitting, inspection and enforcement program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals and entities engaged in the HVAC trade, and all individuals and organizations installing an HVAC system subject to permitting, as well as local governments approved by this agency to directly conduct that jurisdiction's HVAC permitting and inspection 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 comply with this administrative regulation or amendment: This regulation does not require new action by HVAC tradespersons. It merely updates the fees required for the Division's existing permitting program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals or contractor entities installing systems subject to the fee increases implemented in this regulation will have to pay the appropriate fee from this amended schedule.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include maintaining the ability to obtain HVAC permits and inspections at the current time intervals and level of service. These fee increases will not expand the current program of permitting and inspections.

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

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is not anticipated to require any additional funding other than the revised fee schedule proposed herein. These amendments will serve as the source of funding for maintaining the Division of HVAC's current level of service.

(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 amendment increases certain existing fees in order to offset the actual costs of the Division in administering its permitting and inspection program. This increase is necessary to cover significantly increased expenditures beyond agency control, including those associated with Actuarially-Required Retirement Contributions (ARC), the Commonwealth Office of Technology (COT), enacted employee raises, and rising employee healthcare costs. OSBD has increased projected Current Receipts for FY15 and FY16 in anticipation of these proposed increases so that expenditures could be covered while maintaining a minimum level and quality of statewide service. The additional revenue generated from the proposed fee increases will be used to support existing programs with no increase in staffing levels and will more closely bring revenues in line with existing expenditures to cover the agency's current level of service and actual costs to administer its statutorily-mandated permitting, inspection and enforcement program.

(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, but does directly increase certain permitting fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals seeking HVAC permits will be subject to the amended fees where applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of HVAC. In addition, any local jurisdiction currently operating an HVAC permitting and inspection program pursuant to written agreement with the Division of HVAC will be authorized to adjust its applicable fees in order to maintain consistency and uniformity with the Division's fee schedule and better offset local costs to maintain the program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.6671 and 198B.6673.

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, as amended, is expected to generate approximately $303,236 in additional revenue during the first year, for a total of approximately $1,318,371.

(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 revenue generated in subsequent years will directly correlate to the number of permits taken out in each category. The Division of HVAC anticipates that revenue from this regulation in future years will be relatively consistent with the revenue generated in the first year; i.e., approximately $1,318,371.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment.

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

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

Revenues (+/-): Increase.

Expenditures (+/-): Neutral.

Other Explanation: N/A.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(Amendment)

815 KAR 8:090. Fees and refunds.

RELATES TO: KRS 198B.656, 198B.658, 198B.660, 198B.664, 198B.6671[~~, EO 2009-535~~]

STATUTORY AUTHORITY: KRS 198B.656, 198B.660(1)(b), (2), 198B.662, 198B.664, 198B.6671, 198B.6673, 198B.676[~~, EO 09-535~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.656, 198B.660, 198B.662, 198B.664,[~~and~~] 198B.6671, 198B.6673, and 198B.676 authorize the Board of Heating, Ventilation and Air Conditioning Contractors to establish license and permit fees.[~~EO 1009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than the executive director, as the head of the department.~~] This administrative regulation establishes procedures pertaining to fee payments and refunds.

Section 1. A fee submitted to the Division of HVAC shall be made payable to the Kentucky State Treasurer.

Section 2. (1) If a submitted fee is returned to the Division of HVAC for nonpayment or insufficient funds, the payor shall pay an insufficient funds fee of fifty (50)[~~thirty-five (35)~~] dollars, unless proof of financial institution error is provided.

(2) A payor whose submitted fee has been returned to the Division of HVAC for nonpayment or insufficient funds[~~If a company or individual submits a check returned to the Division for insufficient funds, the payor~~] shall not, for a period of at least six (6) months, make a payment to the Division of HVAC by personal check.

Section 3. A refund for an installation permit shall be given if:

(1) The refund request is received by the Division of HVAC[~~made~~] within six (6) months of the date of issuance of the permit[~~purchase~~]; and

(2) Work has not begun on the project for which the permit was issued.

AMBROSE WILSON IV, Commissioner
LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: October 10, 2014

FILED WITH LRC: October 14, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 1, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for paying fees to the Division of HVAC and the fee for returned checks.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement KRS Chapter 198B.650 to 198B.689; specifically, the payment and collection of all fees authorized by KRS 198B.650 to 198B.689 and all administrative regulations promulgated thereunder.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.654(1) requires the Board of HVAC to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689; KRS 198B.650 to 198B.689 and the administrative regulations promulgated thereunder authorize the collection of various fees to fund the Division of HVAC for its enforcement of this range of statutes and regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation directly implements the authorizing statutes and establishes the procedure for payment of fees and refunds of those fees in the authorizing statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment increases the existing fee for the return of a submitted payment due to insufficient funds from thirty-five (35) dollars to fifty (50) dollars, in order to more closely cover the actual administrative cost or processing and collecting a returned payment.

(b) The necessity of the amendment to this administrative regulation: To provide adequate revenue to maintain the current level of services provided by the Division of HVAC.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment implements the increased returned check fee approved by the board consistent with the Board's mandate in KRS 198B.6673.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to generate the revenue required for the Division of HVAC to maintain the current services of its administrative program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals and entities engaged in the HVAC trade, and all individuals and organizations installing an HVAC system subject to permitting or engaged in HVAC continuing education, and who submit any sort of Division-established fee by means other than currency or cashier's check.

(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 comply with this administrative regulation or amendment: This regulation does not require new action by HVAC tradespersons. It merely revises the existing fee associated with the return of a submitted fee as the result of nonpayment or insufficient funds.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals who pay fees to the Division of HVAC and who fail to ensure adequate funds to cover the payment method submitted to pay the fee will be subject to an increased returned check fee of fifty (50) dollars rather than thirty-five (35) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include maintaining the ability to obtain Division of HVAC services at the current time intervals. This fee increase will not expand the current Division of HVAC programs.

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

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is not anticipated to require any additional funding. This amendment will serve as a source of funding for maintaining the Division of HVAC's current level of service.

(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 amendment increases the existing fee for the return of a submitted payment due to insufficient funds from thirty-five (35) dollars to fifty (50) dollars. This increase is necessary to offset the actual administrative costs of the service and thereby minimize the effect of significantly increased expenditures beyond agency control, including those associated with Actuarially-Required Retirement Contributions (ARC), the Commonwealth Office of Technology (COT), enacted employee raises, and rising employee healthcare costs. OSBD has increased projected Current Receipts for FY15 and FY16 in anticipation of this and other HVAC-related proposed increases so that expenditures could be covered while maintaining a minimum level and quality of statewide service. The additional revenue generated from the proposed fee increases will be used to support the actual costs of the existing service without drawing from other division revenues, and thereby contribute toward the division's efforts to more closely bring revenues in line with existing expenditures to administer its statutorily-mandated permitting, inspection and enforcement program.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish any fees, but does directly increase the returned check/payment fee at Section 2(1).

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals making payments to the Division of HVAC will be subject to the amended fee.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of HVAC.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.6673(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation, as amended, is expected to generate approximately $1,750 during the first year, which represents an increase of $630 over FY2014.

(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 revenue generated in subsequent years is expected to be consistent with the first year.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment.

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

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

Revenues (+/-): Increase.

Expenditures (+/-): Neutral.

Other Explanation: N/A.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:015. Fees and refunds.

RELATES TO: KRS 318.050, 318.054, 318.134

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.050, 318.054, and 318.134 authorize the office to establish license and permit fees. KRS 318.130 requires the department to establish a State Plumbing Code and authorizes the department[~~office~~] to promulgate[~~adopt~~] reasonable rules or administrative regulations to administer KRS Chapter 318. This administrative regulation establishes[~~acceptable~~] methods of payment of fees, a penalty for returned payments, and the requirements to receive a refund of installation permit payments.[~~The office is directed by KRS 318.130 to adopt and put into effect a State Plumbing Code. The office is directed by KRS 318.050 to adopt reasonable fees for licensure as a journeyman plumber or master plumber. KRS 318.054 authorizes the office to establish fees for the renewal or revival of licenses, and KRS 318.134 authorizes the office to establish fees for installation permits. This administrative regulation establishes the manner in which fees are to be paid to the office. The regulation also establishes the penalty for nonpayment of fees as well as the requirements to receive a refund for installation permits.~~]

Section 1. Fees. (1) Fees payable to the Division of Plumbing shall be paid by:

(a) Money order;

(b) Check;

(c) Credit card;

(d) Debit card;[~~or~~]

(e) Electronic funds transfer; or

(f) United States coins and currency.

(2) All fees shall be made payable to the Kentucky State Treasurer.

Section 2. Returned Payments. (1) If a fee is returned to the Division of Plumbing for nonpayment, the payor shall be assessed a fee of thirty-five (35) dollars, except if[~~when~~] proof of fault of the financial institution is provided.

(2) A company or individual[~~Companies or individuals that are~~] notified of a returned payment shall, for a period of six (6) months, make all payments to the Division of Plumbing by:

(a) Cashier's check;

(b) Certified check;

(c) Money order;[~~or~~]

(d) Electronic funds transfer; or

(e) United States coins and currency.

Section 3. Permit Refunds. A refund[~~Refunds~~]for an installation permit[~~permits~~] shall be given if:

(1) The refund request is made within twelve (12) months of purchase;[~~and~~]

(2) Work has not begun on the project for which the permit was issued; and

(3) A processing fee of twenty (20) dollars is received by the Division of Plumbing.

AMBROSE WILSON IV, Commissioner
LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: October 10, 2014

FILED WITH LRC: October 14, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 1, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes for the Division of Plumbing methods of payment of fees, a penalty for returned payments, and the requirements to receive a refund of installation permit payments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to administer the processing of payments to the Division of Plumbing and refunds thereof.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation directly conforms to its authorizing statutes, which direct the establishment of fees relating to licenses and permits, and which authorize reasonable rules to administer those fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the manner in which payments shall be presented, processed and refunded by the Division of Plumbing.

(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 a processing fee to reimburse a portion of the administrative costs incurred by the Division in effectuating a timely request for refund of an installation permit fee.

(b) The necessity of the amendment to this administrative regulation: To cover a portion of the processing costs incurred by the Division in issuing an installation permit fee refund.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment directly conforms to the regulation's authorizing statutes, which direct the establishment of fees relating to licenses and permits, and which authorize reasonable rules to administer those fees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment permits the Division of Plumbing to continue allowing certain permit fee refunds by establishing the means to partially cover the administrative costs associated with processing a refund request.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All plumbing permit holders.

(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 comply with this administrative regulation or amendment: Any individual seeking to obtain a refund of an installation permit fee must qualify under the conditions of and pay the processing fee established by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Any individual seeking to obtain a refund of an installation permit fee must pay a processing for of twenty (20) dollars per permit refund.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit consists of continued availability of a refund for certain installation permit fees.

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

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any agency costs that are not reimbursed by the processing fee established by this amendment will continue to be met with existing 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: This amendment will not necessitate an increase in existing fees or require funding to the department for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes a processing fee of twenty (20) dollars to reimburse a portion of the administrative costs incurred by the division in effectuating a timely request for refund of an installation permit fee. This will permit the division to continue allowing certain permit fee refunds by establishing the means to partially cover the administrative costs associated with processing a refund request.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals submitting a fee or requesting a refund will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction's Division of Plumbing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 318.130, in order to administer the provisions of Chapter 318, which include those provisions authorizing the establishment of license and permit fees: KRS 318.050, 318.054, and 318.134.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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? Based on historical data on the number of refunds issued in FY 2013 and FY2014, this amendment is anticipated to generate approximately $4,820 in additional revenues for the agency annually, which will cover a portion of the existing administrative costs associated with issuing refunds.

(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? Based on historical data on the number of refunds issued in FY 2013 and FY2014, this amendment is anticipated to generate approximately $4,820 in additional revenues for the agency annually, which will cover a portion of the existing administrative costs associated with issuing refunds.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment.

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

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

Revenues (+/-): Increase.

Expenditures (+/-): Neutral.

Other Explanation: N/A.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival, or reinstatement of licenses.

RELATES TO: KRS 318.010, 318.020, 318.040, 318.050, 318.054

STATUTORY AUTHORITY: KRS 318.040(1)(d), (2), (3), 318.050, 318.054(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.040(1)(d) requires an applicant for a master or journeyman plumber's license to possess the qualifications established in KRS 318.040 and other qualifications prescribed by the commissioner. KRS 318.040(2) and (3) require an applicant to successfully complete an examination prescribed by the department. KRS 318.050 requires the department to establish reasonable application fees for licensure as a master or journeyman plumber. KRS 318.054(3) requires the department to establish reasonable renewal fees for master or journeyman plumbers. This administrative regulation establishes the application and examination requirements and the application and renewal fees.

Section 1. Applications for Examination for Master or Journeyman Plumber's Licenses. (1) An application for examination for a master or journeyman plumber's license shall be submitted to the department of Housing, Buildings and Construction on:

(a) Form PLB-1, Application for License as a Master Plumber; or

(b) Form PLB-2, Application for License as a Journeyman Plumber.

(2) The application shall:

(a) Be properly signed and notarized;

(b) Be accompanied by an examination fee of:

1. $150 to take the master plumber's examination; or

2. Fifty (50) dollars to take the journeyman plumber's examination; and

(c) Include a passport-sized, color photograph of the applicant taken within the past six (6) months[~~not less than two (2) inches square nor larger than four (4) inches square taken within two (2) years of submittal~~].

(3) The application fee shall be submitted with the application.

(4) The application fee shall be paid by United States coin and currency,[~~at least two (2) weeks prior to the date of examination and remitted by~~] post office or express money order, bank draft, or certified check payable to the Kentucky State Treasurer.

(5)[~~(4)~~] After passing the examination, an applicant for a master plumber's license shall remit a license fee of $250.

(6)[~~(5)~~] After passing the examination, an applicant for a journeyman's license shall remit a license fee of sixty (60) dollars.

Section 2. Examinations for Master or Journeyman Plumber's Licenses. (1) Examination of applicants.

(a) Regular examination of applicants for a master or journeyman plumber's license shall be conducted during the months of February, May, August, and November of each year.

(b) A special examination may be conducted at other times as the Department of Housing, Buildings and Construction directs.

(2) Time and place of examination. Notice of the time and place of examination shall be given by United States mail at least one (1) week prior to the date of examination to each person who has an approved application on file.

(3) An applicant who fails to attend or successfully complete an examination for which he or she has been scheduled may request to reschedule or retake the examination within one (1) year from the date of the applicant's first notice of examination as established in subsection (2) of this section. The requirements established in paragraphs (a) through (d) of this subsection shall apply to a rescheduled examination.

(a) The applicant shall complete and submit a new application form and examination fee as required by Section 1 of this administrative regulation. An applicant proceeding pursuant to this section shall not be required to resubmit:

1. The photograph required by Section 1(2)(c) of this administrative regulation; or

2. Proof of compliance with Sections 4 or 5 of this administrative regulation.

(b) An applicant for a journeyman plumber's license who has achieved a passing score on only the written or practical portion of the examination, but not both portions, may apply to retake the portion that he or she failed during the initial examination if the reexamination is completed within one (1) year from the date of the applicant's first notice of examination as established in subsection (2) of this section.

(c) An applicant for a journeyman plumber's license who has failed to achieve a passing score on the retaken portion of the examination may apply to retake the entire examination if the reexamination is completed within one (1) year from the date of the applicant's first notice of examination as established in subsection (2) of this section.

(d) The application of an applicant for a master or journeyman plumber's license who fails to successfully complete his or her examination within one (1) year from the date of the applicant's first notice of examination as established in subsection (2) of this section shall be void.

1. An applicant whose application has become void pursuant to this subsection may reapply.

2. Reapplication shall be accomplished by complying with all applicable provisions of this administrative regulation as if the applicant were a first-time applicant.

(4) Materials required for journeyman plumbers' examinations. An applicant for a journeyman plumber's license shall furnish the materials required for the practical examination, which are established[~~specified~~] in the List of Required Examination Materials that is included as part of the application.

(5)[~~(4)~~] The testing requirements shall be designed by the State Plumbing Examining Committee and shall be more complex for the master's examination than the journeyman's examination.

Section 3. Renewals of Master and Journeyman Plumber's Licenses. (1) Renewal fees. The annual license renewal fee shall be:

(a) $250 for a master plumber; and

(b) Sixty (60) dollars for a journeyman plumber.

(2) Continuing education. The continuing education requirements established in 815 KAR 20:032 shall be met.

(3) Inactive master renewal.

(a) To place or keep a[~~the~~] master plumber's license in inactive status, the[~~a~~] master plumber shall pay annually an inactive fee of $125.

(b) An inactive master plumber shall not secure a plumbing permit, advertise,[~~or~~] represent himself or herself as a qualified master plumber, or otherwise engage in the work of a master plumber.

(c) To reactivate a master plumber's[~~plumber~~] license, the inactive master plumber shall first pay an additional $125 and comply with the continuing education requirements established in 815 KAR 20:032.

(4) Inactive journeyman renewal.

(a) To place or keep a journeyman plumber's license in inactive status, the journeyman plumber shall pay annually an inactive fee of thirty (30) dollars.

(b) An inactive journeyman plumber shall not represent himself or herself as a qualified journeyman plumber or otherwise engage in the work of a journeyman plumber.

(c) To reactivate a journeyman plumber's license, the inactive journeyman plumber shall first pay an additional thirty (30) dollars and comply with the continuing education requirements established in 815 KAR 20:032.

(5) Remittance of renewal fees. The[~~A~~] renewal fee shall be paid[~~remitted~~] by United States coin and currency, post office or express money order, bank draft, or certified check payable to the Kentucky State Treasurer.

Section 4. Requirements for Master Plumber Applicants. Pursuant to KRS 318.040(1)(d), each person shall meet the[~~following~~] requirements established in subsections (1) through (4) of this section to become licensed as a master plumber.[~~:~~]

(1)(a) An applicant shall have:

1. A valid journeyman plumber's license for a minimum of two (2) years within the past five (5) years immediately preceding application; and

2. Been actively employed in plumbing under the supervision of a licensed master plumber for a minimum of two (2) years; or

(b) The applicant shall be a Kentucky registered engineer experienced in mechanical engineering.

(2) An applicant shall successfully complete the examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate that the applicant:

(a) Understands KRS Chapter 318 and 815 KAR Chapter 20;

(b) Is capable of the design of a plumbing system; and

(c) Understands the technical and practical installation techniques and principles for a safe and sanitary plumbing system.

(3) The examination shall include:

(a) Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20; and

(b) Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes, and vents and the plumbing fixtures connected thereto.

1. The proper sizing of main stacks shall be given more importance than other piping.

2. Deductions shall be required for oversized piping and for undersized piping.

(4) The passing grade for the total examination for a master plumber shall be eighty (80) percent, with a minimum of seventy-five (75) percent obtained for each portion of the examination established in subsection (3)(a) and (b) of this section.

Section 5. Requirements for Journeyman Plumber Applicants. Pursuant to KRS 318.040(1)(d), an applicant shall meet the[~~following~~] requirements established in subsections (1) through (3) of this section to become licensed as a journeyman plumber.[~~:~~]

(1) An applicant shall have completed two (2) consecutive years experience as an apprentice plumber.

(a) Proof of this requirement shall be satisfied by submission of:

1. A W-2 form;

2. An affidavit of a Kentucky licensed master plumber; or

3. A plumbing license issued by another state.

(b) Completion of a committee approved course shall be deemed to be the equivalent of one (1) year of experience. An applicant may only substitute one (1) year of experience by completing a committee approved course.

[~~(c) Approved courses which satisfy the requirements of paragraph (b) shall be:~~

~~1. Plumbing Technology by the Kentucky Community and Technical College System; and~~

~~2. Plumbing Technology by Daymar College.~~]

(2) An applicant shall successfully complete the practical and written examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate the practical and technical understanding of plumbing principles and the ability to apply those principles for a safe and sanitary plumbing system. The examination shall include:

(a) Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20;

(b) Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes, and vents and the plumbing fixtures connected thereto.

1. The proper sizing of main stacks shall be given more importance than other piping.

2. Deductions shall be required for oversized piping and for undersized piping; and

(c) Completing a practical section in which the applicant shall demonstrate the ability to properly install plumbing by engaging in certain activities such as properly installing a no hub cast-iron project and soldering copper solder connections.

(3) The passing grade for the total examination for a journeyman plumber shall be seventy-five (75) percent, with a minimum of seventy (70) percent obtained for each portion of the examination established in subsection (2)(a), (b), and (c) of this section.

Section 6. A master plumber or journeyman plumber shall notify the department of the name of the plumber's business and its address, employer, and the employer's address each time a change of employment is made.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PLB-1, "Application for License as a Master Plumber", August 2014[~~October, 2007~~]; and

(b) Form PLB-2, "Application for License as a Journeyman Plumber", August 2014[~~October 2007~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412[~~5405~~], Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner
LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: October 10, 2014

FILED WITH LRC: October 14, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an

opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 1, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application, examination and renewal requirements and fees for master and journeyman plumbers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement KRS Chapter 318; specifically, the licensing qualification and examination requirements of KRS 318.040 and the license and renewal fee requirements of KRS 318.050 and KRS 318.054.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation directly conforms to the statutes' mandate that the department prescribe the qualifications for licensure and prescribe fees for licenses, examinations and renewals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation directly implements the authorizing statutes and establishes the licensing and examination requirements to be administered by the Division of Plumbing.

(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 additional opportunities for a license applicant to retake his or her failed examination within a year of the initial application under certain circumstances without having to reapply as a new applicant. In addition, this amendment extends to journeyman plumbers the same option to place his or her license into inactive status that masters currently have. Finally, this amendment revises the referenced application forms to make non-substantive corrections and provide clarifying language regarding the submission of payment and attachment of documentary proof.

(b) The necessity of the amendment to this administrative regulation: To provide consistency among both license types regarding the voluntary suspension of licensing activity and to establish clear limits and guidelines regarding the processing of applications and reexaminations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment directly conforms to the statutes' mandate that the department prescribe the qualifications for licensure and prescribe fees for licenses, examinations and renewals.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will enhance uniformity in the administration of inactive plumbing licenses and provide clarity and notice to applicants regarding the completion of the application process in the event of a failed examination or portion thereof.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All plumbing licensees and applicants.

(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 comply with this administrative regulation or amendment: The identified entities must comply with the new application procedures for reexamination or in order to place his or her license into inactive status.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities must pay the applicable examination fee for each scheduled reexamination ($150 for a master, fifty (50) dollars for a journeyman), and journeyman plumbers must pay thirty (30) dollars to place or keep his or her license in inactive status.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include increased opportunities to retake license examinations without restarting the entire application process, and to voluntarily suspend licensing status during times of trade inactivity.

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

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the agency. Any agency costs that are not reimbursed by the associated fees established by this amendment will be met with existing 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: This amendment will not necessitate an increase in existing fees or require funding to the department for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes a thirty (30) dollar fee for the new option for a journeyman plumber to voluntarily place his or her license into inactive status. This fee is one-half (1/2) of the existing fee currently required for a journeyman to annually renew his or her license. Therefore, since any existing licensee who may elect to apply for inactive status is currently paying the full applicable annual renewal fee, which is sixty (60) dollars, any use of this fee will in fact result a lowered fee to the licensee and in reduced overall licensing revenue.

(9) TIERING: Is tiering applied? Tiering is not applied as all licensees and applicants will be equally subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 318.040(1)(d), (2), (3), 318.050, and 318.054(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not anticipated to generate additional revenues for the agency, but should instead merely recover a portion of the administrative costs associated with processing and conducting examinations and the processing or maintenance of an inactive license. In fact, this amendment is anticipated to result in the loss of revenue resulting from the loss of license renewal fees from journeyman plumbers who elect the lower fee to achieve inactive

status.

(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 is not anticipated to generate additional revenues for the agency, but should instead merely recover a portion of the administrative costs associated with processing and conducting examinations and the processing or maintenance of an inactive license. In fact, this amendment is anticipated to result in the loss of revenue resulting from the loss of license renewal fees from journeyman plumbers who elect the lower fee to achieve inactive status.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment.

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

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

Revenues (+/-): Decrease.

Expenditures (+/-): Neutral.

Other Explanation: N/A.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:050. Installation permits.

RELATES TO: KRS 318.030, 318.134, 318.160

STATUTORY AUTHORITY: KRS 318.130, 318.134(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.134(3) requires the department to establish a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. KRS 318.130 authorizes the department to promulgate a reasonable rule or administrative regulation to administer the provisions of KRS Chapter 318. This administrative regulation establishes the requirements, fees, and charges for plumbing installation permits and inspections in Kentucky.

Section 1. Issuance of Permits. (1) A permit[~~Permits~~] to construct, install, or alter plumbing, sewerage, or drainage shall be issued only to a licensed master plumber[~~plumbers~~] except as established in subsection (3) of this section.

(2) A journeyman plumber shall not construct, install, or alter plumbing, sewerage, or drainage unless the work is performed under the supervision of a licensed master plumber.

(3) A permit to construct, install, or alter plumbing, sewerage, or drainage shall be issued to a homeowner desiring to install plumbing in a home occupied by the homeowner or constructed by the homeowner for the homeowner's own personal residential use, if:

(a) Application is made for the permit prior to the beginning of the work;

(b) The homeowner files with the application an affidavit stating that the homeowner shall abide by the terms of this section;

(c) All work shall be performed in compliance with the state plumbing code, 815 KAR Chapter 20;

(d) All the work shall be personally performed by the homeowner; and

(e) The homeowner shall not have obtained another homeowner permit for construction of a new home issued within the last five (5) years.

(4) A permit shall not be required for:

(a) The repairing of[~~the following~~]:

1. Leaks;

2. Cocks; or

3. Valves; or

(b) Cleaning out waste or sewer pipes.

Section 2. Conditions Under which a Permit Shall be Required. A plumbing installation permit shall be required for:

(1) A new plumbing installation;

(2) An existing plumbing installation if a fixture, soil, or waste opening or conductor is to be moved or relocated;

(3) Each individual unit of a multistory building if there is more than one (1) unit;

(4) A building that is considered separate if:

(a) The connection between the building and another building is not a necessary part of the structure of either building; or

(b) The building's roof is not part of the roof of another building;

(5) A new house sewer or a house sewer that is to be replaced;

(6) A new water service or a water service that is to be replaced;

(7) The addition of a backflow prevention device to an existing water service;

(8) A new water heater installation or a water heater installation that is to be replaced; or

(9) Taking over a plumbing installation originally permitted to another master plumber or assuming responsibility to correct and test an installation made by someone else.

Section 3. Plumbing Installation Permit Fees. (1) The base fee for each plumbing installation permit for residential, one (1) and two (2) family units, shall be forty-five (45) dollars plus seven (7) dollars for each:

(a) Plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances;

(b) Domestic water heater; and

(c) Separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(2) The base fee for each plumbing installation permit for other than residential, one (1) and two (2) family units, shall be forty-five (45) dollars plus fifteen (15)[~~ten (10)~~] dollars for each:

(a) Plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances;

(b) Domestic water heater;

(c) Conductor opening; and

(d) Separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(3)(a) If only one (1) new domestic water heater is installed or replaced within a single building, the only fee for the plumbing installation permit shall be forty-five (45) dollars.

(b) If more than one (1) water heater is replaced within a building, a permit shall be required pursuant to Sections 1 or 2 of this administrative regulation.

(4) If the application for permit does not include any new installation but is to make corrections to or to provide testing for an installation made by someone else, the permit fee shall be limited to the base fee of forty-five (45) dollars only.

Section 4. Inspection Fees. (1) A person with a plumbing permit shall be entitled to five (5) plumbing inspections at no additional cost.

(2) Each plumbing inspection in excess of five (5) shall be charged at the rate of fifty (50) dollars per inspection and shall be paid prior to the final inspection.

(3) Inspection fees shall not apply if the cost of the permit exceeds $200.

Section 5. Expiration of Permits. (1) Except as established in subsection (2) of this section, all plumbing installations permits issued pursuant to this administrative regulation shall expire one (1) year after the date of issuance.

(2)(a) Except as established in paragraph (b) of this subsection, if construction is begun within one (1) year after the date the permit is issued, the permit shall remain effective until completion of the planned plumbing inspection.

(b) The permit shall expire and become void if the plumbing work ceases on the project for a period exceeding twelve (12) months.\

Section 6. Plumbing Inspection Fees for Public Buildings. The schedule of fees for inspection of the construction, installation, or alteration of plumbing in public buildings shall be the same as established in Section 4 of this administrative regulation.

AMBROSE WILSON IV, Commissioner
LARRY R. BOND, Acting Secretary
APPROVED BY AGENCY: October 10, 2014
FILED WITH LRC: October 14, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 1, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, ext. 144, fax 502-573-1057

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements, fees and charges for plumbing installation permits and inspections in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement the Division of Plumbing's duty to administer and enforce uniform standards for the permitting and inspection of plumbing work.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.134(3) requires the department to establish a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists Division of Plumbing in establishing uniform guidelines for the permitting and inspection fees to be charged in performing its oversight role over plumbing work in Kentucky.

(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 "per opening" portion of the commercial plumbing installation permit fee from forty-five (45) dollars plus ten (10) dollars per opening to forty-five (45) dollars plus fifteen (15) dollars per opening.

(b) The necessity of the amendment to this administrative regulation: The primary reason for the fee increase is significantly increased expenditures beyond agency control, including those associated with Actuarially-Required Retirement Contributions (ARC) and the Commonwealth Office of Technology (COT); however, the Division is already no longer generating sufficient revenue to sustain its existing expenditures necessary to maintain a minimum level and quality of statewide service. The additional revenue generated from the proposed fee increase will be used to support existing programs with no increase in staffing levels and will more closely bring revenues in line with existing expenditures to cover the agency's current level of service.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.130 permits the department to adopt any reasonable rule or regulation to administer the provisions of Chapter 318.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help enable the Division to continue operating at the current level of service with no increase in staffing levels, and raise revenues to more closely match existing expenditures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in commercial plumbing activity within the Commonwealth for which a permit is required.

(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 comply with this administrative regulation or amendment: This amendment requires the affected parties to pay the applicable permit fee associated with a commercial plumbing installation project.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The potential cost to individual affected entities will vary depending upon the size and nature of the commercial plumbing project, but such parties will incur an additional cost of five (5) dollars per commercial opening.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include continued access to the Division's current level of service, including the scheduling and completion of required installation inspections and project approvals.

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

(a) Initially: There are no anticipated additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any agency costs resulting associated with this amendment will be met with existing 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: This amendment increases the "per opening" portion of the commercial plumbing installation permit fee. This increase is necessary due to significantly increased expenditures beyond agency control, including those associated with Actuarially-Required Retirement Contributions (ARC) and the Commonwealth Office of Technology (COT); however, the Division is already no longer generating sufficient revenue to sustain its existing expenditures necessary to maintain a minimum level and quality of statewide service. The additional revenue generated from the proposed fee increases will be used to support existing programs with no increase in staffing levels and will more closely bring revenues in line with existing expenditures to cover the agency's current level of service. These fees do not cover the entire cost of that service, and this proposal is intended to lessen that operational deficit with no increase in staffing.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment directly increases the "per opening" portion of the commercial plumbing installation permit fee.

(9) TIERING: Is tiering applied? Tiering is not applied as all permitted commercial plumbing operations will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is required by KRS 318.134(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is estimated to generate approximately $513,000.00 in additional revenues for the agency's Division of Plumbing annually, including the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is estimated to generate approximately $500,000.00 in additional revenues for the agency's Division of Plumbing annually.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment.

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

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

Revenues (+/-): Increase.

Expenditures (+/-): Neutral.

Other Explanation: Neutral.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:195. Medical gas piping installations.

RELATES TO: KRS 198B.050, 318.010, 318.134

STATUTORY AUTHORITY: KRS 198B.050(2), (5), 318.130, 318.134(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.134(3) requires the department to establish a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. KRS 318.130 authorizes the department to promulgate a reasonable rule or administrative regulation to administer the provisions of KRS Chapter 318[~~KRS 318.010(4)(e) establishes the definition for "plumbing" medical gas piping. KRS 318.134 requires that a person shall obtain a permit from the department prior to the installation of plumbing and that the department shall cause inspections as necessary~~]. This administrative regulation establishes the requirements for medical gas piping installation.

Section 1. Definitions. (1) "Health care facility" means a hospital, nursing home, limited care facility, clinic, ambulatory care center, or office practice medical or dental office as defined in NFPA 99C.

(2) "Medical gas piping" means a permanent fixed piping system in a health care facility that is used to convey oxygen, nitrous oxide, nitrogen, carbon dioxide, helium, medical air, and mixtures of these gases from its source to the point of use. Medical gas piping includes the fixed piping associated with a medical, surgical, or gas scavenging vacuum system, as well as a bedside suction system.

(3) "NFPA" means the National Fire Protection Association.

Section 2. Standards and Procedures. (1) Installation standards. Except that Section 5.1.10.6.6, Branch Takeoffs, shall not be adopted nor enforced within the Commonwealth, a new medical gas piping installation or an addition to an existing medical gas piping system shall comply with the applicable provisions of NFPA 99C, Standard on Gas and Vacuum Systems, 2002 Edition.

(2) Permit required. A licensed master plumber shall make application for a permit to install medical gas piping prior to the installation. To obtain the permit, the master plumber shall:

(a) Pay a fee of forty-five (45)[~~thirty-five (35)~~] dollars base permit for the medical gas system for each building;

(b) Pay a fee of fifteen (15)[~~five (5)~~] dollars per opening; and

(c) Identify the person who shall perform the installation. The person making the installation shall be a certified medical gas installer as required by NFPA 99C as well as a licensed journeyman plumber.

(3) Supervision by the master. It shall be the responsibility of the licensed master plumber to ensure that the person doing the installation:

(a) Is properly certified as required by NFPA 99C;

(b) Uses the proper products and stores them correctly; and

(c) Requests and receives all inspections at the initial pressure test for the complete system from a certified state plumbing inspector.

(4) Final approval. Upon completion of the installation, the master plumber shall furnish the Division of Plumbing with certification from the medical gas system verifier as required by NFPA 99C.

Section 3. Incorporation by Reference. (1) "NFPA 99C Standard on Gas and Vacuum Systems", 2002 Edition, National Fire Protection Association, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412[~~5405~~], Monday through Friday, 8 a.m. to 4:30 p.m.

(3) A copy may also be obtained by contacting the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101.

AMBROSE WILSON IV, Commissioner
LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: October 10, 2014

FILED WITH LRC: October 14, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 1, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-

0365, ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for medical gas piping installations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement the Division of Plumbing's duty to administer and enforce uniform standards for the permitting and inspection of plumbing work.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.134(3) requires the department to establish a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists Division of Plumbing in establishing uniform installation standards for medical gas piping, and guidelines for the permitting and inspection fees to be charged in performing its oversight role over such plumbing work in Kentucky.

(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 current medical gas piping system installation permit fee from thirty-five (35) dollars plus five (5) dollars per opening to forty-five (45) dollars plus fifteen (15) dollars per opening.

(b) The necessity of the amendment to this administrative regulation: The primary reason for the fee increase is significantly increased expenditures beyond agency control, including those associated with Actuarially-Required Retirement Contributions (ARC) and the Commonwealth Office of Technology (COT); however, the division is already no longer generating sufficient revenue to sustain its existing expenditures necessary to maintain a minimum level and quality of statewide service. The additional revenue generated from the proposed fee increase will be used to support existing programs with no increase in staffing levels and will more closely bring revenues in line with existing expenditures to cover the agency's current level of service.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.130 permits the department to adopt any reasonable rule or regulation to administer the provisions of Chapter 318.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help enable the Division to continue operating at the current level of service with no increase in staffing levels, and raise revenues to more closely match existing expenditures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in plumbing activity within the Commonwealth for which a medical gas piping permit is required.

(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 comply with this administrative regulation or amendment: This amendment requires the affected parties to pay the applicable permit fee associated with a medical gas piping installation project.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The potential cost to individual affected entities will vary depending upon the size and nature of the medical gas piping project, but such parties will incur an additional cost of five (5) dollars per project plus an additional ten (10) dollars per opening.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include continued access to the Division's current level of service, including the scheduling and completion of required installation inspections and project approvals.

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

(a) Initially: There are no anticipated additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any agency costs resulting associated with this amendment will be met with existing 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: This amendment will increases the base and "per opening" portions of the medical gas piping installation permit fee. This increase is necessary due to significantly increased expenditures beyond agency control, including those associated with Actuarially-Required Retirement Contributions (ARC) and the Commonwealth Office of Technology (COT); however, the Division is already no longer generating sufficient revenue to sustain its existing expenditures necessary to maintain a minimum level and quality of statewide service. The additional revenue generated from the proposed fee increases will be used to support existing programs with no increase in staffing levels and will more closely bring revenues in line with existing expenditures to cover the agency's current level of service. These fees do not cover the entire cost of that service, and this proposal is intended to lessen that operational deficit with no increase in staffing.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment directly increases the base and "per opening" portions of the medical gas piping installation permit fee.

(9) TIERING: Is tiering applied? Tiering is not applied as all permitted medical gas piping operations will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is required by KRS 318.134(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is estimated to generate approximately $32,000.00 in additional revenues for the agency's Division of Plumbing annually, including the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is estimated to generate approximately $32,000.00 in additional revenues for the agency's Division of Plumbing annually.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment.

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

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

Revenues (+/-): Increase.

Expenditures (+/-): Neutral.

Other Explanation: N/A.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Benefit and Health Information Exchange
(Amendment)

900 KAR 10:030. Kentucky Health Benefit Exchange Eligibility and Enrollment in a Qualified Health Plan.

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 Office of Health Benefit and Health Information 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 eligibility and enrollment in a qualified health plan in the individual market 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) "Advance payments of the premium tax credit" 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) "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) "Annual open enrollment period" is defined by 45 C.F.R. 155.410(e).

(4) "Applicant" is defined by 45 C.F.R. 155.20.

(5) "Application filer" is defined by 45 C.F.R. 155.20.

(6) "Benefit year" means a calendar year for which a health plan provides coverage for health benefits.

(7) "Catastrophic plan" means a health plan that is described in and meets the requirements of 45 C.F.R. 156.155.

(8) "COBRA" means continuation of coverage under 29 U.S.C. Part 6.

(9) "Cost sharing" is defined by 45 C.F.R. 155.20.

(10) "Cost-sharing reduction" or "CSR" means a reduction in cost sharing for an eligible individual enrolled in a silver level plan in an exchange or for an individual who is an Indian enrolled in a qualified health plan in an exchange.

(11) "Date of the notice" means the date on the notice plus five (5) calendar days.

(12) "Department of Health and Human Services" or "HHS" means the U.S. Department of Health and Human Services.

(13) "Dependent" is defined by 26 C.F.R. 54.9801-2.

(14) "Enrollee" means a qualified[~~an eligible~~] individual enrolled in a qualified health plan.

(15) "Family size" is defined by 26 C.F.R. 1.36B-1(d)[~~means the number of individuals in a family for whom a taxpayer properly claims a deduction for a personal exemption under Section 151 of the Internal Revenue Code, 26 U.S.C. 151, for the taxable year~~].

(16) "Federal poverty level" or "FPL" means the most recently published federal poverty level, updated periodically in the Federal Register by the Secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2), as of the first day of the annual open enrollment period for coverage in a qualified health plan through the Kentucky Health Benefit Exchange.

(17) "Health plan" is defined by 42 U.S.C. 18021(b)(1).

(18) "Household income" is defined by 26 C.F.R. 1.36B-1(e).

(19) "Indian" is defined by 25 U.S.C. 450b(d).

(20) "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.

(21) "Insurance 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. 18071.

(22)[~~"Internal Revenue Code" or "Code" means the Internal Revenue Code of 1986.~~

~~(23)~~] "Issuer" is defined by 45 C.F.R. 144.103.

(23)[~~(24)~~] "Kentucky Children's Health Insurance Program" or "KCHIP" means the separate child health program established by the Commonwealth of Kentucky under title XXI of the Social Security Act in accordance with implementing regulations at 42 C.F.R. 457.

(24)[~~(25)~~] "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.

(25)[~~(26)~~] "Lawfully present" is defined by 45 C.F.R. 155.20.

(26)[~~(27) "MAGI-based income" is defined by 42 C.F.R. 435.603(e).~~

~~(28)~~] "Medicaid" means coverage in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq. as amended.

(27)[~~(29)~~] "Minimum essential coverage" is defined by 26 U.S.C. 5000A-2.

(28)[~~(30)~~] "Non-citizen" is defined by 45 C.F.R. 155.300.

(29)[~~(31)~~] "Personal exemption deduction" means an amount that can be deducted from taxable income based on the exemption given to any tax filer who cannot be claimed as a dependent by another tax filer.

(30)[~~(32)~~] "Public insurance program" means an insurance program that:

(a) Is paid for by a governmental entity and provided to consumers; and

(b) Includes Medicare, Medicaid, or Children's Health Insurance Program.

(31)[~~(33)~~] "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.

(32)[~~(34)~~] "Qualified individual" is defined by 45 C.F.R. 155.20[~~means an individual who has been determined eligible to enroll through the KHBE in a QHP in the individual market~~].

(33)[~~(35)~~] "Qualifying coverage in an eligible employer-sponsored plan" means coverage in an eligible employer-sponsored plan that meets the affordability and minimum value standards specified in 26 U.S.C. 36B(c)(2)(C).

(34)[~~(36)~~] "Shared responsibility payment" means a penalty imposed for failing to meet the requirement to maintain minimum essential coverage in accordance with 26 U.S.C. 5000A.

(35)[~~(37)~~] "Silver level" is defined by 42 U.S.C. 18022(d)(1)(B).

(36)[~~(38)~~] "Special enrollment period" means a period during

which a qualified individual or enrollee who experiences certain qualifying events may enroll in, or change enrollment in, a QHP through the KHBE outside the initial and annual open enrollment periods.

(37)[~~(39)~~] "Tax filer" is defined by 45 C.F.R. 155.300.

Section 2. Eligibility Standards to Enroll in a Qualified Health Plan. (1) An applicant shall be eligible to enroll in a QHP through the KHBE if the applicant:

(a) 1. Is a citizen or national of the United States;

2. Is a non-citizen who is lawfully present in the United States and is reasonably expected to become a citizen or national; or

3. Is a non-citizen who is lawfully present for the entire period for which enrollment is sought;

(b) Except for an incarceration pending a disposition of a charge, is not incarcerated; and

(c) Meets a residency requirement in 45 C.F.R. 155.305(a)(3).

(2) An applicant may submit an application as described in 45 C.F.R. 155.405 for a determination of eligibility at any time during a year; however, the applicant shall only enroll during an open enrollment or special enrollment period[~~periods~~].

(3) An applicant determined eligible for enrollment in a QHP as set forth in subsection (1) of this section shall be eligible to enroll in a QHP during:

(a) An initial open enrollment period as set forth in Section 6(2) of this administrative regulation;

(b) An annual open enrollment period as set forth in Section 6(3) of this administrative regulation; or

(c) A special enrollment period as set forth in Sections 6(4) or 7 of this administrative regulation.

(4) An applicant determined eligible to enroll in a QHP who does not select a QHP within the applicable enrollment period as set forth in Sections 6 or 7 or is not eligible for an enrollment period, who seeks a new enrollment period prior to the date on which the applicant's eligibility is redetermined as set forth in Section 9 of this administrative regulation, shall attest to whether or not information affecting the applicant's eligibility has changed since the most recent eligibility determination.

(5) An applicant shall submit an application for enrollment in a QHP:

(a) Via the KHBE Web site at www.kynect.ky.gov;

(b) By telephone by contacting the KHBE contact center at 1-800-459-6328;

(c) By mail; or

(d) In person.

(6)(a) An applicant who has a Social Security number shall provide the number to the KHBE.

(b) An individual who is not seeking coverage for himself or herself shall not be required to provide a Social Security number, except as specified in Section 3(8) of this administrative regulation.

(7) In accordance with 45 C.F.R. 155.310(a)(2), an individual who is not seeking coverage for himself or herself on any application or any supplemental form shall not be required to provide information regarding:

(a) Citizenship;

(b) Status as a national; or

(c) Immigration status.

(8)(a) Except as specified in Section 11(2) of this administrative regulation, an applicant who requests an eligibility determination for an insurance affordability program shall have an eligibility determination for all insurance affordability programs.

(b) An applicant who requests an eligibility determination for a QHP only shall not have an eligibility determination for an insurance affordability program.

(9) An applicant shall not provide information beyond the minimum amount necessary to determine eligibility and enrollment through the KHBE.

(10) If an application filer submits an application that does not include sufficient information for the KHBE to make an eligibility determination for enrollment in a QHP or for an insurance affordability program, the KHBE shall:

(a) Provide notice to the applicant that additional information is needed to complete an eligibility determination;

(b) Provide the applicant with a period of ninety (90) days to provide the requested information; and

(c) Not proceed with an applicant's eligibility determination or provide APTC or CSR.

Section 3. Eligibility Standards for Advanced Payments of the Premium Tax Credit. (1) A tax filer shall be eligible for APTC if:

(a) The tax filer is expected to have a household income greater than or equal to 100 percent of the FPL but not more than 400 percent of the FPL for the benefit year for which coverage is requested; and

(b) One (1) or more applicants for whom the tax filer expects to claim a personal exemption deduction on the tax filer's tax return for the benefit year:

1. Meets the requirements for eligibility for enrollment in a QHP through the KHBE as specified in Section 2 of this administrative regulation; and

2. Is not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with 26 C.F.R. 1.36B-2(a)(2) and (c).

(2) A tax filer who is a non-citizen and lawfully present and ineligible for Medicaid for reason of immigration status shall be eligible for APTC if:

(a) The tax filer meets the requirement in subsection (1)(b) of this section;

(b) The tax filer is expected to have a household income of less than 100 percent of the FPL for the benefit year for which coverage is requested; and

(c) One (1) or more applicants for whom the tax filer expects to claim a personal exemption deduction on the tax filer's tax return for the benefit year is:

1. A non-citizen who is lawfully present; and

2. Not eligible for Medicaid for reason of immigration status.

(3) A tax filer shall attest that one (1) or more applicants for whom the tax filer attests that a personal exemption deduction for the benefit year shall be claimed is enrolled in a QHP that is not a catastrophic plan.

(4) A tax filer shall not be eligible for APTC if HHS notifies the KHBE that APTCs were made on behalf of the tax filer or tax filer's spouse for a year in accordance with 45 C.F.R. 155.305(f)(4).

(5) An APTC amount shall be:

(a) Calculated in accordance with 26 C.F.R. 1.36B-3; and

(b) Allocated between QHPs and stand-alone dental policies in accordance with 45 C.F.R. 155.340(e).

(6) An applicant for APTC may accept less than the full amount of APTC for which the applicant is determined eligible.

(7) An APTC shall be authorized by the KHBE on behalf of a tax filer only if the KHBE obtains necessary attestations from the tax filer that:

(a) The tax filer shall file an income tax return for the benefit year in accordance with 26 U.S.C. 6011 and 6012;

(b) If the tax filer is married, a joint tax return shall be filed for the benefit year;

(c) No other taxpayer shall be able to claim the tax filer as a dependent for the benefit year; and

(d) The tax filer shall claim a personal exemption deduction on the tax filer's return for the applicants identified as members of the tax filer's family, including the tax filer and the spouse of the tax filer, in accordance with 45 C.F.R. 155.305(f)(4).

(8) An application filer who is not an applicant shall provide the Social Security number of a tax filer only if the applicant attests that the tax filer:

(a) Has a Social Security number; and

(b) Filed a tax return for the year for which tax data would be utilized for verification of household income and family size.

(9) The effective date of eligibility for APTC shall be:

(a) For an initial eligibility determination, in accordance with the dates specified in Section 6 (1), (2), (3) and (4) of this administrative regulation, as applicable; and

(b) For a redetermination, in accordance with the dates specified in 45 C.F.R. 155.330(f) and 155.335(i), as applicable.

(10) An employer shall be notified of an employee's eligibility for APTC in accordance with 45 C.F.R. 155.310(h).

Section 4. Eligibility Standards for Cost-sharing Reductions. (1) An applicant shall be eligible for cost-sharing reductions if the applicant:

(a) Meets the eligibility requirements for enrollment in a QHP as set forth in Section 2 of this administrative regulation;

(b) Meets the requirements for APTC as set forth in Section 3 of this administrative regulation;

(c) Is expected to have a household income that does not exceed 250 percent of the FPL for the benefit year for which coverage is requested; and

(d) Except for an enrollee who is an Indian and whose eligibility is governed by Section 11 of this administrative regulation, enrolls in a silver level QHP through the KHBE.

(2) An eligibility determination for cost-sharing reductions shall be based on the following categories:

(a) 1. An individual who is expected to have a household income greater than or equal to 100 percent of the FPL and less than or equal to 150 percent of the FPL for the benefit year for which coverage is requested; or

2. An individual who is eligible for APTC as set forth in Section 3(2) of this administrative regulation, and who has a household income less than 100 percent of the FPL;

(b) An individual who is expected to have a household income greater than 150 percent of the FPL and less than or equal to 200 percent of the FPL for the benefit year for which coverage is requested; and

(c) An individual who is expected to have a household income greater than 200 percent of the FPL and less than or equal to 250 percent of the FPL for the benefit year for which coverage is requested.

(3)(a) If two (2) or more individuals enrolled in the individual market under a single policy would be eligible for different cost sharing amounts if enrolled in separate policies, the individuals under the single policy shall be deemed by the KHBE to be collectively eligible only for the last category listed in paragraph (b) of this subsection for which all the individuals covered by the policy would be eligible.

(b) The categories of eligibility shall be an individual:

1. Not eligible for changes to cost sharing;
2. Described in 45 C.F.R. 155.350(b);
3. Described in subsection (2)(c) of this section;
4. Described in subsection (2)(b) of this section;
5. Described in subsection (2)(a) of this section; and
6. Described in 45 C.F.R. 155.350(a).

(4) The effective date of eligibility for cost-sharing reductions shall be:

(a) For an initial eligibility determination, in accordance with the dates specified in Section 6(1), (2), (3), and (4) of this administrative regulation, as applicable; and

(b) For a redetermination, in accordance with the dates specified in 45 C.F.R. 155.330(f) and 45 C.F.R. 155.335(i), as applicable.

(5) An employer shall be notified of an employee's eligibility for cost-sharing reductions in accordance with 45 C.F.R. 155.310(h).

Section 5. Verification processes. (1) Verification of eligibility for an applicant seeking enrollment in a QHP shall be performed in accordance with:

(a) 45 C.F.R. 155.315; and

(b) Kentucky QHP/APTC Eligibility Verification Plan as incorporated by reference in this administrative regulation.

(2) Verification of eligibility for an applicant or tax filer who requests an eligibility determination for an insurance affordability program shall be in accordance with:

(a) 45 C.F.R. 155.320; and

(b) Kentucky QHP/APTC Eligibility Verification Plan as incorporated by reference in this administrative regulation.

Section 6. QHP Enrollment Periods and Effective Dates of Coverage. (1) For a benefit year beginning on or after January 1, 2015, a qualified individual shall:

(a) Be able to enroll in a QHP or an enrollee shall be able to change from one (1) QHP to another during an annual open enrollment period set forth in 45 C.F.R. 155.410 for that benefit year; and

(b) Have an effective date of coverage in accordance with 45 C.F.R. 155.335(i).

(2)[~~A qualified individual shall enroll in a QHP or an enrollee shall change from one (1) QHP to another QHP during the initial open enrollment period.~~

~~(2) A qualified individual or enrollee who selects a QHP during the initial open enrollment period shall have an effective date of coverage of:~~

~~(a) January 1, 2014, if the QHP selection is received on or before December 15, 2013;~~

~~(b) The first day of the following month, if the QHP selection is received between the first and fifteenth day of the month for any month between January, 2014, and March 31, 2014; or~~

~~(c) The first day of the second following month, if the QHP selection is received between the sixteenth and last day of the month for any month between December, 2013, and March 31, 2014.~~

~~(3)(a) For a benefit year beginning on or after January 1, 2015, a qualified individual shall be able to enroll in a QHP or an enrollee shall be able to change from one (1) QHP to another QHP during an annual open enrollment period that:~~

~~1. Begins October 15 of the preceding calendar year; and~~

~~2. Extends through December 7 of the preceding calendar year.~~

~~(b) A qualified individual or enrollee who selects a QHP during an annual open enrollment period shall have an effective date of coverage of January 1 of the following benefit year.~~

~~(4)~~](a) A qualified individual shall enroll in a QHP or an enrollee shall change from one (1) QHP to another QHP during a special enrollment period as specified in Section 7 of this administrative regulation.

(b) A qualified individual or an enrollee who selects a QHP during a special enrollment period shall have an effective date of coverage as set forth in Section 7 of this administrative regulation.

(3)[~~(5)(a)~~] An initial enrollment in a QHP shall not be effective until the first month's premium is received by the QHP issuer.[~~(b) The first month's premium shall be received by a QHP issuer no later than seven (7) days after an effective date of coverage as set forth in subsection (2), (3)(b), or (4)(b) of this section.~~]

Section 7. Special Enrollment Periods. (1) Except as specified in subsection (3) of this section, a qualified individual or enrollee shall have sixty (60) days from the date of a qualifying event as set forth in subsection (2) of this section to select a QHP.

(2) A qualified individual may enroll in a QHP or an enrollee or a dependent of an enrollee may change QHPs during a special enrollment period if:

(a) The qualified individual or a dependent of the qualified individual:

1. Loses minimum essential coverage;

2. Is enrolled in any non-calendar year health insurance policy that will expire in 2014 as described in 45 C.F.R 147.104(b)(2), even if the qualified individual or a dependent of the qualified individual has the option to renew the expiring non-calendar year individual health insurance policy;

3. Loses pregnancy-related coverage described under 42 U.S.C.1396a (a)(10)(A)(i)(IV) and 42 U.S.C. 1396a(a)(10)(A)(ii)(IX); or

4. Loses medically needy coverage as described under 42 U.S.C. 1396a(a)(10)(C) only once per calendar year;

(b) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement in foster care, or placement for adoption;

(c) The qualified individual or dependent of the qualified individual, who was not previously a citizen, national, or lawfully present, gains status as a citizen, national, or lawfully present;

(d) The qualified individual or dependent of the qualified individual enrolls or fails to enroll in a QHP due to an error, misrepresentation, or inaction of an officer, employee, or agent of the Kentucky Office of Health Benefit and Health Information Exchange[~~OKHBE~~] or HHS;

(e) The enrollee or dependent of the enrollee demonstrates to the KHBE that the QHP in which the enrollee or the dependent of the enrollee is enrolled substantially violated a provision of its contract in relation to the enrollee;

(f) The enrollee is determined newly eligible or newly ineligible for APTC or has a change in eligibility for CSR;

(g) The enrollee's dependent enrolled in the same QHP is determined newly eligible or ineligible for APTC or has a change in eligibility for CSR;

(h) The qualified individual or a dependent of the qualified individual who is enrolled[~~in qualifying coverage~~] in an employer-sponsored plan is determined newly eligible for APTC in part on a finding that the individual will no longer be eligible for qualifying coverage in the employer-sponsored plan in accordance with 26 C.F.R. 1.36B-2(c)(3) within[~~in~~] the next sixty (60) days and is allowed to terminate existing coverage;

(i)[~~(h)~~] The qualified individual or enrollee or a dependent of the qualified individual or the enrollee gains access to new QHPs as a result of a change in residence;

(j)[~~(i)~~] The qualified individual is an Indian who may enroll in a QHP or change from one (1) QHP to another QHP one (1) time per month;

(k)[~~or (j)~~] The qualified individual or a dependent of the qualified individual demonstrates to the Kentucky Office of Health Benefit and Health Information Exchange[~~OKHBE~~] that the individual meets other exceptional circumstances; or

(l) The Kentucky Office of Health Benefit and Health Information Exchange determines that as a result of misconduct on the part of a non-Kentucky Office of Health Benefit and Health Information Exchange entity providing enrollment assistance or conducting enrollment activities, a qualified individual or enrollee, or dependent of a qualified individual or enrollee:

1. Was not enrolled in QHP coverage;

2. Was not enrolled in the QHP selected by the qualified individual or enrollee; or

3. Is eligible but is not receiving APTC or CSRs.

(3) A[~~The~~] qualified individual or enrollee, or a dependent of a[~~the~~] qualified individual or enrollee described in subsection (2)(h)[~~(2)(g)~~] of this section may access this special enrollment period sixty (60) days prior to the end of the individual's qualifying coverage in an eligible employer-sponsored plan.

(4) The date of the triggering event for the loss of minimum essential coverage shall be:

(a) In the case of a decertification of a QHP as set forth in 900 KAR 10:010, the date of the notice of decertification; [~~or~~]

(b) In the case of a loss of coverage as set forth in subsection (2)(a)1. of this section, the last day the qualified individual would have coverage under the qualified individual's previous plan or coverage;

(c) In the case of a loss of coverage as set forth in subsection (2)(a)2. of this section, the date in 2014 of the expiration of the non-calendar year policy;

(d) In the case of a loss of coverage as set forth in subsection (2)(a)3. of this section, the last day the qualified individual would have pregnancy-related coverage; or

(e) In the case of a loss of coverage as set forth in subsection (2)(a)4. of this section, the last day the qualified individual would have medically needy coverage[~~For all other cases, the date the qualified individual or dependent of the qualified individual loses eligibility for minimum essential coverage~~].

(5) Loss of minimum essential coverage shall include those circumstances described in 26 C.F.R. 54.9801–6(a)(3)(i) through (iii).

(6) Loss of minimum essential coverage shall 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.

(7) Except as specified in subsection (8) of this section, a qualified individual or enrollee who selects a QHP during a special enrollment period shall have an effective date of coverage of:

(a) The first day of the following month for a selection made between the first and the fifteenth day of any month; or

(b) The first day of the second following month for a selection made between the sixteenth and last day of any month.

(8) A qualified individual or enrollee who selects a QHP during a special enrollment period:

(a) For coverage following a birth, adoption, placement in foster care, or placement for an adoption shall have as the effective date of coverage:

1. The date of the birth, adoption, placement in foster care, or placement for adoption; or

2. If elected by the qualified individual or enrollee, the first day of the month following the date of birth, adoption, placement in foster care, or placement for adoption;

(b) For coverage following a marriage[~~or loss of minimum essential coverage~~] shall have as the effective date of coverage the first day of the month following the selection of a QHP;

(c) For coverage following a loss of coverage described in subsection (2)(a) or (2)(h) of this section, if the plan selection is made:

1. Before or on the day of the loss of coverage, the coverage effective date shall be the first day of the month following the loss of coverage; or

2. After the loss of coverage, the coverage effective date shall be the first day of the month following plan selection; or

(d) For a special enrollment described in subsection (2)(d),(e),(k), or (l) of this section, the effective date of coverage shall be based on the circumstance of the special enrollment period[~~marriage or loss of minimum essential coverage~~].

(9)(a) An individual described in subsection (2)(h)[~~(2)(g)~~] of this section may access a special enrollment period sixty (60) days prior to the end of the individual's qualifying coverage in the employer-sponsored plan.

(b) An individual described in subsection (2)(a) of this section shall have sixty (60) calendar days before and after the loss of coverage to select a QHP.

(c) An individual who accesses a special enrollment as set forth in paragraph (a) or (b) of this subsection shall not be eligible for APTCs until the end of the individual's qualifying coverage through the eligible employer-sponsored plan or loss of minimum essential coverage.

(10) For a determination of eligibility for a special enrollment described in subsection (2)(d), (k), or (l) of this section, KHBE shall follow HHS guidance as set forth in:

(a) Guidance for Issuers on Special Enrollment Periods for Complex Cases in the Federally-facilitated Marketplace after the Initial Open Enrollment Period and Special Enrollment Period, as incorporated by reference in this administrative regulation;

(b) Guidance for Issuers on People "In Line" for the Federally-facilitated Marketplace at the end of the Initial Open Enrollment Period, as incorporated by reference in this administrative regulation; or

(c) Special Enrollment Periods and Hardship Exemptions for Persons Meeting Certain Criteria, as incorporated by reference in this administrative regulation.

Section 8. Eligibility Redetermination During a Benefit Year. (1) Eligibility shall be redetermined for an enrollee during a benefit year if the KHBE receives and verifies:

(a) New information reported by an enrollee; or

(b) Updated information obtained in accordance with 45 C.F.R. 155.315(b)(1) and 45 C.F.R. 155.320(b) that identifies:

1. A death; or

2. For an enrollee who is receiving APTCs or CSRs, a change in eligibility for a public insurance program.

(2) Except as specified in subsection (3) of this section, an enrollee or an application filer, on behalf of an enrollee, shall report within thirty (30) days:

(a) A change related to an eligibility standard in Section 2, 3, 4, 10, or 11 of this administrative regulation; and

(b) Via a method described in Section 2(5) of this administrative regulation.

(3) An enrollee who did not request an eligibility determination for an insurance affordability program shall not report a change

related to income.

(4) If new information provided by an enrollee in accordance with subsection (1)(a) of this section is verified:

(a) Eligibility shall be redetermined in accordance with Section 2, 3, 4, 10, or 11 of this administrative regulation;

(b) The enrollee shall be notified of the redetermination in accordance with the requirements in 45 C.F.R. 155.310(g); and

(c) If applicable, the enrollee's employer shall be notified in accordance with the requirement specified in 45 C.F.R. 155.310(h).

(5) If updated information obtained in accordance with subsection (1)(b) of this section regarding death or related to eligibility not regarding income, family size, or family composition is identified, an enrollee shall:

(a) Be notified by the KHBE of:

1. The updated information; and

2. The projected enrollee's eligibility determination after consideration of the information; and

(b) Have thirty (30) days from the date of the notice in paragraph (a) of this subsection to notify the KHBE if the information is inaccurate.

(6) If an enrollee responds to the notice in subsection (5)(a) of this section, contesting the updated information in the notice, the KHBE shall proceed in accordance with 45 C.F.R. 155.315(f).

(7) If an enrollee does not respond to the notice in subsection (5)(a) of this section within the thirty (30) day timeframe specified in subsection (5)(b) of this section, the KHBE shall:

(a) Redetermine eligibility in accordance with Section 2, 3, 4, 10, or 11 of this administrative regulation; and

(b) Notify the enrollee regarding the determination in accordance with the requirements specified in 45 C.F.R. 155.310(g).

(8) With the exception of information regarding death, if updated information regarding income, family size, or family composition is identified, an enrollee shall:

(a) Be notified by the KHBE of:

1. The updated information regarding income, family size, and family composition obtained in accordance with subsection (1)(b) of this section; and

2. The projected eligibility determination after consideration of the information; and

(b) Have thirty (30) days from the date of the notice to:

1. Confirm the updated information; or

2. Provide additional information.

(9) If the enrollee responds to the notice in subsection (8)(a) of this section by confirming the updated information, the KHBE shall:

(a) Redetermine the enrollee's eligibility in accordance with Section 2, 3, 4, 10, or 11 of this administrative regulation; and

(b) Notify the enrollee regarding the determination in accordance with the requirements specified in 45 C.F.R. 155.310(g).

(10) If the enrollee does not respond to the notice in subsection (8)(a) of this section within the thirty (30) day timeframe specified in subsection (8)(b) of the section, the KHBE shall maintain the enrollee's existing eligibility determination without considering the updated information in subsection (8)(a) of this section.

(11) If the enrollee responds with more updated information, the KHBE shall verify the updated information in accordance with 45 C.F.R. 155.315 and 155.320.

(12) The effective date of a change resulting from a redetermination pursuant to this section shall be in accordance with 45 C.F.R. 155.330(f).

(13) The amount of an APTC or eligibility for a cost-sharing reduction as a result of an eligibility redetermination in accordance with this section shall be recalculated in accordance with 45 C.F.R. 155.330(g).

Section 9. Annual Eligibility Redetermination. (1) A qualified individual shall:

(a) Have an annual redetermination of eligibility; and

(b) Be sent a notice of the annual redetermination that includes:

1. The qualified individual's projected annual household income and family size[~~data obtained under subsection (2) of this section;~~

~~2. The data used in the qualified individual's most recent eligibility determination~~]; and

2.[~~3.~~] The projected eligibility determination for the following year, after considering the information in subparagraph 1. of this paragraph.

(2)(a) A qualified individual requesting an eligibility determination for an insurance affordability program shall authorize the release of updated tax return information[~~, data regarding Social Security benefits, and data regarding MAGI-based incomes as described in 45 C.F.R. 155.320(c)(1)~~] for use in the qualified individual's eligibility redetermination.

(b) Eligibility shall not be redetermined for a qualified individual requesting an eligibility determination for an insurance affordability program who does not authorize the release of updated tax return information.

(3) A qualified individual may authorize the release of tax return information for a period of no more than five (5) years based on a single authorization, if the authorization permits the qualified individual to:

(a) 1. Decline to authorize the release of updated tax return information; or

2. Authorize the release of updated tax return information for fewer than five (5) years; and

(b) Discontinue, change, or renew the authorization at any time.

(4) A qualified individual, an application filer, or an authorized representative, on behalf of the enrollee, shall[~~: (a)~~] report any changes with respect to the information listed in the notice described in subsection (1)(b) of this section:

(a)[~~1.~~] Within thirty (30) days from the date of the notice; and

(b)[~~2.~~] Via a method listed in Section 2(5) of this administrative regulation[~~; and (b) Sign and return the notice described in subsection (1)(b) of this section within thirty (30) days of the date of the notice~~].

(5) Any information reported by a qualified individual under subsection (4) of this section shall be verified as set forth in Section 5 of this administrative regulation.

(6)[~~For a qualified individual who fails to sign and return the notice described in subsection (1)(b) of this section within the thirty (30) day period specified in subsection (4) of this section, eligibility shall be redetermined as set forth in subsection (7)(a) of this section.~~

~~(7)~~]

(a) After the thirty (30) day period specified in subsection (4) of this section:

1. Eligibility of a qualified individual shall be redetermined in accordance with Section 2, 3, 4, 10, or 11 of this administrative regulation using the information provided in the notice, as supplemented with any information reported by the qualified individual verified in accordance with Section 5 of this administrative regulation;

2. The qualified individual shall be notified in accordance with the requirements in 45 C.F.R. 155.310(g); and

3. If applicable, the qualified individual's employer shall be notified in accordance with 45 C.F.R. 155.310(h).

(b) If a qualified individual reports a change with respect to the information provided in the notice specified in subsection (1)(b) of this section that has not been verified by the KHBE as of the end of the thirty (30) day period specified in subsection (4) of this section, eligibility shall be redetermined after verification in accordance with Section 5 of this administrative regulation.

(7)[~~(8)~~] The effective date of a redetermination in accordance with this section shall be the later of:

(a) The first day of the coverage year following the year in which the notice in subsection (1)(b) of this section is issued to the qualified individual; or

(b) In accordance with 45 C.F.R. 155.330(f).

(8)[~~(9)~~] If an enrollee remains eligible for coverage in a QHP upon annual redetermination and has not terminated coverage from the QHP in accordance with Section 13 of this administrative regulation, the enrollee shall:

(a) Remain in the QHP selected the previous year that may

include modifications that shall be approved by the Department of Insurance; or

(b) Be enrolled by KHBE in a QHP that is substantially similar that shall be approved by the Department of Insurance[~~unless the enrollee terminates coverage from the QHP in accordance with Section 13 of this administrative regulation~~].

(9) If an enrollee remains eligible for coverage in a QHP upon annual redetermination, the enrollee may change from one (1) QHP to another.

(10) Eligibility shall not be redetermined if a qualified individual was redetermined eligible in accordance with this section during the prior year, and the qualified individual was not enrolled in a QHP at the time of the redetermination and has not enrolled in a QHP since the redetermination.

Section 10. Eligibility to Enroll in a QHP that is a Catastrophic Plan. (1) In addition to the requirements in Section 2 of this administrative regulation, to enroll in a QHP that is a catastrophic plan, an applicant shall:

(a) Not have attained the age of thirty (30) before the beginning of the plan year; or

(b) Have a certificate of exemption from the shared responsibility payment issued by the KHBE or HHS for a plan year in accordance with:

1. 26 U.S.C. 5000A(e)(1); or

2. 26 U.S.C. 5000A(e)(5).

(2) Verification related to eligibility for enrollment in a QHP that is a catastrophic plan shall be in accordance with 45 C.F.R. 155.315(j).

Section 11. Special Eligibility Standards and Processes for Indians. (1) An applicant who is an Indian shall be eligible for the special cost-sharing described in section 1402(d)(2) of the ACA, 42 U.S.C. 18071, if the applicant:

(a) Meets the requirements specified in 45 C.F.R. 155.305(a) and (f);

(b) Is expected to have a household income that does not exceed 300 percent of the FPL for the benefit year for which coverage is requested; and

(c) Enrolls in a QHP through the KHBE.

(2) An applicant who is an Indian shall have an eligibility determination for the special cost-sharing described in section 1402(d)(2) of the ACA, 42 U.S.C. 18071, without requesting an eligibility determination for an insurance affordability program.

Section 12. Eligibility Determination and Notification Standards. (1) Eligibility shall be determined in accordance with 45 C.F.R. 155.310(e).

(2) Notifications regarding eligibility determinations shall be made in accordance with 45 C.F.R. 155.310(g).

Section 13. Termination of Coverage. (1) To terminate coverage in a QHP, an enrollee, including an enrollee who has obtained other minimum essential coverage, shall submit a request:

(a) Via the KHBE Web site at www.kynect.ky.gov;

(b) By telephone by contacting the KHBE contact center at 1-800-459-6328;

(c) To the QHP issuer;

(d) By mail; or

(e) In person.

(2) At the time of QHP selection, an enrollee in a QHP shall remain in a QHP if the enrollee:

(a) Has been identified as eligible for other minimum essential coverage through the data matching described in 45 C.F.R. 155.330(d); and

(b) Does not request termination in accordance with subsection (1) of this section.

(3) The last day of coverage of an enrollee who terminates coverage in accordance with subsection (1) of this section shall be:

(a) The termination date requested by the enrollee if the enrollee provides reasonable notice in accordance with subsection (7) of this section;

(b) Fourteen (14) days after the termination is requested by the enrollee, if the enrollee does not provide reasonable notice in accordance with subsection (7) of this section;

(c) A date determined by the issuer of an enrollee's QHP if the issuer is able to terminate coverage in fewer than fourteen (14) days and the enrollee requests an earlier termination effective date; or

(d) If the enrollee is newly eligible for Medicaid or KCHIP, the day before coverage in Medicaid or KCHIP begins.

(4) An enrollee's health coverage shall be terminated by an issuer if:

(a) The enrollee is no longer eligible for coverage in a QHP through the KHBE;

(b)1. The enrollee has failed to pay a premium; and

2.a. A three (3) month grace period required for an individual receiving an APTC has been exhausted as described in 45 C.F.R. 156.270(g); or

b. A thirty (30) day grace period required by KRS 304.17A-243 for an individual not receiving an APTC has been exhausted;

(c) The enrollee's coverage is rescinded in accordance with 45 C.F.R. 147.128 or KRS 304.14-110;

(d) The enrollee is enrolled in a QHP that:

1. Has been decertified pursuant to 900 KAR 10:010; or

2. Has withdrawn from participation in the KHBE; or

(e) The enrollee changes from one (1) QHP to another during an open enrollment period or special enrollment period in accordance with Section 6 or 7 of this administrative regulation.

(5) The last day of coverage of an enrollee shall be:

(a) If terminated in accordance with subsection (4)(a) of this section, the last day of the month following the month in which the notice described in subsection (7) of this section is sent by KHBE, unless the enrollee requests an earlier termination date in accordance with subsection (3) of this section;

(b) If terminated in accordance with subsection (4)(b)2.a. of this section, the last day of the first month of the three (3) month grace period; or

(c) If terminated in accordance with subsection (4)(b)2.b. of this section, in accordance with KRS 304.17A-245.

(6) For an enrollee who is terminated in accordance with subsection (4)(e) of this section, the last day of coverage in an enrollee's prior QHP shall be the day before the effective date of coverage in the enrollee's new QHP.

(7) Reasonable notice shall be fourteen (14) calendar days from the requested date of termination of coverage.

Section 14. Authorized Representative. (1) An individual or employee may designate an individual or organization as an authorized representative:

(a) 1. At the time of application; or

2. At another time chosen by the individual or employee;

(b) Through a method described in 45 C.F.R. 155.405(c)(2);

(c) In writing with a signature or other legally binding format; and

(d) Through a method described in Section 2(5) of this administrative regulation.

(2) An authorized representative shall comply with state and federal laws regarding:

(a) Conflict of interest; and

(b) Confidentiality of information.

(3) An applicant may authorize a representative to:

(a) Sign an application on behalf of the applicant;

(b) Submit an update or respond to a redetermination of eligibility for the applicant in accordance with Section 8 or 9 of this administrative regulation;

(c) Receive a copy of a notice or communication from the KHBE;

(d) Make an appeal request on behalf of an appellant; or

(e) Act on behalf of the individual or employee in a matter with the KHBE.

(4) The designation of an authorized representative shall be valid until:

(a) An applicant or employee:

1. Changes the authorization; or

2. Notifies the KHBE and the authorized representative, through a method described in 45 C.F.R. 155.405(c), that the authorized representative is no longer authorized to act on behalf of the individual or employee; or

(b) The authorized representative informs the KHBE and the individual or employee that the authorized representative is no longer acting as the authorized representative.

Section 15. Appeals. (1) An applicant, a qualified individual, or an enrollee shall have the right to appeal an adverse determination.

(2) An applicant shall have the right to appeal an exemption of the shared responsibility payment.

(3) An applicant, qualified individual, or enrollee shall have the right to appeal an eligibility determination for Medicaid or KCHIP in accordance with 907 KAR 1:560.

(4) An employer shall have the right to appeal a determination of an employee's eligibility for APTC or CSR.

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

(a) "Kentucky QHP/APTC Eligibility Verification Plan", June 2013;

(b) "Guidance for Issuers on Special Enrollment Periods for Complex Cases in the Federally-facilitated Marketplace after the Initial Open Enrollment Period and Special Enrollment Period", March 26, 2014;

(c) "Guidance for Issuers on People "In Line" for the Federally-facilitated Marketplace at the end of the Initial Open Enrollment Period", March 26, 2014; and

(d) "Special Enrollment Periods and Hardship Exemptions for Persons Meeting Certain Criteria", May 2, 2014[~~, is incorporated by reference~~].

(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: October 8, 2014

FILED WITH LRC: October 9, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2014, at 9:00 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2014, 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 1, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, (502) 564-7905, fax (502) 564-7573, tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures relating to eligibility and enrollment in a qualified health plan in the individual market 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.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so the Kentucky Health Benefit may timely determine eligibility and facilitate enrollment in qualified health plans. Eligibility determination and enrollment in qualified health plans is necessary for the provision of health care services provided in the Commonwealth through the Exchange. Additionally, individuals must enroll through the Exchange for the purchase of health insurance to receive advanced payments of the premium tax credit and cost sharing deductions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that individuals are aware of the eligibility and enrollment requirements to participate in the Kentucky Health Benefit Exchange.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed requirements for enrollment and eligibility on the Kentucky Health Benefit Exchange.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended for technical "clean-up", to provide language to specify an application that does not contain sufficient information upon which to make an eligibility determination will not be processed, to provide clarification related to open enrollment periods, to provide clarification for special enrollment periods, and to provide clarification about the annual eligibility redetermination process.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation. This amendment is necessary to provide technical "clean-up", to provide language to specify an application that does not contain sufficient information upon which to make an eligibility determination will not be processed, to provide clarification related to open enrollment periods, to provide clarification for special enrollment periods, and to provide clarification about the annual eligibility redetermination process

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by providing information so that individuals are aware of the eligibility and enrollment requirements to participate in the Kentucky Health Benefit Exchange.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides detailed requirements for enrollment and eligibility on the Kentucky Health Benefit Exchange.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 300,000 individuals that may apply for health insurance in a qualified health plan to be offered on the Kentucky Health Benefit Exchange.

(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 entity will make an application for a qualified health plan in the individual market offered on the Exchange. An application may be submitted via the KHBE website, by telephone, by mail, or in person.

(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 an individual that wishes to make an application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each individual as individuals that enroll in a qualified health plan through the Exchange may be able to receive advanced payments of the premium tax credit and cost sharing deductions

for the purchase of health insurance.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Kentucky Office of Health Benefit and Health Information Exchange existing budget. No new funding will be needed to implement the provisions of this regulation.

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

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

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

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 the Office of the Kentucky Health Benefit and Health Information Exchange within the Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. 18031, and 45 C.F.R. Parts 155 and 156.

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

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. Section 18031 and 45 C.F.R. Parts 155 and 156.

2. State compliance standards. 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 eligibility and enrollment in a qualified health plan in the individual market 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.

3. Minimum or uniform standards contained in the federal mandate. The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105 to offer a QHP in Kentucky beginning January 1, 2014. An Exchange must establish eligibility and enrollment criteria for individuals wishing to enroll in qualified health plans offered on the Exchange.

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. This administrative regulation does not impose stricter requirements than those required by the federal mandate.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(Amendment)

902 KAR 2:020. Reportable disease surveillance.

RELATES TO: KRS 211.180(1), 214.010, 214.645, 333.130

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 211.180(1)[~~EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY:[~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 211.180(1) requires the cabinet to implement a statewide program for the detection, prevention, and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases which are transmissible to man, and other diseases and health hazards that may be controlled. KRS 214.010 requires every physician, advanced practice registered nurse, and every head of family to notify the local health department of the existence of diseases and conditions designated by administrative regulation of the cabinet[~~of public health importance, known to him or her~~]. This administrative regulation establishes notification standards and specifies the diseases requiring immediate, urgent, priority,[~~or~~] routine, or general notification, in order to facilitate rapid public health action to control diseases, and to permit an accurate assessment of the health status of the Commonwealth.

Section 1. Definitions. (1) "Authorize" means to confer rights to the Kentucky Department for Public Health in the NHSN database at the healthcare facility level.

(2) "HAI outbreak" means:

(a) The occurrence of two (2) or more HAIs that are epidemiologically linked or connected by person, place, or time; or

(b) A single case of an HAI not commonly diagnosed such as a postsurgical group A Streptococcus infection or healthcare-associated Legionella infection.

(3) "Health facility" means:

(a) A facility licensed under 902 KAR Chapter 20 and required by the Centers for Medicare and Medicaid Services (CMS) to report an HAI event or healthcare personnel influenza vaccination information to CMS using the National Healthcare Safety Network; or

(b) A facility licensed under KRS Chapter 216B.

(4) "Health professional" means a professional licensed under KRS Chapters 311 through 314.

(5) "Healthcare-associated infection" or "HAI" means an infection acquired by a person while receiving treatment for a separate condition in a health care setting.

(6) "HIV case report" means an HIV infection or AIDS diagnosis which:

(a) Has been confirmed by laboratory test results; or

(b) Meets the definition of AIDS established within the Centers for Disease Control and Prevention (CDC) guidelines.

(7) "Kentucky Department for Public Health Advisory" means a notification to health professionals, health facilities, and laboratories subject to this administrative regulation identifying a new health threat that warrants reporting through the procedures of this administrative regulation.

(8) "Medical laboratory" is defined by KRS 333.020(2).

(9) "National Healthcare Safety Network" or "NHSN" means the nation's most widely used healthcare-associated infection (HAI) tracking system as provided to medical facilities by the Centers for Disease Control and Prevention.

(10) "National reference laboratory" means a laboratory located outside of Kentucky which has been contracted by a Kentucky health professional, laboratory, or healthcare facility to provide laboratory testing.

(11) "Outbreak" means two (2) or more cases that are epidemiologically linked or connected by person, place, or time.

(12) "Pharmacist" means a professional licensed under KRS 315.010.

(13) "Select agent" means a biological agent or toxin that could pose a severe threat to public health, plant health, animal product, or plant product as determined by the National Select Agent Registry (NSAR) at www.selectagents.gov.

(14) "Veterinarian" means a professional licensed under KRS 321.181.

Section 2. Notification Standards. (1) Health Professionals and Facilities. A health professional and a health facility shall give notification if:

(a) The health professional makes a probable diagnosis of a disease specified in Section 3, 5, 6, 7, 8, 10, 13, 14, 15, or 16 of this administrative regulation; and

(b) The diagnosis is supported by:

1.a. Clinical or laboratory criteria; and

b. Case classifications published by the Centers for Disease Control and Prevention at wwwn.cdc.gov/nndss; or

2. A health professional's medical opinion that the disease is present.

(2) A single report by a health facility of a condition diagnosed by a test result from the health facility's laboratory shall constitute notification on behalf of the health facility and its laboratory.

(3) A health facility may designate an individual to report on behalf of the health facility's laboratory, pharmacy, and the health facility's other clinical entities.

(4) Notification shall be given to the local health department serving the jurisdiction in which the patient resides.

(5) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(6) The reporting health professional shall furnish:

(a) Information required in Section 4(16) of this administrative regulation; and

(b) Clinical, epidemiologic, and laboratory information pertinent to the disease including sources of specimens submitted for laboratory testing.

(7) Medical Laboratories. Upon a laboratory test result which indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in Section 3, 5, 6, 7, 8, 10, 13, 14 15, or 16 of this administrative regulation, the laboratory shall report the result to the local health department serving the county in which the patient resides.

(8) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(9) The reporting laboratory shall furnish the information required in Section 4(16) of this administrative regulation.

(10) National Reference Laboratories. Upon a test result performed by a national reference laboratory which indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in Section 3, 5, 6, 7, 8, 10, 13, 14, 15, or 16 of this administrative regulation, the director of a medical laboratory, a health facility, or the health professional that referred the test to the national reference laboratory shall be responsible to ensure that the result is reported to the local health department serving the jurisdiction in which the patient resides.

(11) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(12) The report shall include the information required by Section 4(16) of this administrative regulation.

Section 3. Submission of Specimens to the Kentucky Department for Public Health Division of Laboratory Services. (1) A medical laboratory and a national reference laboratory in receipt of diagnostic specimens originating from the Commonwealth of Kentucky shall send specimens or clinical isolates for diseases outlined in subsection (5) of this section to the Division of Laboratory Services for primary or confirmatory testing and related studies.

(2) A medical laboratory or national reference laboratory using non-culture techniques to identify bacterial agents of diarrheal disease, such as enzyme immunoassays (EIAs) or molecular assays, shall attempt isolation of the etiologic agent identified. Clinical isolates shall be submitted to the Division of Laboratory Services.

(3) If the culture attempts do not produce a clinical isolate, the direct specimen, submitted in the appropriate preservative, shall be sent to the Division of Laboratory Services. A submitting laboratory shall be responsible for providing the name of the etiologic agent detected by the non-culture technique at the time of specimen submission.

(4) A medical laboratory performing this test shall continue to follow the state's requirement for the submission of appropriate materials to the state public health laboratory.

(5) A medical or national reference laboratory shall submit clinical isolates or, if not available, the direct specimen from the following diseases to the Division of Laboratory Services:

(a) Botulism;
(b) Brucellosis;
(c) Campylobacteriosis;
(d) Cholera and diseases caused by other Vibrio species;
(e) Diphtheria;
(f) Escherichia coli O157:H7;
(g) Hemolytic Uremic Syndrome (HUS) – Post Diarrheal;
(h) Listeriosis;
(i) Measles;
(j) Meningococcal infections;
(k) Rabies animal;
(l) Rubella;
(m) Salmonellosis;
(n) Shiga toxin-producing E. coli (STEC);
(o) Shigellosis;
(p) Tuberculosis;
(q) Tularemia; and
(r) Typhoid fever.

Section 4. Reporting Classifications and Methods. (1) Immediate reporting. A report required by Section 10 of this administrative regulation to be made immediately shall be:

(a) Made by telephone to the local health department serving the county in which the patient resides; and

(b) Followed up by electronic or fax submission to the local health department serving the county in which the patient resides within one (1) business day.

(2) Upon receipt of a report for a disease requiring immediate reporting, the local health department shall:

(a) Notify the Kentucky Department for Public Health by

telephone; and

(b) Assist the department in carrying out a public health response.

(3) Weekend, evening, or holiday immediate notification. If local health department personnel cannot be contacted directly, notification shall be made by telephone using an emergency number provided by the local health department or the Kentucky Department for Public Health.

(4) For the protection of patient confidentiality, a report using the emergency number shall include:

(a) The name of the condition being reported; and

(b) A telephone number that can be used by the department to contact the reporting health professional or health facility.

(5) Urgent Reporting. A report made within twenty-four (24) hours as required by Section 5 of this administrative regulation shall be:

(a) Submitted electronically, by fax, or by telephone to the local health department serving the county in which the patient resides; and

(b) If submitted by telephone, followed up by electronic or fax submission to the local health department serving the county in which the patient resides within one (1) business day.

(6) Upon receipt of a report for a disease requiring urgent reporting, the local health department shall:

(a) Notify the Kentucky Department for Public Health; and

(b) Assist the department in carrying out a public health response.

(7) Weekend, evening, or holiday urgent notification. If local health department personnel cannot be contacted directly, notification shall be made by telephone using an emergency number provided by the local health department or the Kentucky Department for Public Health.

(8) For the protection of patient confidentiality, notification using the emergency number shall include:

(a) The name of the condition being reported; and

(b) A telephone number that can be used by the department to contact the reporting health professional or health facility.

(9) Priority Reporting. A report made within one (1) business day as required by Sections 6, 14(4), and 15 of this administrative regulation shall be:

(a) Submitted electronically, by fax, or by telephone to the local health department serving the county in which the patient resides; and

(b) If submitted by telephone, followed up by electronic or fax submission of a report to the local health department serving the county in which the patient resides within one (1) business day.

(10) Upon receipt of a report for a disease requiring priority reporting, a local health department shall:

(a) Investigate the report and carry out public health protection measures; and

(b) Notify the Kentucky Department for Public Health of the case by electronic or fax submission within one (1) business day.

(11) The reporting health department may seek assistance in carrying out public health measures from the Kentucky Department for Public Health.

(12) Routine Reporting. A report made within five (5) business days, as required by Sections 7, 8, 9, 13, 14(7), and 17 of this administrative regulation, shall be made electronically, by fax, or by mail to the local health department serving the county in which the patient resides.

(13) Upon receipt of a report of a disease or condition requiring routine reporting, a local health department shall:

(a) Make a record of the report;

(b) Answer inquiries or render assistance regarding the report if requested by the reporting entity; and

(c) Forward the report to the Kentucky Department for Public Health by electronic or fax submission of a report, or in writing within five (5) business days.

(14) General Reporting. A report made within three (3) months, as required by Section 16 of this administrative regulation, shall be made electronically, by fax, or by mail.

(15) A report submitted by fax or by mail shall be made using one (1) of the following reporting forms:

(a) EPID 200, Kentucky Reportable Disease Form;

(b) EPID 250, Kentucky Reportable MDRO Form;

(c) EPID 394, Kentucky Reportable Disease Form, Hepatitis Infection in Pregnant Women or Child (under the age of five);

(d) EPID 399, Perinatal Hepatitis B Prevention Form for Infants;

(e) Adult HIV/AIDS Confidential Case Report form; or

(f) Pediatric HIV/AIDS Confidential Case Report form.

(16) Information to be reported. Except as provided in subsections (3) and (7) of this section, a report required by this administrative regulation shall include:

(a) Patient name;

(b) Date of birth;

(c) Gender;

(d) Race;

(e) Ethnicity;

(f) Patient address;

(g) County of residence;

(h) Patient telephone number;

(i) Name of the reporting medical provider or facility;

(j) Address of the reporting medical provider or facility; and

(k) Telephone number of the reporting medical provider or facility;

Section 5. Notifiable Infectious Conditions Requiring Urgent Notification. Notification of the following diseases shall be considered urgent and shall be made within twenty-four (24) hours:

(1) Anthrax;

(2) Botulism;

(3) Brucellosis (multiple cases, temporally or spatially clustered);

(4) Diphtheria;

(5) Hepatitis A, acute;

(6) Measles;

(7) Meningococcal infections;

(8) Novel influenza A virus infections;

(9) Plague;

(10) Poliomyelitis;

(11) Rabies, animal;

(12) Rabies, human;

(13) Rubella;

(14) Severe Acute Respiratory Syndrome-associated Coronavirus (SARS-CoV) disease;

(15) Smallpox;

(16) Tularemia;

(17) Yellow fever; and

(18) Viral hemorrhagic fevers due to:

(a) Crimean-Congo Hemorrhagic Fever virus;

(b) Ebola virus;

(c) Lassa virus;

(d) Lujo virus;

(e) Marburg virus; or

(f) New world arenaviruses including:

1. Guanarito virus;

2. Junin virus,

3. Machupo virus; and

4. Sabia virus.

Section 6. Notifiable Infectious Conditions and Notifiable Non-Infectious Conditions Requiring Priority Notification. Notification of the following diseases shall be considered priority and shall be made within one (1) business day:

(1) Arboviral diseases, neuroinvasive and non-neuroinvasive, including:

(a) California serogroup virus diseases, including diseases caused by:

1. California encephalitis virus;

2. Jamestown Canyon virus;

3. Keystone virus;

4. La Crosse virus;

5. Snowshoe hare virus; and

6. Trivittatus viruses;

(b) Chikungunya virus disease;

(c) Eastern equine encephalitis virus disease;
(d) Powassan virus disease;
(e) St. Louis encephalitis virus disease;
(f) Venezuelan equine encephalitis disease;
(g) West Nile virus disease; and
(h) Western equine encephalitis virus disease;
(2) Brucellosis (cases not temporally or spatially clustered);
(3) Campylobacteriosis;
(4) Cholera;
(5) Cryptosporidiosis;
(6) Dengue virus infections;
(7) Escherichia coli O157:H7;
(8) Foodborne disease outbreak;
(9) Haemophilus influenzae invasive disease;
(10) Hansen's disease (leprosy);
(11) Hantavirus infections;
(12) Hemolytic uremic syndrome (HUS), post-diarrheal;
(13) Hepatitis B, acute;
(14 Hepatitis B infection in a pregnant woman;
(15) Hepatitis B infection in an infant or a child aged five years or less;
(16) Newborns born to Hepatitis B positive mothers at the time of delivery;
(17) Influenza-associated mortality in a pregnant woman;
(18) Influenza-associated pediatric mortality;
(19) Listeriosis;
(20) Mumps;
(21) Norovirus outbreak;
(22) Pertussis;
(23) Pesticide-related illness, acute;
(24) Psittacosis;
(25) Q fever;
(26) Rabies post exposure prophylaxis;
(27) Rubella, congenital syndrome;
(28) Salmonellosis;
(29) Shiga toxin-producing E. coli (STEC);
(30) Shigellosis;
(31) Streptococcal toxic-shock syndrome;
(32) Streptococcus pneumoniae, invasive disease;
(33) Tetanus;
(34) Toxic-shock syndrome (other than Streptococcal);
(35) Tuberculosis;
(36) Typhoid fever;
(37) Varicella-associated mortality;
(38) Vibriosis; and
(39) Waterborne disease outbreak.

Section 7. Notifiable Infectious Conditions and Notifiable Non-Infectious Conditions Requiring Routine Notification. Notification of the following diseases shall be considered routine and shall be made within five (5) business days:
(1) Babesiosis;
(2) Coccidioidomycosis;
(3) Creutzfeldt-Jakob disease;
(4) Ehrlichiosis/Anaplasmosis;
(5) Hepatitis C, acute;
(6) Hepatitis C infection in a pregnant woman;
(7) Hepatitis C infection in an infant or a child aged five years or less;
(8) Newborns born to Hepatitis C positive mothers at the time of delivery;
(9) Histoplasmosis;
(10) Lead poisoning;
(11) Legionellosis;
(12) Lyme Disease;
(13) Malaria;
(14) Spotted Fever Rickettsiosis (Rocky Mountain Spotted Fever);
(15) Toxoplasmosis; and
(16) Trichinellosis (Trichinosis).

Section 8. Notifiable Infectious Conditions Requiring Routine Notification by Electronic Laboratory Reporting. (1) Beginning October 1, 2016, notification of the following diseases shall be considered routine and shall be electronically reported to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) business days:
(a) Cyclosporiasis;
(b) Giardiasis;
(c) Hepatitis B laboratory test results whether reported as positive or negative;
(d) Hepatitis C laboratory test results whether reported as positive or negative; and
(e) Varicella laboratory test results reported as positive for:
1. Isolation of varicella virus from a clinical specimen;
2. Varicella antigen detected by direct fluorescent antibody test;
3. Varicella-specific nucleic acid detected by polymerase chain reaction (PCR); or
4. A significant rise in serum anti-varicella immunoglobulin G (IgG) antibody level by a standard serologic assay.
(2) Reports made pursuant to this section shall include a diagnosis.

Section 9. Multi-Drug Resistant Organisms and Other Organisms Requiring Routine Notification by Electronic Laboratory Reporting. (1) Beginning October 1, 2016, notification of the following diseases shall be considered routine and shall be electronically reported to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) business days:
(a) Vancomycin-intermediate Staphylococcus aureus (VISA), which includes S. aureus cultured from any specimen that the results show a minimum inhibitory concentration (MIC) of 4-8 μg/mL per standard laboratory methods;
(b) Vancomycin-resistant Staphylococcus aureus (VRSA), which includes S. aureus cultured from any specimen that the results show a minimum inhibitory concentration (MIC) of greater than or equal to 16 μg/mL per standard laboratory methods;
(c) Methicillin-resistant Staphylococcus aureus (MRSA), which includes S. aureus cultured from any specimen that tests oxacillin-resistant, cefoxitin-resistant, or methicillin-resistant by standard susceptibility testing methods, or by a laboratory test that is FDA-approved for MRSA detection from isolated colonies. These methods may also include a positive result by any FDA-approved test for MRSA detection;
(d) Vancomycin-resistant Enterococcus species (VRE), regardless of whether identified to the species level, that is resistant to Vancomycin by standard susceptibility testing methods or by results from any FDA-approved test for VRE detection from specific specimen sources;
(e) Clostridium difficile (C. difficile) identified from a positive laboratory test result for a C. difficile toxin A or B (includes molecular assays {PCR} or toxin assays) or a toxin-producing organism detected by culture or other laboratory means performed on a stool sample;
(f) Carbapenem-resistant Enterobacteriaceae (CRE) or any Enterobacteriaceae species testing non-susceptible (resistant or intermediate) to imipenem, meropenem, or doripenem, by standard susceptibility testing methods and resistant to all third-generation cephalosporins tested;
(g) Extended–spectrum beta-lactamase Gram negative organisms (ESBL) Enterobacteriaceae species non-susceptible (resistant or intermediate) to ceftazidime, cefepime, ceftriaxone, or cefotaxime;
(h) Multidrug-resistant – Acinetobacter - Non-susceptibility (resistant or intermediate) to at least one (1) agent in at least three (3) antimicrobial classes of the following six (6) classes:
1. Ampicillin-sulbactam;
2. Cephalosporins (cefepime, ceftazidime);
3. β-lactam-β-lactamase inhibitor combination (piperacillin, piperacillin-tazobactam);
4. Carbapenems (imipenem, meropenem, doripenem);
5. Fluoroquinolones (ciprofloxacin or levofloxacin);
6. Aminoglycosides (gentamicin, tobramycin, or amikacin);
(i) Multidrug-resistant Pseudomonas - Non-susceptibility,

resistant or intermediate, to at least one (1) agent in at least three (3) antimicrobial classes of the following five (5) classes:

1. Cephalosporins (cefepime, ceftazidime);
2. β-lactam-β-lactam β-lactamase inhibitor combination (piperacillin, piperacillin-tazobactam);
3. Carbapenems (imipenem, meropenem, doripenem);
4. Fluoroquinolones (ciprofloxacin or levofloxacin);
5. Aminoglycosides (gentamicin, tobramycin, or amikacin).

(2) The report of an organism under this section shall include the following:

(a) Date of specimen collection;
(b) Source of specimen;
(c) Susceptibility pattern; and
(d) Name of the ordering health professional.

(3) Upon a test result performed by a medical laboratory which indicates infection with an agent associated with one (1) or more of the diseases or conditions or a multi-drug resistant organism specified in this section, the director of the medical laboratory shall electronically report the result to the Kentucky Department for Public Health through the Kentucky Health Information Exchange.

(4) The report shall include a diagnosis.

Section 10. Newly Recognized Infectious Agents, HAI Outbreaks, Emerging Pathogens, and Pathogens of Public Health Importance. (1) The following shall be reported immediately by telephone to the Kentucky Department for Public Health:

(a) A suspected incidence of bioterrorism caused by a biological agent;
(b) Submission of a specimen to the Kentucky Division of Laboratory Services for select agent identification or select agent confirmation testing; or
(c) An outbreak of a disease or condition that resulted in multiple hospitalizations or death.

(2) An unexpected pattern of cases, suspected cases, or deaths which may indicate the following shall be reported immediately by telephone to the local health department in the county where the health professional is practicing or where the facility is located:

(a) A newly-recognized infectious agent;
(b) An outbreak;
(c) An emerging pathogen which may pose a danger to the health of the public;
(d) An epidemic; or
(e) A non-infectious chemical, biological, or radiological agent.

(3) A report of the following shall be considered priority and shall be reported to the local health department in the county where the health professional is practicing or where the facility is located within one (1) business day:

(a) Suspected Staphylococcal or other foodborne intoxication; or
(b) Salmonellosis or other foodborne or waterborne infection.

(4) The local health department shall:

(a) Investigate the outbreak or occurrence;
(b) Carry out public health protection measures to address the disease or condition involved; and
(c) Make medical and environmental recommendations to prevent future similar outbreaks or occurrences.

(5) The local health department may seek assistance from the Kentucky Department for Public Health.

Section 11. Laboratory Surveillance. (1) Medical or national reference laboratory results for the following shall be reported weekly:

(a) Influenza virus isolates;
(b) PCR-positive test results for influenza virus; and
(c) DNA molecular assays for influenza virus.

(2) The report shall include specific laboratory information pertinent to the result.

(3) Upon request by the Kentucky Department for Public Health, a health facility laboratory or a medical laboratory shall report the number of clinical isolates and information regarding the antimicrobial resistance patterns of the clinical isolates at intervals no less frequently than three (3) months for the following:

(a) Staphylococcus aureus;
(b) Enterococcus species; or
(c) An organism specified in a request that includes a justification of its public health importance.

Section 12. Healthcare-Associated Infection Surveillance. (1) A healthcare facility in Kentucky that participates in CMS reporting programs shall authorize the CDC to allow the Kentucky Department for Public Health to access health care-associated infection data reported to NHSN.

(2) The Kentucky Department for Public Health shall preserve patient confidentiality and shall not disclose to the public any patient-level data obtained from any health care facility.

(3) The Kentucky Department for Public Health may issue reports to the public regarding healthcare-associated infections in aggregate data form which:

(a) May identify individual health care facilities; and
(b) Shall comply with methodology developed by the CDC and CMS for national reporting of health care-associated infections.

(4) The Kentucky Department for Public Health may evaluate healthcare-associated infection data for accuracy and completeness.

Section 13. Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) Surveillance. (1) A report of an HIV infection or AIDS diagnosis shall be considered routine and shall be reported within five (5) business days of diagnosis on one (1) of the following forms:

(a) Adult HIV/AIDS Confidential Case Report form; or
(b) Pediatric HIV/AIDS Confidential Case Report form.

(2) Health professionals and medical laboratories shall report:

(a) A positive test result for HIV infection including a result from:

1. 3rd generation immunoassay;
2. 4th generation immunoassay;
3. Western Blot;
4. PCR;
5. HIV-1 or HIV-2 differentiating such as Multispot;
6. HIV antigen;
7. HIV antibody;
8. CD4+ assay including absolute CD4+ cell counts and CD4+%;
9. HIV Viral Load Assay including detectable and undetectable values; or
10. A positive confirmatory serologic test result for HIV infection; or

(b) A diagnosis of AIDS that meets the definition of AIDS established within the CDC guidelines.

(3) A case report for a resident of Jefferson, Henry, Oldham, Bullitt, Shelby, Spencer, or Trimble County shall be submitted to the HIV/AIDS Surveillance Program of the Louisville-Metro Health Department.

(4) A case report for a resident of the remaining Kentucky counties shall be submitted to the HIV/AIDS Surveillance Program of the Kentucky Department for Public Health, Division of Epidemiology and Health Planning.

(5) A case report for a person with an HIV infection without a diagnosis of AIDS shall include the following information:

(a) The patient's full name;
(b) The patient's complete address;
(c) Date of birth using the format MMDDYYYY;
(d) Gender;
(e) Race;
(f) Ethnicity;
(g) Risk factor as identified by CDC;
(h) County of residence;
(i) Name of provider and facility submitting report including contact information;
(j) Specimen collected;
(k) Date and type of HIV test performed using the format MMDDYYYY;
(l) Results of CD4+ cell counts and CD4+%;
(m) Results of viral load testing;

(n) Results of PCR, HIV culture, HIV antigen, and HIV antibody, if performed;
(o) Results of TB testing, if available; and
(p) HIV status of the person's partner, spouse, or children, as applicable.
(6) A reports of an AIDS case shall include:
(a) Information in subsections (2) through (5) of this section;
(b) Opportunistic infections diagnosed; and
(c) Date of onset of illness.
(7) A report of AIDS shall be made whether or not the patient has been previously reported as having an HIV infection.
(8) If the patient has not been previously reported as having an HIV infection, the AIDS report shall also serve as the report of HIV infection as required by subsection (2) through (5) of this section.

Section 14. Sexually Transmitted Disease (STD). (1) A health professional or a health facility shall give notification if a probable diagnosis of an STD specified in subsection (4) or (7) of this section is made.
(2) The report shall provide the following information:
(a) Pregnancy status; and
(b) Clinical, epidemiologic, laboratory, and treatment information pertinent to the disease.
(3) Upon a laboratory test result which indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in subsection (4) and (7) of this section, a medical laboratory shall report to the Kentucky Department for Public Health information required by Section 4(16) of this administrative regulation.
(4) Sexually Transmitted Diseases Requiring Priority Notification. A report of the following shall be considered priority and shall be made within one (1) business day:
(a) Congenital syphilis; or
(b) Syphilis - primary, secondary, or early latent.
(5) Upon receipt of a report for a disease or condition specified in subsection (4) of this section, a local health department shall:
(a) Investigate the report;
(b) Carry out public health protection measures to address the disease or condition; and
(c) Forward the report to the Kentucky Department for Public Health within one (1) business day.
(6) The local health department may seek assistance from the Kentucky Department for Public Health.
(7) Sexually Transmitted Diseases Requiring Routine Notification. A report of the following shall be considered routine and shall be made by a health professional or medical laboratory within five (5) business days to the local health department serving the county in which the patient resides:
(a) Chancroid;
(b) Chlamydia trachomatis infection;
(c) Gonorrhea;
(d) Granuloma inguinale;
(e) Lymphogranuloma venereum; or
(f) Syphilis, other than primary, secondary, early latent, or congenital.
(8) Upon receipt of a report for a disease or condition specified in subsection (7) of this section, a local health department shall:
(a) Make a record of the report using Form EPID 200, Kentucky Reportable Disease Form;
(b) Forward the report to the Kentucky Department for Public Health within five (5) business days; and
(c) Render assistance if requested by the reporting entity or the Kentucky Department for Public Health.

Section 15. Tuberculosis. (1) A pharmacist shall give notice if two (2) or more of the following medications used for the initial treatment of active tuberculosis are dispensed to an inpatient in a health facility or to an ambulatory patient in a health facility or a pharmacy:
(a) Rifampin or rifabutin;
(b) Isoniazid;
(c) Pyrazinamide; and
(d) Ethambutol.
(2) A report of tuberculosis shall be considered priority and shall be reported to the local health department serving the county in which the patient resides.
(3) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.
(4) The report shall include:
(a) Information required in Section 4(16) of this administrative regulation; and
(b) Names of the medications dispensed.

Section 16. Asbestosis, Coal Worker's Pneumoconiosis, and Silicosis. (1) A health professional shall report a diagnosis of the following to the Kentucky Department for Public Health within three (3) months of diagnosis:
(a) Asbestosis;
(b) Coal worker's pneumoconiosis; or
(c) Silicosis.
(2) A report required under this section shall include the following information regarding the patient:
(a) Name;
(b) Address;
(c) Date of birth; and
(d) County of residence.

Section 17. Reporting of Communicable Diseases in Animals. (1) A diagnosis in an animal of a condition known to be communicable to humans, except for rabies, shall require routine notification.
(2) A veterinarian shall report the diagnosis within five (5) business days to the local health department serving the county in which the animal is located.
(3) If a laboratory test indicates infection of an animal with an agent associated with a condition known to be communicable to humans, the director of a medical laboratory shall report the result to the local health department serving the county in which the animal is located within five (5) business days.
(4) The local health department receiving the report shall:
(a) Investigate the report;
(b) Carry out public health protection measures for the control of communicable diseases; and
(c) Forward the report to the Kentucky Department for Public Health within five (5) business days.
(5) The local health department may seek assistance from the Kentucky Department for Public Health.

Section 18. Kentucky Department for Public Health Advisory. (1) If the Secretary of the Cabinet for Health and Family Services or the Commissioner of the Department for Public Health determines that a disease not presently listed in this administrative regulation requires reporting, the secretary or commissioner may issue a Kentucky Public Health Advisory.
(2) The Kentucky Public Health Advisory shall include:
(a) Date and time the advisory is issued;
(b) A unique number to identify the advisory;
(c) Names for the disease or condition;
(d) A description of the disease or condition;
(e) Recommendations for health professionals, health facilities, and laboratories; and
(f) Notification requirements including:
1. The notification time interval;
2. Methods for notification; and
3. Forms to be completed and submitted with the notification.
(3) The duty to report by health professionals, health facilities, and laboratories pursuant to a Kentucky Public Health Advisory shall begin upon receipt of the advisory and shall remain in effect until the advisory is rescinded by order of the secretary or the commissioner.

Section 19. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form "EPID 200, Kentucky Reportable Disease Form", 9/2014;

(b) Form "EPID 250, Kentucky Reportable MDRO Form", 6/2014;

(c) Form "EPID 394, Kentucky Reportable Disease Form, Hepatitis Infection in Pregnant Women or Child (under the age of five)", 11/2013;

(d) Form "EPID 399, Perinatal Hepatitis B Prevention Form for Infants", 4/2012;

(e) Form "Adult HIV Confidential Case Report Form", 3/2013; and

(f) Form "Pediatric HIV Confidential Case Report Form", 3/2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.[~~Notification Standards. (1) A health professional licensed under KRS Chapters 311 through 314, and a health facility licensed under KRS Chapter 216B, shall give notification pursuant to subsection (3) of this section, if:~~

~~(a) The health professional makes a probable diagnosis of a disease specified in Section 2, 3, or 4 of this administrative regulation; and~~

~~(b) The diagnosis is supported by:~~

~~1. "Case Definitions for Infectious Conditions under Public Health Surveillance"; or~~

~~2. A reasonable belief that the disease is present.~~

~~(2)(a) A single report by a hospital of a condition diagnosed by a test result from the hospital laboratory shall constitute notification on behalf of the hospital and its laboratory.~~

~~(b) A hospital may designate an individual to report on behalf of the hospital's laboratory and the hospital's clinical facilities.~~

~~(3) The notification shall be given to the:~~

~~(a) Local health department serving the jurisdiction in which the patient resides; or~~

~~(b) Department for Public Health.~~

~~(4) The reporting professional shall furnish the:~~

~~(a) Name, birthdate, address, county of residence, and telephone number of the patient; and~~

~~(b) Clinical, epidemiologic, and laboratory information pertinent to the disease.~~

~~(5) Upon the confirmation of a laboratory test result which indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in Section 2, 3, or 4 of this administrative regulation, the director of a clinical laboratory licensed under KRS Chapter 333 shall:~~

~~(a) Report the result to the:~~

~~1. Local health department serving the jurisdiction in which the patient resides; or~~

~~2. Department for Public Health; and~~

~~(b) Report the patient's name, birthdate, address, and county of residence; and~~

~~Section 2. Diseases Requiring Urgent Notification. (1) Notification pursuant to Section 1(3) of this administrative regulation of the following diseases shall be made within twenty-four (24) hours:~~

~~(a) Anthrax;~~

~~(b) Botulism;~~

~~(c) Brucellosis;~~

~~(d) Campylobacteriosis;~~

~~(e) Cryptosporidiosis;~~

~~(f) Cholera;~~

~~(g) Diphtheria;~~

~~(h) Escherichia coli O157:H7;~~

~~(i) Escherichia coli, shiga toxin positive;~~

~~(j) Encephalitis, California group;~~

~~(k) Encephalitis, Eastern equine;~~

~~(l) Encephalitis, St. Louis;~~

~~(m) Encephalitis, Venezuelan equine;~~

~~(n) Encephalitis, Western;~~

~~(o) Encephalitis, West Nile Virus;~~

~~(p) Hansen's Disease;~~

~~(q) Hantavirus infection;~~

~~(r) Hemophilus influenzae invasive disease;~~

~~(s) Hepatitis A;~~

~~(t) Listeriosis;~~

~~(u) Measles;~~

~~(v) Meningococcal infections;~~

~~(w) Pertussis;~~

~~(x) Plague;~~

~~(y) Poliomyelitis;~~

~~(z) Psittacosis;~~

~~(aa) Q fever;~~

~~(bb) Rabies, animal;~~

~~(cc) Rabies, human;~~

~~(dd) Rubella;~~

~~(ee) Rubella syndrome, congenital;~~

~~(ff) Salmonellosis;~~

~~(gg) Shigellosis;~~

~~(hh) Syphilis, primary, secondary, early latent or congenital;~~

~~(ii) Tetanus;~~

~~(jj) Tularemia;~~

~~(kk) Typhoid fever;~~

~~(ll) Vibrio parahaemolyticus;~~

~~(mm) Vibrio vulnificus;~~

~~(nn) Yellow fever.~~

~~(2) Weekend or evening urgent notification.~~

~~(a) If health department personnel cannot be contacted directly, notification shall be made by electronic submission or by telephone to an emergency number provided by the local health department or the Department for Public Health.~~

~~(b) For the protection of patient confidentiality, this notification shall include:~~

~~1. The name of the condition being reported; and~~

~~2. A telephone number that can be used by the department to contact the reporting professional.~~

~~(3) Upon receipt of a report for a disease specified in subsection (1) of this section, the local health department shall:~~

~~(a) Immediately notify the Department for Public Health; and~~

~~(b) Assist the department in carrying out a public health response as instructed.~~

~~Section 3. Diseases Requiring Priority Notification. (1) Notification pursuant to Section 1(3) of this administrative regulation of the following diseases shall be made within one (1) business day:~~

~~(a) Group A streptococcal infection, invasive;~~

~~(b) Hepatitis B, acute;~~

~~(c) Hepatitis B infection in a pregnant woman or a child born in or after 1992;~~

~~(d) Mumps;~~

~~(e) Toxic shock syndrome;~~

~~(f) Tuberculosis.~~

~~(2) Upon receipt of a report for a disease or condition specified in subsection (1) of this section, a local health department:~~

~~(a) Shall investigate the report and carry out public health measures appropriate to the disease or condition;~~

~~(b) Shall notify the Department for Public Health of the case, in writing, within five (5) business days; and~~

~~(c) May seek assistance from the Department for Public Health.~~

~~Section 4. Diseases Requiring Routine Notification. (1) Notification pursuant to Section 1(3) of this administrative regulation of the following diseases shall be made within five (5) business days:~~

~~(a) Chancroid;~~

~~(b) Chlamydia trachomatis infection;~~

~~(c) Ehrlichiosis;~~

~~(d) Gonorrhea;~~

~~(e) Granuloma inguinale;~~

~~(f) Hepatitis C, acute;~~

~~(g) Histoplasmosis;~~

~~(h) Lead poisoning;~~

~~(i) Legionellosis;~~

~~(j) Lyme Disease;~~

~~(k) Lymphogranuloma venereum;~~

~~(l) Malaria;~~

~~(m) Rabies postexposure prophylaxis;~~

~~(n) Rocky Mountain Spotted Fever;~~

~~(o) Streptococcus pneumoniae, drug-resistant invasive disease;~~

~~(p) Syphilis, other than primary, secondary, early latent or congenital; and~~

~~(q) Toxoplasmosis.~~

~~(2) Upon receipt of a report for a disease or condition specified in subsection (1) of this section, a local health department shall:~~

~~(a) Make a record of the report;~~

~~(b) Answer inquiries or render assistance regarding the report if requested by the reporting entity; and~~

~~(c) Forward the report to the Department for Public Health within three (3) business days.~~

~~Section 5. Outbreaks or Unusual Public Health Occurrences. (1) If, in the judgment of a health professional licensed under KRS Chapters 311 through 314, or a health facility licensed under KRS Chapter 216B, an unexpected pattern of cases, suspected cases, or deaths which may indicate a newly-recognized infectious agent, an outbreak, epidemic, related public health hazard or an act of bioterrorism, such as smallpox, appears, a report shall be made immediately by telephone to the:~~

~~(a) Local health department where the professional is practicing or where the facility is located; or~~

~~(b) Department for Public Health.~~

~~(2) An instance of suspected staphylococcal or other foodborne intoxication or an instance of salmonellosis or other foodborne or waterborne infection shall be reported within one (1) business day, and shall include all known information about the persons affected.~~

~~(3) The local health department:~~

~~(a) Shall investigate the outbreak or occurrence;~~

~~(b) Shall carry out public health measures appropriate to the disease or condition involved;~~

~~(c) Shall make medical and environmental recommendations appropriate to prevent future similar outbreaks or occurrences; and~~

~~(d) May seek assistance from the Department for Public Health.~~

~~Section 6. Laboratory Surveillance. (1)(a) In addition to the reports required by Sections 1 through 4 of this administrative regulation, laboratory results shall be reported weekly for influenza virus isolates.~~

~~(b) The report shall include the:~~

~~1. Name, birthdate, address, and county of residence of the person with the disease; and~~

~~2. Specific laboratory information pertinent to the result.~~

~~(c) The format of the report shall be an alphabetical listing of each person for whom a report is submitted.~~

~~(2) Upon request by the Department for Public Health, a clinical laboratory within a hospital licensed under KRS Chapter 216B, or a laboratory licensed under KRS Chapter 333, shall report:~~

~~(a) The numbers of isolates and information regarding the antimicrobial resistance patterns of the isolates;~~

~~(b) At intervals agreed upon between the laboratory and the department, not less frequently than three (3) months, for the following:~~

~~1. Staphylococcus aureus;~~

~~2. Enterococcus species; or~~

~~3. Other organism specified in a request that includes a justification of the public health importance of the organism.~~

~~Section 7. Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) Surveillance. (1) Physicians and Medical Laboratories shall report:~~

~~(a)1. A positive test result for HIV infection including a result from:~~

~~a. Elisa;~~

~~b. Western Blot;~~

~~c. PCR;~~

~~d. HIV antigen; or~~

~~e. HIV culture;~~

~~2. CD4+ assay including absolute CD4+ cell counts and CD4+%;~~

~~3. HIV detectable Viral Load Assay; and~~

~~4. A positive serologic test result for HIV infection; or~~

~~(b) A diagnosis of AIDS that meets the definition of AIDS established within the Centers for Disease Control and Prevention (CDC) guidelines and reported in the:~~

~~1. "Adult HIV/AIDS Confidential Case Report Form," or~~

~~2. "Pediatric HIV/AIDS Confidential Case Report Form."~~

~~(2) An HIV infection or AIDS diagnosis shall be reported within five (5) business days and, if possible, on the "Adult HIV/AIDS Confidential Case Report form" or the "Pediatric HIV/AIDS Confidential Case Report form."~~

~~(a) A report for a resident of Jefferson, Henry, Oldham, Bullitt, Shelby, Spencer, and Trimble Counties shall be submitted to the HIV/AIDS Surveillance Program of the Louisville Metro Health Department.~~

~~(b) A report for a resident of the remaining Kentucky counties shall be submitted to the HIV/AIDS Surveillance Program of the Kentucky Department for Public Health, or as directed by the HIV/AIDS project coordinator.~~

~~(3) A report for a person with HIV infection without a diagnosis of AIDS shall include the following information:~~

~~(a) The patient's full name;~~

~~(b) Date of birth, using the format MMDDYY;~~

~~(c) Gender;~~

~~(d) Race;~~

~~(e) Risk factor, as identified by CDC;~~

~~(f) County of residence;~~

~~(g) Name of facility submitting report;~~

~~(h) Date and type of HIV test performed;~~

~~(i) Results of CD4+ cell counts and CD4+%;~~

~~(j) Results of viral load testing;~~

~~(k) PCR, HIV culture, HIV antigen, if performed;~~

~~(l) Results of TB testing, if available; and~~

~~(m) HIV status of the person's partner, spouse or children.~~

~~(4) Reports of AIDS cases shall include the information in subsections (1) through (3) of this section; and~~

~~(a) The patient's complete address;~~

~~(b) Opportunistic infections diagnosed; and~~

~~(c) Date of onset of illness.~~

~~(5) (a) Reports of AIDS shall be made whether or not the patient has been previously reported as having HIV infection.~~

~~(b) If the patient has not been previously reported as having HIV infection, the AIDS report shall also serve as the report of HIV infection.~~

~~Section 8. Reporting of Communicable Diseases in Animals. (1) Upon arriving at a probable diagnosis in an animal of a condition known to be communicable to humans, a veterinarian licensed under the provisions of KRS Chapter 321 shall report the occurrence within one (1) business day to:~~

~~(a) The local health department in which the animal is located; or~~

~~(b) If the local health department cannot be reached, the Department for Public Health.~~

~~(2) Upon the confirmation of a laboratory test result which indicates infection of an animal with an agent associated with a condition known to be communicable to humans, the director of a clinical laboratory licensed under KRS Chapter 333 shall, within one (1) business day, report the result to the:~~

~~(a) Local health department serving the jurisdiction in which the animal is located; or~~

~~(b) Department for Public Health.~~

~~(3) The local health department:~~

~~(a) Shall investigate the report and carry out public measures for the control of communicable diseases appropriate to the condition;~~

~~(b) Shall notify the Department for Public Health of the occurrence, in writing, within five (5) business days; and~~

~~(c) May seek assistance from the Department for Public~~

~~Health.~~

~~Section 9. Asbestosis, Coal Worker's Pneumoconiosis, and Silicosis. (1) A reporting provider shall submit the following information relating to a person diagnosed with asbestosis, coal worker's pneumoconiosis, or silicosis:~~

~~(a) Name;~~

~~(b) Address;~~

~~(c) Birthdate; and~~

~~(d) County of residence.~~

~~(2) A reporting provider shall submit the required information to the department within three (3) months following the diagnosis.~~

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

~~(a) "Case Definitions for Infectious Conditions under Public Health Surveillance, MMWR, May 2, 1997, Volume 46, Number RR-10", published by the Epidemiology Program Office, Centers for Disease Control and Prevention, Public Health Service, U.S. Department of Health and Human Services, Atlanta, Georgia;~~

~~(b) "Adult HIV/AIDS Confidential Case Report (CDC 50.42A, Revised January, 2003)"; and~~

~~(c) "Pediatric HIV/AIDS Confidential Case Report form (CDC 50.42B, Revised January, 2003)"; and~~

~~(d) "Control of Communicable Diseases Manual 17th Edition, An Official Report of the American Public Health Association, American Public Health Association, Washington, D.C., 2000".~~

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

STEPHANIE MAYFIELD GIBSON, MD, FCAP
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: October 8, 2014

FILED WITH LRC: October 10, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on, November 21, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2014, 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 on December 1, 2014. 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, Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Kelly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes notification standards and specifies the diseases requiring immediate, urgent, priority, routine, or general notification, in order to facilitate rapid public health action to control diseases, and to permit an accurate assessment of the health status of the Commonwealth.

(b) The necessity of this administrative regulation: KRS 211.180 requires the cabinet to implement a statewide program for the detection, prevention and control of diseases. This regulation outlines the process and methods of reporting and surveillance of diseases of concern for the public's health.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.180 requires the cabinet to collect disease data and KRS 214.010 requires every physician, Advanced Practice Registered Nurse or household to notify the local health department of the existence of diseases and conditions of public health importance. This regulation outlines the appropriate way to report and collect this information including what should be reported.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes that require the cabinet to collect disease data and protect the health of the public. The process for what things to report when, how and where are outlined to give clear guidance to those entities required to report.

(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 outlines which diseases are to be reported and how, including electronic reporting through the Kentucky Health Information Exchange. This amendment updates the prior regulation to allow for newly discovered organisms, diseases and viruses. The amendment also outlines a process whereby the Kentucky Department for Public Health can access data already being submitted electronically by hospitals and healthcare facilities so public health concerns can be more easily recognized and addressed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary due to the ever changing state of diseases and their impact on the health of the community. Further, the implementation of the Kentucky Health Information Exchange allows data to be shared among reporting facilities, the CDC, and the Kentucky Department for Public Health. This amendment guides the sharing of this data.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment makes specific what diseases are to be reported and how, therefore helping to clarify what is required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in effective administration of the statutes as it clarifies the diseases to be reported and how they are to be reported. Because the regulation had not been amended in many years, several diseases, organisms, and materials of grave concern for the health of the public were not included in the current reporting requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky hospitals and healthcare facilities, Kentucky physicians, state and national laboratories, local health departments, the Kentucky Department for Public Health and any Kentucky citizen exposed to or potentially exposed to a reportable disease will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Kentucky hospitals and healthcare facilities will be required to permit the Department for Public Health access to data they are reporting to the federal government. However, since they are currently reporting these diseases to the federal government, there will be no extra work or expense incurred by the hospitals or facilities. Hospitals and healthcare facilities are already working to connect with the Kentucky Health Information Exchange and will use that as the tool for sharing data with federal and state officials. A phase-in period has been provided in this amended regulation to allow hospitals and healthcare facilities time to implement electronic reporting, which is not required until October of 2016. Kentucky physicians will experience minimal change in reporting requirements as they are currently required to report diseases on a federal and state level.

There will be new modes of reporting with which the physicians must become familiar. However, education/training will be provided by state staff and regional epidemiologists to assist with the reporting. Because laboratories are currently required to report diseases on the state and federal level, they will experience minimal change in required action. Local health departments will see no change in their duties under this regulation as they are currently receiving disease reports and working with the cabinet to investigate risks to the public health. A Kentucky citizen exposed or potentially exposed to reportable diseases is, at present, required to report this exposure to the local health department in the county in which he resides. This has not been changed under the amendment to the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional fiscal impact resulting from this amendment as hospitals, health professionals, and healthcare facilities currently report this information to the CDC.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local health departments, the cabinet, health professionals, and healthcare facilities will have a better opportunity to cooperate to identify dangerous diseases and their infection patterns and identify possible large-scale threats. Working together will afford more protections for Kentuckians who will benefit as health officials are better able to identify dangerous disease patterns and outbreaks and address those as quickly as possible.

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

(a) Initially: There will be no fiscal impact to the administrative body from implementation of this amendment.

(b) On a continuing basis: There will be no fiscal impact to the administrative body from implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The department currently operates the disease surveillance program using state general funds. No additional funding will be necessary to implement this amended regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no new fees nor increase to existing fees due to this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established either directly or indirectly by this amendment.

(9) TIERING: Is tiering applied? No, 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? Local health departments and the Kentucky Department for Public Health 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 211.180, 214.010, 214.645, and 333.130

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

(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 amendment in the first year.

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

(c) How much will it cost to administer this program for the first year? Reporting and data surveillance is occurring. Therefore, there will be no additional costs in the first year to administer this program due to this amendment.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation will create no additional costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(Amendment)

902 KAR 4:030. Newborn screening program.

RELATES TO: KRS 214.155

STATUTORY AUTHORITY: KRS 194A.050, 211.090, 214.155

NECESSITY, FUNCTION, AND CONFORMITY: KRS 214.155 requires the Cabinet for Health and Family Services to operate a newborn screening program for inborn errors of metabolism and other inherited and congenital disorders and conditions, and to establish a schedule of fees to cover the actual costs to the cabinet for the program. This administrative regulation requires that infants be tested for inborn errors of metabolism and other inherited and congenital disorders and conditions as specified in KRS 214.155, and establishes the schedule of fees to cover actual costs of the newborn screening program.

Section 1. Definitions. (1) "Blood spot testing" means laboratory testing that is performed on newborn infants to detect a wide variety of inherited and congenital disorders and conditions by using a laboratory-authorized filter paper specimen card.

(2) "Critical congenital heart disease" or "CCHD" means an abnormality in the structure or function of the heart that exists at birth and places an infant at significant risk of disability or death if not diagnosed and treated soon after birth.

(3) "Diagnostic echocardiogram" means a test that uses ultrasound to provide an image of the heart that is performed by a technician trained to perform pediatric echocardiograms.

(4) "Laboratory" means the Division of Laboratory Services within the Cabinet for Health and Family Services, Department for Public Health.

(5) "Pediatric cardiologist" means a pediatrician that is board-certified to provide pediatric cardiology care.

(6) "Program" means the Newborn Screening Program for inherited and congenital disorders and conditions operated by the Cabinet for Health and Family Services, Department for Public Health.

(7) "Pulse oximetry testing" means a noninvasive test that estimates the percentage of hemoglobin in blood that is saturated with oxygen.

(8) "Submitter" means a hospital, primary care provider, health department, birthing center, laboratory, or midwife submitting an infant's blood specimen for the purpose of newborn screening.

Section 2. Tests for inborn errors of metabolism or other inherited or congenital disorders and conditions for newborn infants as part of newborn screening shall include the following:

(1) 2-Methyl-3-hydroxybutyric aciduria (2M3HBA);
(2) 2-Methylbutyryl-CoA dehydrogenase deficiency (2MBDH);
(3) 3-Methylcrotonyl-CoA carboxylase deficiency (3MCC);
(4) 3-Methylglutaconic aciduria (3MGA);
(5) 3-Hydroxy 3-Methylglutaric aciduria (HMG);
(6) Argininemia (ARG);
(7) Argininosuccinic acidemia (ASA);
(8) Beta-ketothiolase deficiency (BKT);
(9) Biotinidase disorder (BIOT);
(10) Carnitine acylcarnitine translocase deficiency (CACT);

(11) Carnitine palmitoyl transferase deficiency I (CPT-I);
(12) Carnitine palmitoyl transferase deficiency II (CPT-II);
(13) Carnitine uptake defect (CUD);
(14) Citrullinemia type I (CIT-I);
(15) Citrullinemia type II (CIT-II);
(16) Congenital adrenal hyperplasia (CAH);
(17) Congenital hypothyroidism (CH);
(18) Critical congenital heart disease (CCHD);
(19) Cystic fibrosis (CF);
(20) Ethylmalonic encephalopathy (EE);
(21) Galactosemia (GAL);
(22) Glutaric acidemia type I (GA I);
(23) Glutaric acidemia type II (GA-II);
(24) Homocystinuria (HCY);
(25) Hypermethioninemia (MET);
(26) Hyperphenylalinemia (H-PHE);
(27) Isobutyryl-CoA dehydrogenase deficiency (IBG);
(28) Isovaleric acidemia (IVA);
(29) Long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCAD);
(30) Malonic academia (MAL);
(31) Maple syrup urine disease (MSUD);
(32) Medium-chain acyl-CoA dehydrogenase deficiency (MCAD);
(33) Methylmalonic acidemia (Cbl A,B);
(34) Methylmalonic acidemia (Cbl C,D);
(35) Methylmalonic acidemia mutase deficiency (MUT);
(36) Multiple carboxylase deficiency (MCD);
(37) Non-ketotic Hyperglycinemia (NKHG);
(38) Phenylketonuria (PKU);
(39) Propionic acidemia (PA);
(40) Severe combined immunodeficiency (SCID);
(41) Short-chain acyl-CoA dehydrogenase deficiency (SCAD);
(42) Sickle cell disease (Hb S/S);
(43) Sickle cell hemoglobin C disease (Hb S/C);
(44) Sickle cell S Beta Thalassemia (Hb S/Th);
(45) Trifunctional protein deficiency (TFP);
(46) Tyrosinemia type I (TYR-I);
(47) Tyrosinemia type II (TYR-II);
(48) Tyrosinemia type III (TYR-III);
(49) Various Hemoglobinopathies (includes Hb E); and
(50) Very long-chain acyl-CoA deficiency (VLCAD).

Section 3. Submitter Responsibilities. (1) Except as provided in KRS 214.155(3) and (5), the administrative officer or other person in charge of the hospital or institution caring for newborn infants and the attending primary care provider or midwife shall administer to, or verify administration of tests to, every infant in its care prior to hospital discharge:

(a) A blood spot test to detect inborn errors of metabolism and other inherited and congenital disorders and conditions identified in Section 2 of this administrative regulation; and

(b) Pulse oximetry testing to detect critical congenital heart disease.

(2) If a baby is not born in a hospital or institution, the attending primary care provider or midwife shall ensure that both tests required by subsection (1) of this section are:

(a) Administered between twenty-four (24) and forty-eight (48) hours of age;

(b) Acted upon if abnormal; and

(c) Reported to the program by fax or by the cabinet's web-based system.

(3) A capillary blood spot specimen shall be obtained from a newborn infant not requiring an extended stay due to illness or prematurity between twenty-four (24) and forty-eight (48) hours of age.

(4) If the infant is to remain in the hospital due to illness or prematurity, the hospital shall obtain the capillary blood spot specimen from that infant after twenty-four (24) and before seventy-two (72) hours of age.

(5) Except as provided by subsection (6) of this section, the pulse oximetry testing shall be performed when the infant is twenty-four (24) hours of age or older and shall occur prior to discharge.

(6) If the infant is discharged prior to twenty-four (24) hours of age, the blood spot and pulse oximetry testing shall be performed as close to twenty-four (24) hours of age as possible.

(7) If an infant is transferred from the birth hospital to another hospital during the newborn hospital stay, the rules established in this subsection shall apply.

(a) The sending hospital shall obtain the capillary blood spot specimen for the newborn screening blood test and the pulse oximetry testing for CCHD if the infant is twenty-four (24) hours of age or more when the infant is transferred to another hospital.

(b) The receiving hospital shall ensure the newborn screening blood spot test and the pulse oximetry testing are performed if the infant is less than twenty-four (24) hours of age when the infant is transferred.

(8) If an infant expires before the newborn screening blood spot test and pulse oximetry test have been performed, the program shall be notified within five (5) calendar days.

(9) If the information on the filter paper specimen card obtained by the submitter and sent to the laboratory is incomplete or inadequate, then the submitter, upon request of the program, shall:

(a) Attempt to locate the infant and obtain a complete and adequate specimen within ten (10) days; and

(b) Report to the program a specimen that is unable to be obtained within ten (10) days.

(10) Submitters that are responsible for the collection of the initial blood spot specimen and pulse oximetry testing for newborn screening shall:

(a) Provide to an infant's parent or guardian educational materials regarding newborn screening and pulse oximetry testing;

(b) Designate a newborn screening coordinator and physician responsible for the coordination of the facility's newborn screening compliance by having a newborn screening protocol;

(c) Notify the program of the name of the individuals designated in paragraph (b) of this subsection each year in January and if the designated individual changes; and

(d) Develop a written protocol for tracking newborn screening compliance which shall:

1. Be submitted to the program each year in January; and

2. Include, at a minimum:

a. A requirement that the name of the primary care provider that will be attending the infant after birth or discharge or, if known, the primary care provider who will be caring for the infant after discharge, shall be placed on the filter paper specimen card sent with the initial blood spot specimen to the laboratory. If the infant is in the neonatal intensive care unit, the name of the attending neonatologist may be placed on the filter specimen card sent with the initial blood spot specimen to the laboratory;

b. Verification that:

(i) Each infant born at that facility has had a specimen obtained for newborn screening and pulse oximetry testing on or before discharge;

(ii) All information on the specimen card has been thoroughly completed; and

(iii) The specimen has been submitted appropriately;

c. A process to ensure that final results of the pulse oximetry screening are entered into the Cabinet's web-based system; and

d. A procedure to assure the hospital or facility that identifies that an infant has not had a specimen obtained for newborn screening and pulse oximetry testing prior to discharge shall:

(i) Notify the program;

(ii) Use every reasonable effort to locate the infant;

(iii) Notify the parent or guardian and the primary care provider immediately; and

(iv) Recommend that the infant present to the hospital or primary care provider immediately for a newborn screening blood spot specimen and pulse oximetry testing.

(11) Hospitals or facilities shall report all written refusals, in accordance with KRS 214.155(5), to the program within five (5) calendar days.

Section 4. Blood Specimen Collection. (1) Capillary blood spot specimens required in Section 3 of this administrative regulation

shall be obtained by a heel stick.

(2) Blood from the heel stick shall be applied directly to filter paper specimen card.

(3) All circles shall be saturated completely using a drop of blood per circle on a filter paper specimen card.

(4) The specimen collector shall provide, on the filter paper specimen card, information requested by the laboratory.

(5) The capillary blood spot specimen shall be air dried for three (3) hours and then shall be mailed or sent to the laboratory:

(a) Within twenty-four (24) hours of collection of the specimen; or

(b) The next business day in which mail or delivery service is available.

(6) Submitters sending blood spot specimens via regular mail services shall send the specimens to the following address: Cabinet for Health and Family Services, Department for Public Health, Division of Laboratory Services, P.O. Box 2010, Frankfort, Kentucky 40602.

(7) Submitters sending blood spot specimens via expedited mail services shall ensure the specimens are sent to the following address: Cabinet for Health and Family Services, Department for Public Health, Division of Laboratory Services, 10 Sower Boulevard, Suite 204, Frankfort, Kentucky 40602.

(8) Specimens processed or tracked under the newborn screening program shall be limited to specimens on infants less than six (6) months of age.

Section 5. Unsatisfactory or Inadequate Blood Specimen. (1) If a specimen is unsatisfactory or inadequate to produce a valid result, the laboratory shall notify the submitter and the parent on the filter paper specimen card that the newborn screen needs to be repeated as soon as possible.

(2) If a requested repeat specimen has not been received within ten (10) business days from the date the repeat request was issued, the program shall notify the parent by mail of the need for a repeat screening test.

Section 6. Special Circumstances - Blood Transfusion. If a newborn infant requires a blood transfusion, the following rules for newborn screening shall apply:

(1) The hospital shall obtain a capillary blood spot specimen[~~sample~~] for newborn screening prior to the infant being transfused, except in an emergency situation.

(2) If the pre-transfusion blood spot specimen[~~sample~~] was obtained before twenty-four (24) hours of age, or if it was not obtained due to an emergency situation, then the hospital or primary care provider shall use all reasonable efforts to obtain a repeat capillary blood specimen from the transfused infant and submit it to the laboratory according to the following schedule:

(a) Seventy-two (72) hours after last blood transfusion, rescreen for inborn errors of metabolism and inherited and congenital disorders and conditions listed in Section 2 of this administrative regulation; and

(b) Ninety (90) days after last blood transfusion, rescreen for any disorder that relies on red blood cell analysis such as hemoglobinopathies, galactosemia, and biotinidase deficiency.

Section 7. Reporting Results of Newborn Screening Blood Tests. (1) Normal Results. Upon receipt of normal lab results, the laboratory shall mail results to the primary care provider and the submitter.

(2) Abnormal Results.

(a) Submitters and primary care providers shall receive a copy of all abnormal, presumptive positive, and equivocal results by mail.

(b) In addition to receiving mailed results, primary care providers shall be notified of abnormal, presumptive positive, and equivocal results in the following manner:

1. Upon receipt of an abnormal, equivocal, or a presumptive positive lab result,
the laboratory shall notify the primary care provider listed on the filter paper specimen card within two (2) business days of the result and the need for follow-up testing.

2. Upon receipt of a presumptive positive lab result, the program shall notify the primary care provider listed on the filter paper specimen card of the result and recommend immediate consultation with a university pediatric specialist.

3. If the program is unable to determine the infant's primary care provider to notify them of abnormal, presumptive positive, or equivocal results and the need for follow-up, the program shall use every available means to notify the infant's parent.

(c) The Cabinet for Health and Family Services shall share pertinent test results with state university-based specialty clinics or primary care providers who inform the cabinet they are treating the infant who received the test.

(d) The cabinet may share pertinent test results with the local health department in the infant's county of residence that conducts newborn screening follow-up activities.

(e) These specialty clinics or primary care providers shall report results of diagnostic testing to the program within thirty (30) days or earlier upon request.

(f) The laboratory shall report abnormal, presumptive positive, or equivocal results of tests for inborn errors of metabolism, inherited and congenital disorders and conditions to the program.

(g) If a requested repeat specimen has not been received within ten (10) business days from the date the repeat request was issued, the program shall notify the parent by mail of the need for a repeat screening test.

Section 8. Pulse oximetry screening for critical congenital heart disease. Pulse oximetry screening for critical congenital heart defects required by Section 2 of this administrative regulation shall be consistent with the standard of care according to national recommendations by the American Academy of Pediatrics.

Section 9. Pulse Oximetry Screening Process. (1) Except as provided by KRS 214.155(3) and subsections (2) and (4) of this section, pulse oximetry testing shall be performed when the infant is between twenty-four (24) and forty-eight (48) hours of age and shall occur no later than the day of discharge.

(2) If the infant is discharged prior to twenty-four (24) hours of age, the blood spot and pulse oximetry testing shall be performed as close to twenty-four (24) hours of age as possible.

(3) Infants in neonatal intensive care units shall be screened when medically appropriate after twenty-four (24) hours of age but prior to discharge.

(4) Infants who have been identified with critical congenital heart disease prior to birth or prior to twenty-four (24) hours of age shall be exempt from the pulse oximetry screening process.

(5) Pulse oximetry screening shall be performed by placing pediatric pulse oximetry sensors simultaneously on the infant's right hand and either foot to obtain oxygen saturation results.

(6) If using a single pediatric pulse oximetry sensor, pulse oximetry screening shall be performed on the infant's right hand and either foot, one after the other, to obtain oxygen saturation results.

Section 10. Pulse Oximetry Testing Results. (1) A passed result shall not require further action if:

(a) The pulse oximetry reading in both extremities is greater than or equal to ninety-five (95) percent; and

(b) The difference between the readings of both the upper and lower extremity is less than or equal to three (3) percent.

(2)(a) A pending result shall:

1. Occur if:

a. The pulse oximetry reading is between ninety (90) and ninety-four (94) percent; or

b. The difference between the readings of both the upper and lower extremity is greater than three (3) percent; and

2. Be repeated using the pulse oximetry screening in one (1) hour.

(b) If a repeated pulse oximetry screen is also interpreted as pending, it shall be performed again in one (1) hour.

(c) If the pulse oximetry result on the third screen continues to meet the criteria as pending after three (3) screenings have been performed, it shall be considered failed and the procedures

established in subsection (3) of this section shall be followed.

(3) A failed result shall occur if the initial pulse oximetry reading is less than ninety (90) percent in the upper or lower extremity and shall require the following action:

(a) The primary care provider shall be notified immediately;

(b) The infant shall be evaluated for the cause of the low saturation reading; and

(c) If CCHD cannot be ruled out as the cause of the low saturation reading, the attending physician or advanced practice registered nurse shall:

1. Order a diagnostic echocardiogram to be performed without delay;

2. Ensure the diagnostic echocardiogram be interpreted as soon as possible; and

3. If the diagnostic echocardiogram results are abnormal, obtain a consultation with a pediatric cardiologist prior to hospital discharge.

Section 11. Reporting Results of Pulse Oximetry Screening. (1) Final results of the pulse oximetry screening shall be entered into the cabinet's web-based system.

(2) A failed result shall be immediately reported to the program by fax or by the cabinet's web-based system.

Section 12. Newborn Screening Fees. (1) Submitters obtaining and sending a blood spot specimen to the laboratory shall be billed a fee of ninety-nine (99) dollars[~~$53.50~~] for the initial newborn screening test.

(2) Submitters obtaining and sending a repeat blood spot specimen to the laboratory shall not be charged an additional fee of ninety-nine (99) dollars[~~$53.50~~].

(3) Fees due the Cabinet for Health and Family Services shall be collected through a monthly billing system.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: October 8, 2014

FILED WITH LRC: October 9, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2014, at 9:00 a.m. in the Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is receive by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business December 1, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Troi Cunningham

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires that all infants born in Kentucky receive the newborn screening test. This administrative regulation requires that infants be tested for inborn errors of metabolism and other inherited and congenital disorders and conditions as specified in KRS 214.155, and establishes the schedule of fees to cover actual costs of the newborn screening program.

(b) The necessity of this administrative regulation: 902 KAR 4:030 improves outcomes for Kentucky's infants by ensuring testing for inborn errors of metabolism and other inherited and congenital disorders and conditions.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 214.155 requires the Cabinet for Health and Family Services to operate a newborn screening program for inborn errors of metabolism and other inherited and congenital disorders and conditions. The specific tests on the newborn screening panel are consistent with the recommendations of the American College of Medical Genetics as required by statute. This administrative regulation details the process and procedures for compliance with the statute and sets up a fee schedule to cover program costs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The statute requires the Cabinet for Health and Family Services to operate a newborn screening program for inborn errors of metabolism and other inherited and congenital disorders and conditions. The specific tests on the newborn screening panel are consistent with the recommendations of the American College of Medical Genetics as required by statute. This administrative regulation details the process and procedures for compliance with the statute and sets up a fee schedule to cover program costs.

(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 increases the newborn screening fee to cover increased program costs as a result of an expansion in tests in accordance with the recommendations of the American College of Medical Genetics.

(b) The necessity of the amendment to this administrative regulation: The current newborn screening fee of fifty-three (53) dollars and fifty (50) cents was established in 2005 when the program expanded from performing four tests to performing twenty-eight (28) tests. The program now tests for fifty (50) disorders and conditions, and the cabinet is in the process of adding another test for Severe Combined Immune Deficiency in order to comply with KRS 214.155. Newborn screening fees have not increased since 2005 and, therefore, are insufficient to cover program maintenance and the additional testing for conditions and diseases. The current fee (fifty-three (53) dollars and fifty (50) cents) does not cover the materials, staffing, and equipment maintenance/replacement costs associated with this program – costs that have increased as more tests on the newborn screening panel have been added.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 214.155 requires the Cabinet for Health and Family Services, Department for Public Health to ensure that all infants born in Kentucky receive the newborn screening test, which now include all disorders as endorsed by the American College of Medical Genetics.

(d) How the amendment will assist in the effective administration of the statutes: This amendment increases the newborn screening fee. This will allow the cabinet to address additional costs resulting from an expansion in the number of tests performed, the replacement of aging equipment, increased staffing needs, laboratory supplies, and funding for life-sustaining metabolic foods and formulas required due to identified disorders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Kentucky's birthing hospitals, primary care providers, midwives, and local health departments submitting newborn screening specimens to the state laboratory will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Birthing hospitals, primary care providers, midwives, and local health departments submitting newborn screening specimens will not be required to change their practices. However, the fee that they charge insurance providers or

patients for these tests will increase from fifty-three (53) dollars and fifty (50) cents to ninety-nine (99) dollars.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An increase of forty-five (45) dollars and fifty (50) cents per child per initial screening will be charged to entities to comply with the amended regulation. There will continue to be no charge for repeated newborn screening tests.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The benefit to doctors, midwives, and birthing hospitals will result from assuring that their patients receive the care required by law, thereby reducing the infants' risk of developmental delays, organ failure and, in some cases, death. Newborn screening and early intervention provide enormous savings compared to the costs of treating these disabling diseases. As a result, early intervention decreases overall health care dollars spent in the long term.

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

(a) Initially: There will be no additional cost to implement this amended regulation as the program is presently operating. Currently, this program has required supplementation with general funds, and this fee increase will eliminate the program's reliance on those general fund dollars.

(b) On a continuing basis: There will be no additional cost to implement this amended regulation on a continuing basis as the program is presently operating. Currently, this program has required supplementation with general funds, and this fee increase will eliminate the program's reliance on those general fund dollars.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Agency fees and general funds support the operation of the program. It is anticipated that this fee increase will eliminate the program's reliance on general fund dollars.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if this is an amendment: This amendment will increase the newborn screening fee. This will enable the replacement of aging equipment, increased staff needs, laboratory supplies and funding for life-sustaining metabolic foods and formulas required due to identified disorders This amendment will increase fees to help pay for the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increase any fees? This administrative regulation increases newborn screening fees in order to eliminate the dependence on general funds, which has been necessary to supplement agency funds that have been insufficient to cover the cost of operating this program.

(9) TIERING: Is tiering applied? Tiering is not applied because the Newborn Screening regulations apply consistently for all infants born in Kentucky and their families.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts local health departments and the Department for Public Health which operates the Newborn Screening Program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 211.090, 214.155

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will generate revenue of approximately $2,366,000 (assuming the current trend of approximately 52,000 births per 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 generate revenue of approximately $2,366,000 (assuming the current trend of approximately 52,000 births per year).

(c) How much will it cost to administer this program for the first year? There will be no additional cost to implement this amended regulation as the program is currently operating. This fee increase will eliminate the program's reliance on general fund dollars. Revenue data shows that the existing fee generated $2.8 million in FY13. Because program costs related to the increased number of tests on the newborn screening panel have exceeded the amount of revenue generated by fees, general funds from other programs in the cabinet had to be redirected to support the Newborn screening program. Costs relating to performing additional have increased, while the fee has not been increased since 2005.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to implement this amended regulation as the program is currently operating. This fee increase will eliminate the program's reliance on general fund dollars.

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
Commission for Children with Special Health Care Needs
Division of Clinical and Augmentative Services
(Amendment)

911 KAR 1:085. Early Hearing Detection and Intervention Program.

RELATES TO: KRS 194A.030(5), 200.460-200.499, 211.647, 213.046(16), 216.2970

STATUTORY AUTHORITY: KRS 194A.030(5), 194A.050(1), 211.647(3), 211.647(4), 216.2970(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.647 requires the Commission for Children with Special Health Care Needs to identify and refer for treatment infants at risk for hearing loss and establish standards for infant audiological assessment and diagnostic centers. KRS 216.2970(1) requires the Commission for Children with Special Health Care Needs to approve methods for auditory screening for all infants born in hospitals offering obstetric services and alternative birthing centers with at least forty (40) births per year. This administrative regulation establishes standards, eligibility criteria, application processes, reporting requirements, and appeal rights for entities seeking designation as approved infant audiological assessment and diagnostic centers, and identifies approved methods for auditory screening for newborn infants in hospitals and alternative birthing centers.

Section 1. Definitions. (1) "AAA Guidelines" means the "Audiologic Guidelines for the Assessment of Infants and Young Children" published by the American Academy of Audiology.

(2) "ASHA Guidelines" means the "Guidelines for the Audiologic Assessment of Children From Birth to 5 Years of Age", published by the American Speech-Language-Hearing Association[~~, and incorporated by reference~~].

(3)[~~(2)~~] "Audiologist" is defined by KRS 334A.020(5).

(4)[~~(3)~~] "Audiology extern" means a student engaged in the clinical experience component of an audiology doctoral degree program.

(5)[~~(4)~~] "Auditory brainstem response" or "ABR" means an objective electrophysiologic measurement of the brainstem's response to the ear when stimulated with a click sound or tone burst.

(6)[~~(5)~~] "Automated auditory brainstem response" or "AABR" means an automatic ABR resulting in a pass/refer outcome.

(7)[~~(6)~~] "Commission" is defined by KRS 211.645(2).

(8)[~~(7)~~] "JCIH Guidelines" means the "Year 2007 Position Statement: Principles and Guidelines for Early Hearing Detection and Intervention Programs", published by the Joint Committee on Infant Hearing[~~, and incorporated by reference~~].

(9)[~~(8)~~] "Otoacoustic emissions" means an objective physiological test method for measuring responses elicited directly from the cochlea.

Section 2. Eligibility Criteria for Centers. (1) In order to be eligible for designation as a Level 1 infant audiological assessment and diagnostic center, an entity located in Kentucky shall:

(a) Employ at least one (1) audiologist who:

1. Is currently licensed pursuant to KRS Chapter 334A;

2. Has experience testing children in the age range newborn to three (3) years; and

3.a. Performs all evaluations; or

b. Directly supervises audiology externs performing evaluations;

(b) Possess the capacity to complete the following tests:

1. Otoscopic examination;

2. Tympanometry;

3. Ipsilateral acoustic reflex measurement;

4. Contralateral acoustic reflex measurement;

5. Ear-specific behavioral observation audiometry;

6. Speech awareness threshold;

7. Speech recognition or reception threshold;

8. Play audiometry; and

9. Either:

a. Otoacoustic emissions with diagnostic or screening capabilities; or

b. ABR screening[~~with threshold information~~];

(c) Annually calibrate all measuring and testing equipment; and

(d) Submit a complete application and assurance packet in accordance with Section 3 of this administrative regulation.

(2) In order to be eligible for designation as a Level 2 infant audiological assessment and diagnostic center, an entity located in Kentucky shall:

(a) Meet the requirements specified in subsection (1) of this section; and

(b) Possess the capacity to complete:

1. Otoacoustic emissions with diagnostic or screening capabilities;

2. Frequency-specific ABR;

3. Bone conduction ABR; and

4. Real ear measures.

Section 3. Application Process. (1) An entity seeking designation as an infant audiological assessment and diagnostic center shall submit to the commission a completed application packet containing:

(a) Completed and signed form CCSHCN-E106, Potential Infant Audiological Assessment and Diagnostic Center Questionnaire;

(b) Copies of current professional licenses for audiologists performing evaluations;

(c) Copies of current calibration certificates for audiological testing equipment; and

(d) Copies of policies and procedures for tests and measures requested on the CCSHCN-E106, Potential Infant Audiological Assessment and Diagnostic Center Questionnaire.

(2) The commission shall review an entity's application within thirty (30) calendar days of receiving a complete packet submitted in accordance with subsection (1) of this section.

(3) Upon review of an entity's application packet, the commission's executive director or designee shall approve the entity as a Level 1 Infant Audiological Assessment and Diagnostic Center if:

(a) The entity meets the requirements specified in Section 2(1) of this administrative regulation; and

(b) The commission determines that the entity's policies and procedures conform to best practice standards as described in[~~ASHA Guidelines and~~] JCIH Guidelines; and

1. AAA Guidelines; or

2. ASHA Guidelines.

(4) Upon review of an entity's application packet, the commission's executive director or designee shall approve the entity as a Level 2 Infant Audiological Assessment and Diagnostic Center if:

(a) The entity meets the requirements specified in Section 2(2) of this administrative regulation; and

(b) The commission determines that the entity's policies and procedures conform to best practice standards as described in[~~ASHA Guidelines and~~] JCIH Guidelines; and

1. AAA Guidelines; or

2. ASHA Guidelines.

(5) If the commission's executive director or designee determines that the entity does not meet the requirements specified in Section 2 of this administrative regulation, the Commission shall:

(a) Advise the entity and request clarifying information; or

(b) Deny the designation as an Infant Audiological Assessment and Diagnostic Center and notify the entity of appeal rights pursuant to Section 8 of this administrative regulation.

(6) Approvals shall expire on December 31 of odd-numbered years. All entities seeking continued approval shall re-apply by December 1 of that year in accordance with this section.

Section 4. Publication of Approved List. (1) The Commission shall maintain a current listing of all approved Infant Audiological Assessment and Diagnostic Centers, with contact information.

(2) The Commission shall make the listing public through the following methods:

(a) Posting on its agency Web site;

(b) Providing to the Cabinet for Health and Family Services, Office of Administrative and Technology Services, for inclusion on the KY-CHILD electronic information system used by birthing hospitals and centers;

(c) Enclosing as an attachment to correspondence with parents; and

(d) Mailing a listing to birthing hospitals and centers upon request.

Section 5. Removal from Approved List and Updates Required. (1) The commission shall remove an entity from the approved list and notify the entity of the removal if the entity requests removal.

(2) If the commission receives a complaint that an entity no longer meets the requirements of Section 2 of this administrative regulation, the commission shall:

(a) Advise the entity of the complaint;

(b) Request clarifying information from the entity;

(c) Review any information received; and

(d) Determine whether the entity meets the eligibility requirements of Section 2 of this administrative regulation.

(3) If the commission determines that the entity no longer meets the eligibility requirements, the commission shall:

(a) Notify the entity of appeal rights pursuant to Section 8 of this administrative regulation; and

(b) Remove the entity from the approved list.

(4) Following approval, an Infant Audiological Assessment and Diagnostic Center shall provide documentation via form CCSHCN-E107, Infant Audiological Assessment and Diagnostic Center Program Modification, if the following changes in circumstances occur:

(a) Employment or termination of employment of an audiologist;

(b) Change in licensure status of an audiologist;

(c) Relocation of agency or addition of a location; or

(d) Modification to policy or procedure with regard to evaluations described in Section 2 of this administrative regulation.

Section 6. Reporting Requirements. (1) Upon completion of diagnostic testing of an infant or child aged birth to three (3) years described in KRS 211.647(5), an approved Infant Audiological Assessment and Diagnostic Center shall report to the commission:

(a) Identifying and demographic information;

(b)[~~Results of the newborn hearing screening;(c)~~] Results of the follow-up audiological evaluation; and

(c)[~~(d)~~] Documentation of the referral required by KRS 211.647(5).

(2) An approved Infant Audiological Assessment and Diagnostic Center shall[~~may~~] submit information specified in subsection (1) of this section[~~by one (1) of the following methods: (a)~~] electronically via the KY-CHILD electronic information system within seven (7) calendar days of evaluation.

(3) Scheduled appointments which are not kept by families shall be marked in the KY-CHILD electronic information system as no-show within four (4) calendar days if not rescheduled[~~; or~~

~~(b) Mailing or faxing the completed form CCSHCN-E3, Audiology Update Form~~].

Section 7. Resource and Informational Materials. The commission shall make available to families of all newborns and children ages birth to three (3) years identified as having permanent hearing loss information provided by the Kentucky Commission on the Deaf and Hard of Hearing.

Section 8. Appeal Rights. An entity denied designation as an Infant Audiological Assessment and Diagnostic Center or which has been removed from the approved list may request an administrative hearing in accordance with KRS 13B.050.

Section 9. Approved Methods of Auditory Screening for Newborn Infants and Children Ages Birth to Three (3) Years. (1) Auditory screenings pursuant to KRS 216.2970(1) shall include at least one (1) of the following physiological tests:

(a)[~~ABR;~~

~~(b)~~] AABR; or

(b)[~~(c)~~] Otoacoustic emissions.

(2) Auditory screening reports shall:

(a) Document the results of physiological tests conducted;

(b) Document the presence of any risk factors pursuant to KRS 211.645(5); and

(c) Be submitted via the KY-CHILD electronic information system.

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

(a) "Audiologic Guidelines for the Assessment of Infants and Young Children", American Academy of Audiology, August 2012[~~CCSHCN-E3, Audiology Update Form, edition 2009~~];

(b) "CCSHCN-E106, Potential Infant Audiological Assessment and Diagnostic Center Questionnaire", [~~edition~~] 2009;

(c) "CCSHCN-E107, Infant Audiological Assessment and Diagnostic Center Program Modification", [~~edition~~] 2009;

(d) "Guidelines for the Audiologic Assessment of Children From Birth to 5 Years of Age", American Speech-Language-Hearing Association; and

(e) "Year 2007 Position Statement: Principles and Guidelines for Early Hearing Detection and Intervention Programs", Joint Committee on Infant Hearing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Commission for Children with Special Health Care Needs, 310 Whittington Parkway, Suite 200, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

JACKIE RICHARDSON, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: October 8, 2014

FILED WITH LRC: October 9, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2014, at 9:00 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 2014, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business December 1, 2014. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peg Barry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards, eligibility criteria, application processes, reporting requirements, and appeal rights for entities seeking designation as approved infant audiological assessment and diagnostic centers, and identifies approved methods for auditory screening of infants for hospitals and alternative birthing centers.

(b) The necessity of this administrative regulation: This administrative regulation is needed to implement provisions of KRS 211.647 and KRS 216.2970, enrolled by HB 5 of the 2009 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes standards for infant audiological assessment and diagnostic centers as required by KRS 211.647(3) and processes for approval of infant audiological assessment and diagnostic centers as required by KRS 211.647(3). This administrative regulation enumerates auditory screening methods as required by KRS 216.2970(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates the Cabinet's compliance with KRS 211.647 and KRS 216.2970. This administrative regulation assists in the effective delivery of services to newborns at risk of hearing loss and proper administration of the Early Hearing Detection and Intervention 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 clarifies processes regarding approved infant audiological assessment and diagnostic centers, as well as the reporting of approved methods for auditory screening results, and modifies material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify submission requirements. Additional material incorporated by reference more specifically describes guidelines for best practice and allows for conformity with standards of one or both of the major accrediting bodies.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes standards for infant audiological assessment and diagnostic centers as required by KRS 211.647(3) and processes for approval of infant audiological assessment and diagnostic centers as required by KRS 211.647(3). This administrative regulation enumerates auditory screening methods as required by KRS 216.2970(1).

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation facilitates the Cabinet's compliance with KRS 211.647 and KRS 216.2970. This administrative regulation assists in the effective delivery of services to newborns at risk of hearing loss and proper administration of the Early Hearing Detection and Intervention Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: Entities providing audiology evaluations to children will be affected by this administration regulation. The Commission for Children with Special Health Care Needs estimates that between twenty (20) and fifty (50) entities meet eligibility criteria. Additionally, Kentucky hospitals offering obstetric services and alternative birthing centers with at least forty (40) births per year will be affected by this administrative regulation. Currently, forty-nine (49) such entities exist.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If they choose, entities providing audiological evaluations to children will have the option to seek designation as approved infant audiological assessment and diagnostic centers. The application process includes the entity forwarding, to the Commission for Children with Special Health Care Needs, a packet with a questionnaire and required assurances, as well as supporting documentation. Hospitals offering obstetric services and alternative birthing centers with at least forty (40) births per year, as a condition of licensure or relicensure, shall provide an auditory screening of all infants. Impact will be minimal, as entities already conduct such screening.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Commission for Children with Special Health Care Needs does not anticipate any additional costs to the entities as a result of this administrative regulation. It is expected that the time needed for form completion may be accomplished by current staff.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities approved as infant audiological assessment and diagnostic centers shall be included on an official list of approved centers disseminated to the general public through a variety of methods. Hospitals offering obstetric services and alternative birthing centers in compliance shall meet a condition of their licensure or relicensure.

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

(a) Initially: There are no additional costs necessary to implement this administrative regulation initially.

(b) On a continuing basis: There are no additional costs necessary to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs to operate this program are supported primarily by general fund and agency fund dollars in the Commission for Special Health Care Needs agency budget. If federal programs provide a funding opportunity, the agency would apply for those dollars as well. In FY 2015, for example, approximately 18 percent of the Early Hearing Detection and Intervention program funding is supported by federal dollars.

(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 additional 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied since policy is applied in a like manner to all entities meeting eligibility criteria. The Early Hearing Detection and Intervention Program is available statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Commission for Children with Special Health Care Needs, a state government agency within the Cabinet for Health and Family Services, will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(5), KRS 194A.050(1), KRS 211.647(3), KRS 211.647(4), KRS 216.2970(1)

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 280g-1

2. State compliance standards. KRS 211.647

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 280g-1

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

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

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

922 KAR 2:160. Child Care Assistance Program.

RELATES TO: KRS[~~81.010,~~] 194A.060, 199.892, 199.894(1),(5), 199.896, 199.898(1), (2), 199.8982, 199.899, 199.8994, 214.036, 314.011(5), 337.275, 600.020(49), 605.120(5), 620.020(10), 2014 Ky. Acts ch. 117, Part 1, G.9(3), 7 C.F.R. 1463, 2012, 20 C.F.R. 652, 660-671, 45 C.F.R. 98, 205.10(a)(6), 205.50(a)(1)(i), 400.66(d), 25 U.S.C. 459, 1261, 1401, 29 U.S.C. 723(a)(5), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1451, 1771, 1775, 2000d, 3001, 4950-5084, 8621, 9902(2), 9858-9858q, 10602(c)[~~, Pub.L. 110-246~~]

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and

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

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that affects eligibility or benefit amounts and includes:

(a) Beginning or ending employment;

(b) Change in an employer or obtaining additional employment;

(c) Increase or decrease in the number of work hours;

(d) Increase or decrease in the rate of pay;

(e) Increase or decrease in family members;

(f) Change in self-employment activity;

(g) Change in scheduled hours care is needed;

(h) Beginning or ending an educational activity;

(i) Change in child care provider;

(j) Change in address or residence;

(k) Change in marital status; or

(l) Beginning or ending receipt of unearned income.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(5) "Child care and development fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined in 922 KAR 1:330, Section 1(3).

(9) "Child with a special need" means a child who has multiple or severe functional needs requiring ongoing specialized care.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for compensation or as an unpaid job requirement.

(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.

(12) "Family child-care home":

(a) Is defined by KRS 199.894(5);

(b) Is described in KRS 199.8982; and

(c) Means a home certified in accordance with 922 KAR 2:100.

(13) "Full day" means child care that is provided for five (5) or more hours per day.

(14) "Health professional" means a person actively licensed as a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner;

(d) Qualified mental health professional as defined by KRS 600.020(49); or

(e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(15) "In loco parentis" means a person acting in place of a parent, including:

(a) A legal guardian;

(b) An individual related by blood, marriage, or adoption to the child; or

(c) A nonrelative pursuing legal custody of the child within one (1) year of application.

(16) "Infant" means a child who is less than one (1) year old.

(17) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(18)[~~"Nonurban" means a county without a first, second, or third class city as specified in KRS 81.010(1) through (3).~~

~~(19)~~] "Parent" is defined by 45 C.F.R. 98.2.

(19)[~~(20)~~] "Part day" means child care that is provided for less than five (5) hours per day.

(20)[~~(21)~~] "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(21)[~~(22)~~] "Preventive services" is defined by KRS 620.020(10).

(22)[~~(23)~~] "Provider" means the entity providing child care services.

(23)[~~(24)~~] "Qualified alien" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).

(24)[~~(25)~~] "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(25)[~~(26)~~] "Related" means having one (1) of the following relationships:

(a) Child;

(b) Stepchild;

(c) Grandchild;

(d) Great-grandchild;

(e) Niece;

(f) Nephew;

(g) Sibling;

(h) Child in legal custody; or

(i) Child living in loco parentis.

(26)[~~(27)~~] "Responsible adult" means a person other than the applicant who is in the child's household and who is:

(a) The natural parent, adoptive parent, or stepparent; or

(b) The spouse of an individual caring for a child in loco parentis.

(27)[~~(28)~~] "School-age child" means a child who has reached the sixth birthday.

(28) "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:

(a) Defined by 7 U.S.C. 2012; and

(b) Governed by 921 KAR Chapter 3.

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

(30) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.[~~(31) "Urban" means a county listed in KRS 81.010(1) through (3) as having a first, second, or third class city.~~]

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

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. A signed DCC-90, Application for Subsidized Child Care Assistance, or DCC-90.1, Intent to Apply for Child Care Assistance, is received at the cabinet or its designee office; or

2. The agency is contacted, if the person:

a. Has a physical or mental disability; and

b. Needs special accommodation due to the impairment.

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

(c) The applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures described in 920 KAR

1:070, interpreter services shall be provided for persons who are:

1. Deaf; or

2. Hard of hearing.

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

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

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

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

1. Furnish verification of:

a. Income;

b. Technical eligibility; and

c. Employment; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

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

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Send a DCC-105, Child Care Assistance Program Notice of Action, to the applicant in accordance with Section 11(5) of this administrative regulation to provide written notification of the decision within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section.

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

(7) A family shall not receive:

(a) Assistance until approval of the application for benefits; or

(b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

1. Resident of Kentucky; and

2. U.S. citizen or qualified alien;

(b) Is under age:

1. Thirteen (13); or

2. Nineteen (19) and is:

a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

a. Licensed child-care[~~child care~~] center;

b. Certified child-care[~~child care~~] home;

c. Public school;

d. Head Start; or

e. Other entity that requires the immunization record.

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

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K-TAP or SNAP[~~food stamp assistance~~] case in which the child in need of child care assistance is included;

(d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) Effective August 15, 2015, a licensed child-care center or certified family child-care home that does not participate in the quality rating program governed by 922 KAR 2:170 or 922 KAR 2:210 unless an exception is granted pursuant to Section 12(8) of this administrative regulation;

(g) A Head Start program unless the child care is provided before, after, or in between the Head Start program's operating hours as wrap-around child care[~~An alternative program such as Head Start, state preschool, or state kindergarten~~]; or

(h)[~~(g)~~] Another child care provider if the family operates the child care business in the home.

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

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

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who has employment an average twenty (20) hours per week;

(b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;

(d) An applicant who:

1. Loses employment through no fault of their own up to four (4) weeks;

2. Is on maternity leave for up to six (6) weeks; or

3. Is on medical leave from employment due to a health condition verified by a health professional for up to six (6) weeks;

(e) A relative caregiver pursuant to the conditions of a program established by KRS 605.120(5), who meets:

1. All requirements in this section; and

2. Income eligibility standards in Section 7[~~(1)~~]; or

(f) A teen parent attending high school or pursuing a general equivalency degree (GED).

(2) Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 7(7)(d) of this administrative regulation by minimum wage established in accordance with KRS 337.275.

(3) An applicant eligible in accordance with this section shall sign and return the DCC-91, Client Rights and Responsibilities Sheet, and the DCC-94, Child Care Service Agreement and Certificate.

Section 5. Requirements for Protection and Permanency Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or

2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan in accordance with 922 KAR 1:430.

(3) A child who participates in the CCAP as a result of a child protective or preventive services authorization shall not be eligible for more than six (6) months without further authorization.

(4)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 10 of this administrative regulation for a child who participates in CCAP as a result of child protective services authorization.

(b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan.

(5) An applicant eligible in accordance with this section shall sign and return the DCC-91.

Section 6. Kentucky Works Child Care Eligibility Determination. (1) A child shall be eligible for CCAP if the child:

(a) Resides with an applicant who is participating in the Kentucky Works Program described in 921 KAR 2:370; and

(b) Meets the requirements listed in Section 3 of the administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application as an integral part of a Kentucky Works Program self-sufficiency plan.

(3) An applicant eligible in accordance with this section shall sign and return the DCC-91.

Section 7. Income Eligibility. (1)(a) A child shall be eligible for the CCAP if the family's income is less than or equal to 140 percent of the 2011 federal poverty level at:

1. Initial application; or

2. Redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.

(b) On or after July 1, 2015, a child shall be eligible for the CCAP if the family's income is less than or equal to:

1. 150 percent of the 2011 federal poverty level at initial application; or

2. 165 percent of the 2011 federal poverty level at redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation[~~Prior to July 1, 2013, a child shall be eligible for the CCAP if the family's income is less than or equal to:~~

~~1. 150 percent of the federal poverty level at the initial application; or~~

~~2. 165 percent of the federal poverty level at the redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.~~

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

~~1. 100 percent of the federal poverty level at the initial application; or~~

~~2. 100 percent of the federal poverty level at the redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation~~].

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

(a) 140 percent of the 2011 federal poverty level; or

(b) 165 percent of the 2011 federal poverty level on or after July 1, 2015[~~165 percent of the federal poverty level prior to July 1, 2013; or~~

~~(b) 100 percent of the federal poverty level effective July 1, 2013~~].

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

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

(5) Excluded income shall be:

(a) K-TAP child only payments, including back payment;

(b) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(c) Educational grant, loan, scholarship, and work study income;

(d) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;

(e) The value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly allotment under SNAP[~~the Supplemental Nutrition Assistance Program (formerly known as the Food Stamp Program):~~

~~a. Defined by 7 U.S.C. 2012, as amended by P.L. 110-246; and~~

~~b. Governed by Title 921 KAR Chapter 3~~];

(f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(g) In-kind income;

(h) Reimbursement for transportation in performance of an employment duty, if identifiable;

(i) Nonemergency medical transportation payment;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grant;

(m) Home produce utilized for household consumption;

(n) Housing subsidy received from federal, state, or local governments;

(o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(p) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5084 if less than the minimum wage under state or federal law, whichever is greater, including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(s) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(t) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(u) The principal of a verified loan;

(v) Up to $12,000 to Aleuts and $20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(w) The advance payment or refund of earned income tax

credit;

(x) Payment made from the Agent Orange Settlement Fund;

(y) Payment made from the Radiation Exposure Compensation Trust Fund;

(z) Up to $2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(cc) A payment received from the National Tobacco Growers Settlement Trust;

(dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;

(ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);

(ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(gg) A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-31(g)(6) of the Social Security Act, 42 U.S.C. 601-619;

(hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);

(ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5); or

(jj) Income or earnings from a program funded under the Work Investment Act (WIA) pursuant to 20 C.F.R. 652 and 660 to 671.

(6) Deductions from gross income shall be:

(a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and

(b) Operating costs to determine adjusted gross income from self-employment.

(7) Best estimate.

(a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.

(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:

1. Cents shall not be rounded at any step in the calculation;

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;

3. A monthly amount shall be determined by:

a. Adding gross income from each pay period;

b. Dividing by the total number of pay periods considered; and

c. Converting the pay period figure to a monthly figure by multiplying a:

(i) Weekly amount by 4.334;

(ii) Biweekly amount by 2.167; or

(iii) Semimonthly amount by two (2); and

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the:

(i) Hourly rate by the estimated number of hours to be worked in a pay period; or

(ii) Daily rate by the estimated number of days to be worked in the pay period; and

b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c. of this paragraph.

(c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Not rounding cents at any step in the calculation;

2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

3. Averaging the amount of nonstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1. Cents shall not be rounded at any step in the calculation;

2. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

3. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

4. Profit shall be determined by:

a. Dividing the allowable expenses permitted by the Internal Revenue Service except for depreciation by:

(i) Twelve (12) if the enterprise has been in operation for at least a year; or

(ii) The number of months the business has been operating if the business has been in existence for less than a year; and

b. Subtracting the monthly expense from the monthly income.

Section 8. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be redetermined at least every:

(a) Twelve (12) months; or

(b) Six (6) months for a child eligible pursuant to requirements in Section 5 of this administrative regulation.

(2) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

(3) A nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

Section 9. Payment Rates and Policy. (1) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rates Chart.

(a) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.

(b) The maximum payment rates shall include the following categories:

1. Full day;

2. Part day;

3.[~~Urban;~~

~~4. Nonurban;~~

~~5.~~] Licensed;

4.[~~6.~~] Certified;

5.[~~7.~~] Registered;

6.[~~8.~~] Infant/Toddler;

7.[~~9.~~] Preschool child; and

8.[~~10.~~] School-age child.

(2) To the extent funds are available, a licensed or certified provider shall receive:

(a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education for Young Children;

2. National Early Childhood Program Accreditation;

3. National Association for Family Child Care;

4. Council on Accreditation; or

5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

(b) One (1) dollar per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:

1. 7 p.m. to 5 a.m. daily; or

2. Friday, 7 p.m. through Monday, 5 a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:

(a) With a special need; or

(b) Who is age thirteen (13), but under age nineteen (19), and is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or

2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum

daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

(a) Three (3) children receiving CCAP per day; or

(b) Six (6) children receiving CCAP per day, if those children are:

1. A part of a sibling group; and

2. Related to the provider.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 10. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(4) of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:

Family Co-Payment Per Day								
Income Range Monthly		Family Size 2 Family Co-Pay With 1 Child	Family Size 3 Family Co-Pay		Family Size 4 Family Co-Pay		Family Size 5 or More Family Co-Pay	
			With 1 Child	With 2 or more	With 1 Child	With 2 or more	With 1 Child	With 2 or more
0	899	$0	$0	$0	$0	$0	$0	$0
900	999	$2	$2	$3	$2	$2	$2	$2
1,000	1,099	$3	$3	$3	$2	$3	$2	$3
1,100	1,199	$4	$4	$4	$3	$3	$2	$3
1,200	1,299	$4	$4	$5	$4	$4	$3	$3
1,300	1,399	$5	$5	$5	$5	$5	$3	$4
1,400	1,499	$6	$5	$6	$5	$6	$4	$4
1,500	1,599	$7	$6	$6	$6	$6	$5	$5
1,600	1,699	$8	$6	$7	$6	$7	$6	$6
1,700	1,799	$9	$7	$8	$7	$8	$6	$7
1,800	1,899	$10	$8	$9	$7	$8	$7	$8
1,900	1,999	$10	$9	$10	$8	$9	$8	$9
2,000	2,099	$11	$10	$11	$8	$9	$8	$9
2,100	2,199.99	$12	$10	$11	$9	$10	$9	$10
2,200	2,299.99	$12	$11	$12	$10	$11	$9	$10
2,300	2,399.99	$12	$12	$13	$11	$12	$9	$10
2,400	2,499.99	$12	$12	$13	$12	$13	$10	$11
2,500	2,599.99	$12	$13	$14	$12	$13	$10	$11
2,600	2,699.99	$12	$13	$14	$13	$14	$12	$13
2,700	2,799.99	$12	$13	$14	$13	$14	$13	$14
2,800	2,899.99	$12	$13	$14	$14	$15	$14	$15
2,900	2,999.99	$12	$13	$14	$14	$15	$16	$17
3,000	3,099.99	$12	$13	$14	$15	$16	$18	$19
3,100	3,199.99	$12	$13	$14	$15	$16	$20	$21
3,200	3,299.99	$12	$13	$14	$15	$16	$20	$21
3,300	3,399.99	$12	$13	$14	$15	$16	$22	$23
3,400	3,499.99	$12	$13	$14	$15	$16	$22	$23
3,500	3,599.99	$12	$13	$14	$15	$16	$24	$25
3,600	3,699.99	$12	$13	$14	$15	$16	$25	$25

(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

(4)(a) If a provider notifies the cabinet or its designee that a family has failed to comply with a required copayment for two (2) weeks, the cabinet or its designee shall request that the provider develop a payment plan with the family.

(b) If a provider notifies the cabinet or its designee that a family fails to enter into a payment plan within ten (10) days from a provider's notification that a payment plan is necessary, or a family fails to make two (2) payments in accordance with the payment plan, the cabinet shall:

1. Not pay a subsequent provider until the family demonstrates compliance with the payment plan; and

2. Terminate CCAP for the family.

(c) The cabinet or its designee may grant an exception to paragraph (b) of this subsection due to:

1. A disaster verified by utility provider, local, state, or federal government;

2. The closure of a provider;

3. Family circumstances, such as relocation, illness, or death; or

4. A risk to the health, welfare, or safety of the child or parent.

Section 11. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

(a) Be offered choice of child care assistance subject to the

availability of state and federal funds; and

(b) Receive a child care certificate, the DCC-94.

(3) An applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the DCC-91 and the DCC-94.

(4) An applicant approved in accordance with Section 5 or 6 of this administrative regulation shall sign and return the DCC-91.

(5) Notification of action.

(a) A DCC-105 shall serve many purposes in the administration of CCAP, including notice to an applicant or recipient of:

1. Changes in:

a. Copayment;

b. Certification period; or

c. Household size;

2. Approval of:

a. Application; or

b. Continued eligibility; or

3. Adverse action, including:

a. Denial of application;

b. Reduction of CCAP benefits; or

c. Termination of CCAP benefits.

(b) The DCC-105 providing notice of an adverse action shall include:[;]

1. Reason for the adverse action;

2. Citation from an applicable state administrative regulation; and

3. Information regarding the:

a. Informal dispute resolution process in accordance with Section 17 of this administrative regulation; and

b. Opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation.

(c) The language on the DCC-105 shall differ according to the purpose of the notice described in paragraphs (a) and (b) of this subsection.

(6) An applicant may change the applicant's provider a maximum of three (3) times in a twelve (12) month period, unless an exception is authorized by the cabinet or its designee due to:

(a) A disaster verified by utility provider, local, state, or federal government;

(b) Closure of a provider;

(c) Family circumstances, such as relocation, illness, or death;

(d) A risk to the health, welfare, or safety of the child or the applicant; or

(e) Failure of the provider to comply with Section 13(1) of this administrative regulation.

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

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

(9) Failure to report a change in a circumstance may result in a:

(a) Decrease or discontinuance of CCAP benefits based on the type of change; or

(b) Claim in accordance with 922 KAR 2:020.

(10) An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:

(a) Discontinued from CCAP benefits; and

(b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

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

Section 12. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

(b) 922 KAR 2:090, Child care center licensure;

(c)[~~(b)~~] 922 KAR 2:100, Certification of family child care homes;

(d)[~~(c)~~] 922 KAR 2:110, Child care facility provider requirements;

(e)[~~(d)~~] 922 KAR 2:120, Child care facility health and safety standards;

(f) 922 KAR 2:170, STARS for KIDS NOW Program for Type I licensed child-care centers, effective August 15, 2015, unless an exception is granted in accordance with Section 12(8) of this administrative regulation;

(g)[~~(e)~~] 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(h)[~~(f) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties; and~~

~~(g)~~] 922 KAR 2:190, Civil penalties; and

(i) 922 KAR 2:210, STARS for KIDS NOW Program for Type II licensed child-care centers and certified family child-care homes, effective August 15, 2015, unless an exception is granted in accordance with Section 12(8) of this administrative regulation.

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

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

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

(7) The cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective or preventive services authorization;

(b) A child with a special need;

(c) K-TAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;

(d) Teen parents attending high school or pursuing a general equivalency degree (GED);

(e) A K-TAP recipient attempting to transition off assistance through employment;

(f) A parent whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;

(g) A low income working parent; or

(h) A parent in education or training programs leading to self-sufficiency.

(8)(a) The cabinet shall grant an exception for a CCAP-eligible child's placement with a child care provider participating in the quality rating program governed by 922 KAR 2:170 and 922 KAR 2:210 if:

1. A violation of or conflict with 45 C.F.R. 98.30 would result, such as:

a. A geographic area in which an adequate supply of child care is lacking;

b. A parent's scheduling, transportation, or other circumstance that prevents the use of a child care provider participating within the quality rating program;

c. A child approved for CCAP in accordance with Section 5 or 6 of this administrative regulation;

d. A child with special needs; or

e. The provision of child care through a provider:

(i) Registered in accordance with 922 KAR 2:180;

(ii) Operated by the armed services located on an armed forces base; or

(iii) Regulated by another state;

2. A situation or circumstance, such as an emergency or disaster, necessitates the provision of emergency child care; or

3. Noncompliance or federal penalty under 421 U.S.C. 601-619 or 42 U.S.C. 9858-9858g would result.

(b) The DCC-400, Request for Exception from Placement with a STAR-Rated Child Care Provider:

1. Shall be used to request an exception in accordance with paragraph (a)1 of this subsection; and

2. May be used to request an exception in accordance with paragraphs (a)2 and (a)3 of this subsection.

(c) The cabinet shall respond to a completed and signed DCC-400 in accordance with Section 11(3) of this administrative regulation within ten (10) calendar days of its submission unless:

1. The cabinet experiences a circumstance that prolongs the review of the request; and

2. Notice of the extension is provided to the requesting parent.

Section 13. Provider Requirements. (1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and submit the DCC-94 to the cabinet or its designee prior to receiving payment from the CCAP;

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;

(c)1. Maintain the DCC-94E, Child Care Daily Attendance Record, in which the attendance is[~~daily arrival and departure times of each child have been~~]:

a. Recorded legibly each time the child arrives and each time the child departs the provider's care[~~on a daily basis~~]; and

b. Signed by the parent or applicant for the child served by CCAP; and

2. Submit the DCC-94E upon request of the cabinet or its designee;[~~and~~]

(d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

2. 922 KAR 2:090, Child care center licensure;

3.[~~2.~~] 922 KAR 2:100, Certification of family child care homes;

4.[~~3.~~] 922 KAR 2:110, Child care facility provider requirements;

5.[~~4.~~] 922 KAR 2:120, Child care facility health and safety standards;

6. 922 KAR 2:170, STARS for KIDS NOW Program for type I licensed child-care centers, effective August 15, 2015, unless an exception is granted in accordance with Section 12(8) of this administrative regulation;

7.[~~5.~~] 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

8.[~~6. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties; and~~

~~7.~~] 922 KAR 2:190, Civil penalties; and

9. 922 KAR 2:210, STARS for KIDS NOW Program for type II licensed child-care centers and certified family child-care homes, effective August 15, 2015, unless an exception is granted in accordance with Section 12(8) of this administrative regulation; and

(e) Complete the cabinet approved training on billing and the DCC-94E:

1. Prior to receiving an initial payment from CCAP if the provider will begin participation in CCAP after the effective date of this administrative regulation; or

2. By August 4, 2015, if the provider began participation in CCAP prior to the effective date of this administrative regulation.

(2) A licensed or certified child care provider shall complete and submit the DCC-94B, Licensed or Certified Provider Agreement[~~Information~~] Form, prior to receiving payment from the CCAP.

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4)(a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as specified in 922 KAR 2:100 or 922 KAR 2:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

1. Each employee of each shift;

2. The work hours for each employee of each shift;

3. The management for each shift;

4. The work hours for each management employee of each shift; and

5. The children enrolled for each shift.

(c) The cabinet shall approve an operating plan that demonstrates the health, safety, and welfare of a child in care in accordance with this administrative regulation and an administrative regulation listed in subsection (1)(d) of this section.

Section 14. Other Services. To the extent state funds are available, a child whose family's income is over the income limits for the CCAP described in Section 7 may be eligible for:

(1) Child care payments;

(2) Enrollment fees;

(3) Activity or day trip fees;

(4) Material fees;

(5) Transportation fees; or

(6) Other items relating to child care services with prior approval of the cabinet.

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

Section 16. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:

1. A death in the family;

2. An illness of the:

a. Child; or

b. Applicant; or

3. A Disaster verified by utility provider, local, state, or federal government;

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in accordance with Section 10(4) of this administrative regulation or 922 KAR 2:020;

(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90) days after the date of service;

(h) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;

(i) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet's designee, or a representative of an agency with regulatory authority:

a. Entry into the provider's premises during operating hours; or

b. Access to a child in care; or

2. The cabinet, the cabinet's designee, or a representative of an agency with regulatory authority access to the provider's records relevant to a:

a. Cabinet review, including CCAP quality control or case review; or

b. Review by another agency with regulatory authority;

(j) Not be made to a provider if the provider's DCC-94E in accordance with Section 13(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97;[~~or~~]

(k) Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94; or

(l) Not be made to a provider for a child in care over the capacity of the provider, as governed by 922 KAR 2:100 or 922 KAR 2:120, unless an operating plan is approved in accordance with Section 13(4) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 12(7)[~~(8)~~] of this administrative regulation.

Section 17. Informal Dispute Resolution and Appeals. (1) An applicant for CCAP or a parent of a child receiving CCAP:

(a) May seek an informal dispute resolution if the applicant or parent is dissatisfied with an action by the cabinet or its designee concerning a denial, reduction, or termination of CCAP benefits;

(b) Shall request an informal dispute resolution with the cabinet or its designee within ten (10) days of the:

1. Notice of denial for CCAP in accordance with Section 2(5) of this administrative regulation; or

2. Date of the adverse action for which notice is provided in accordance with Section 12(6) of this administrative regulation; and

(c) Who is dissatisfied with the decision of the informal dispute resolution, may submit an administrative hearing request:

1. In accordance with Section 18 of this administrative regulation; and

2. Within thirty (30) calendar days of the date of the decision made by the cabinet or its designee in accordance with subsection (3) of this section.

(2)(a) If the child's parent provides notice within ten (10) calendar days from the date of adverse action in accordance with 45 C.F.R. 205.10(a)(6), a child receiving CCAP may continue to receive CCAP during the informal dispute resolution or administrative hearing process pending the outcome of the informal dispute resolution or the administrative hearing.

(b) If an informal dispute resolution or administrative hearing process upholds the denial, reduction, or termination of CCAP, the child's parent who continued to receive CCAP benefits during the informal dispute resolution or administrative hearing process shall repay the CCAP back to the effective date of the denial, reduction, or termination.

(3) Upon receipt of a request for the informal dispute resolution, the cabinet or its designee shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within ten (10) days, unless:

1. The commissioner or designee grants an extension to the timeframe specified in this paragraph due to extenuating circumstances that prolong the review of the request; and

2. Notice of the extension is provided to the applicant or parent who made the request for informal dispute resolution.

(4) An applicant for CCAP or a parent of a child receiving CCAP may request an administrative hearing in accordance with Section 18 of this administrative regulation at any time during the informal dispute resolution process established in this section.

Section 18. Administrative Hearings. An administrative hearing may be requested in accordance with:

(1) 922 KAR 1:320; or

(2) 922 KAR 2:020.

Section 19. Records. Records of CCAP shall be maintained and disclosed in accordance with:

(1) KRS 194A.060;

(2) 45 C.F.R. 98.90(e); and

(3) 45 C.F.R. 205.50(a)(1)(i).

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-90, Application for Subsidized Child Care Assistance",[~~edition~~] 11/09;

(b) "DCC-90.1, Intent to Apply for Child Care Assistance",[~~edition~~] 11/09.

(c) "DCC-91, Client Rights and Responsibilities Sheet",[~~edition~~] 04/13;

(d) "DCC-94, Child Care Service Agreement and Certificate",[~~edition~~] 11/09;

(e) "DCC-94B, Licensed or Certified Provider Agreement[~~Information~~] Form", 10/14[~~edition 7/13~~];

(f) "DCC-94E, Child Care Daily Attendance Record[~~Records~~]",[~~edition~~] 7/13;

(g) "DCC-97, Provider Billing Form",[~~edition~~] 04/13;

(h) "DCC-105, Child Care Assistance Program Notice of Action",[~~edition~~] 11/09;[~~and~~]

(i) "DCC-300, Kentucky Child Care Maximum Payment Rates Chart", 10/14; and

(j) "DCC-400, Request for Exception from Placement with a STAR-Rated Child Care Provider", 10/14[~~edition 11/09~~].

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

TERESA C. JAMES, LCSW, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: October 13, 2014

FILED WITH LRC: October 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2014, 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 1, 2014. 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, tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation enables the Cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishing procedures for the implementation of CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the CCAP in a manner which is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers.

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

(a) How the amendment will change this existing administrative regulation: The amendment increases the CCAP income eligibility

criteria, specifically the federal poverty level, in accordance with available revenues, including the restoration of CCAP authorized by 2014 Ky. Acts ch. 117. In addition, the amendment delinks child care provider payment rates from the classification of cities, reinforces quality within CCAP by requiring licensed and certified child care providers' participation in the STARS for KIDS NOW Program and one-time free-of-charge training concerning CCAP billing, and makes technical corrections and clarifications in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to restore CCAP to a higher service level in response to 2014 Ky. Acts ch. 117, state budgetary context, and to protect and preserve provider rates from fluctuations that would otherwise be created by changes to city classifications. In addition, the amendment is necessary to improve the quality of child care purchased through the program and provided to Kentucky's most vulnerable and at-risk child populations thereby preserving and making additional gains for the positive development (i.e., health), safety, and welfare of children prioritized for CCAP, including children receiving Child Protective Services, children with special needs, children of teen parents, children whose parents are transitioning from cash assistance or welfare, and children from low-income households; and readying Kentucky's child care community for forthcoming federal legislation or regulation redefining purposes of the Child Care and Development Fund Block Grant to include enhanced focuses on quality. Lastly, the amendment is necessary to assure compliance with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by restoring CCAP in accordance with available federal and state funding and assuring stable child care provider payment rates and quality within CCAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by ensuring CCAP operates within available funding and quality standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of September 2014, CCAP served 21,323 children in 11,153 families, which was an increase from July's figures, 18,857 and 9,829 respectively. As of September 30, 2014, there were 392 certified family child-care homes. Of those, 330 certified family child-care homes were not in STARS and were serving 838 children receiving benefits through the CCAP. Sixty-two (62) certified homes were STARS-rated and were serving 139 children receiving benefits through CCAP. There were 2,041 licensed child-care centers. Of those, 1,263 licensed centers were not participating in STARS and were serving 13,086 children receiving benefits through CCAP. Seven hundred and seventy-eight (778) licensed centers were participating in STARS and were serving 9,259 children receiving CCAP benefits. There are no registered child care providers participating in STARS. Three hundred fifty-four (354) CCAP children are receiving child care through 203 registered providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will open the program for newly eligible low-income working families and will assure the use of public funds for the highest quality child care for Kentucky's most vulnerable and at-risk children.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation imposes no direct cost to applicants and recipients of CCAP. If not already participating, a licensed or certified child care provider will realize new administrative burden and operating costs to participate in the state's quality rating program; however, the burden and costs should be minimal for providers entering the quality rating program at a Level 1 and should be offset by incentives and awards provided through the quality rating program. There is no fee associated with a provider's application to participate in the state's quality rating program; services are provided by the state without charge. Exceptions to a licensed or certified child care provider's participation within the state's quality rating program are also outlined within the administrative regulation to maintain compliance with associated federal mandates and to avoid imposing hardships on CCAP-eligible families and children.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky's most vulnerable and at-risk children will have improved access to quality child care.

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

(a) Initially: Funds to restore CCAP were appropriated in 2014 Ky. Acts ch.117. Changes contained in this amendment are within available revenues.

(b) On a continuing basis: Funds to restore CCAP were appropriate in 2014 Ky. Acts ch.117. Changes contained in this amendment are within available revenues. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this administrative regulation are federal Child Care and Development Fund Block Grant, state matching, state maintenance of effort 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: An increase in funding for CCAP was provided in 2014 Ky. Acts ch. 117.

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

(9) TIERING: Is tiering applied? The Child Care Assistance Program is implemented in a like manner statewide. Provider payment rates are tiered to recognize the higher operating costs of certain geographical, more populated areas. While this administrative regulation protects and preserves the current provider payment rates by delinking the rates from the classification of cities, the provider payment rates were originally established based on the classification of cities. The rates are further supported by the analysis of the market rate survey results specified in KRS 199.899.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619, 45 C.F.R. 98

2. State compliance standards. KRS 194A.050, 199.892, 199.8994

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619, 45 C.F.R. 98

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services will be impacted by this administrative regulation.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Child Care Assistance Program (CCAP) has been operational for a number of years. It does not directly generate revenues for the state; however, it supports the health, safety, and welfare of children and the ability of low-income parents to work and obtain additional skills and training. This administrative regulation will not directly generate any new revenue for the first year. Research suggests that quality early care and education help avoid future public costs.

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

(c) How much will it cost to administer this program for the first year? The restoration of CCAP is supported through funds appropriated in 2014 Ky. Acts ch. 117. The restoration as proposed within this amendment is projected to fall within available federal and state revenues.

(d) How much will it cost to administer this program for subsequent years? The restoration of CCAP, as proposed within this amendment, is supported through funds appropriated in 2014 Ky. Acts ch. 117. The restoration as proposed within this amendment is projected to fall within available federal and state revenues. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(New Administrative Regulation)

11 KAR 20:001. Definitions for 11 KAR Chapter 20.

RELATES TO: KRS 164.7894

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7894

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7894. KRS 164.7894(6) requires the authority to promulgate administrative regulations as may be needed for the administration of the program. This administrative regulation defines terms used in 11 KAR Chapter 20 pertaining to the Kentucky Coal County College Completion Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester at a postsecondary institution and shall not include summer sessions.

(2) "Academic year" means a period of time that begins July 1 of a calendar year and ends June 30 of the next succeeding calendar year.

(3) "Authority" is defined by KRS 164.740(1).

(4) "Census date" means the date set by the institution that marks the end of the add/drop period.

(5) "District" is defined by KRS 164.7894(2)(a).

(6) "Full-time" means enrollment in a postsecondary program of study that meets the full-time requirements of the participating or nonparticipating institution in which the student is enrolled, typically consisting of a minimum of twelve (12) credit hours per semester.

(7) "Half-time" means enrollment in a postsecondary program of study that amounts to at least one-half (1/2) the workload required for full-time enrollment, as determined by the participating or nonparticipating institution, typically consisting of a minimum of six (6) credit hours per semester.

(8) "High school" is defined by KRS 164.7894(2)(b).

(9) "Kentucky Coal County College Completion scholarship" or "KCCCC scholarship" is defined by KRS 164.7894(2)(c).

(10) "Kentucky Coal County College Completion student services grant" or "KCCCC student services grant" is defined by KRS 164.7894(2)(d).

(11) "Nonparticipating institution" is defined by KRS 164.7894(5).

(12) "Participating institution" is defined by KRS 164.7894(3).

(13) "Tuition" is defined by KRS 164.7894(2)(e).

LISA PAYNE, Chair

APPROVED BY AGENCY: September 30, 2014

FILED WITH LRC: October 10, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, November 24, 2014, 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 on December 1, 2014. 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: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Authority is charged with implementation and administrative of the Kentucky Coal County College Completion Scholarship program created by the General Assembly during the 2014 Regular Legislative Session and codified at KRS 164.7894. This administrative regulation sets forth the definition of terms applicable to this student aid program.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administrative of the newly-established Kentucky Coal County College Completion Scholarship program pursuant to KRS 164.7894. One such aspect of administration is defining terms applicable to the program consistent with the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing definitions applicable to 11 KAR Chapter 20 pertaining to this new scholarship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with the effective administration of the statutes by establishing definitions applicable to the scholarship 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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals who reside in Kentucky's coal-producing counties and satisfy the other eligibility criteria for this program will benefit by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The individuals specified in (3) above will be positively impacted by this newly-created scholarship program in that, if they satisfy the other eligibility criteria, they will be considered for an award under this program to complete their college education.

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

(a) Initially: There is no cost to implement this administrative regulation.

(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 program is funded in full through transfer of receipts from the coal severance tax levied pursuant to KRS 143.020.

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

(8) State whether or not this administrative regulation 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 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? Finance and Administrative 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 164.744(2), 164.748(4), 164.753(3), 164.7894

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 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 regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute 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:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(New Administrative Regulation)

11 KAR 20:010. Student eligibility requirements.

RELATES TO: KRS 164.7894

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7894

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7894. KRS 164.7894(6) requires the authority to promulgate administrative regulations as may be needed for the administration of the program. This administrative regulation sets forth the student eligibility requirements under this program.

Section 1. Eligibility of Students. In order to qualify for disbursement of a Kentucky Coal County College Completion Program scholarship, a student shall:

(1) Be considered a permanent resident of the district for at least one (1) year immediately preceding July 1 of the academic year in which the scholarship is made;

(2) Be a United States citizen;

(3) Be a Kentucky resident as determined by the institution in accordance with criteria established by the Council on Postsecondary Education for the purposes of admission and tuition assessment;

(4) Complete and submit the Free Application for Federal Student Aid for the academic year in which the award is made;

(5) Have earned at least sixty (60) credit hours or the equivalent of completed coursework toward a bachelor's degree;

(6) Be enrolled at least half-time at a participating institution, or a nonparticipating institution in accordance with KRS 164.7894(8), in upper division courses in a program of study that leads to a bachelor's degree;

(7) Be in good academic standing in accordance with the policy of the institution;

(8) Have remaining KCCCC scholarship limit;

(9) Not have earned a first baccalaureate degree; and

(10) Not be in default on any obligation to the authority under any program administered by the authority under KRS 164.740 to 164.785, except that ineligibility for this reason may be waived by the authority for cause.

LISA PAYNE, Chair

APPROVED BY AGENCY: September 30, 2014

FILED WITH LRC: October 10, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, November 24, 2014, 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 on December 1, 2014. 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: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Authority is charged with implementation and administrative of the Kentucky Coal County College Completion Scholarship program created by the General Assembly during the 2014 Regular Legislative Session and codified at KRS 164.7894. This administrative regulation sets forth the student eligibility requirements under this program.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administrative of the newly-established Kentucky Coal County College Completion Scholarship program pursuant to KRS 164.7894. One such aspect of administration is establishing student eligibility requirements for the program consistent with the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing student eligibility criteria applicable to 11 KAR Chapter 20 pertaining to this new scholarship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with the effective administration of the statutes by establishing student eligibility criteria applicable to the scholarship 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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals who reside in Kentucky's coal-producing counties will benefit by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The individuals specified in (3) above will be positively impacted by this newly-created scholarship program in that, if they satisfy the eligibility criteria set forth in the regulation, they will be considered for an award under this program to complete their college education.

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

(a) Initially: There is no cost to implement this administrative regulation.

(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 program is funded in full through transfer of receipts from the coal severance tax levied pursuant to KRS 143.020.

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

(8) State whether or not this administrative regulation 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 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? 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 164.744(2), 164.748(4), 164.753(3), 164.7894

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 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 regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute 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:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(New Administrative Regulation)

11 KAR 20:020. Application and certification.

RELATES TO: KRS 164.7894

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7894

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7894. KRS 164.7894(6) requires the authority to promulgate administrative regulations as may be needed for the administration of the program. This administrative regulation establishes the application procedures for a student to follow in applying for an award under the Kentucky Coal County College Completion Scholarship Program.

Section 1. Application. (1) In order for an eligible student to be considered for an award under this program, the student shall complete:

(a) The Kentucky Coal County College Completion Scholarship Application incorporated by reference in 11 KAR 4:080; and

(b) The Free Application for Federal Student Aid (FAFSA) as set forth in 11 KAR 4:080, Section 2.

(2) The application period for this program shall be January 1st through May 1st preceding the academic year for which the award is requested.

Section 2. Certification. (1) For each applicant for an award under this program, the institution shall certify to the authority:

(a) The number of credit hours the applicant has successfully completed toward bachelor's degree completion at or prior to the end of the spring semester of the academic year preceding the application award year;

(b) The applicant's status as a permanent resident of a coal-producing county; and

(c) If the applicant is a permanent resident of a coal-producing county, the name of the county of permanent residence.

(2) The certification shall be completed and submitted to the authority no later than July 1st preceding the academic year for which the certification is applicable.

LISA PAYNE, Chair

APPROVED BY AGENCY: September 30, 2014

FILED WITH LRC: October 10, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, November 24, 2014, 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 on December 1, 2014. 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: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Authority is charged with implementation and administrative of the Kentucky Coal County College Completion Scholarship program created by the General Assembly during the 2014 Regular Legislative Session and codified at KRS 164.7894. This administrative regulation sets forth the application procedures for students to follow in applying for awards under this new scholarship program.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administrative of the newly-established Kentucky Coal County College Completion Scholarship program pursuant to KRS 164.7894. One such aspect of administration includes establishing application procedures for awards under this program consistent with the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing application procedures applicable to 11 KAR Chapter 20 pertaining to this new scholarship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with the effective administration of the statutes by establishing application procedures applicable to the scholarship 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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals who reside in Kentucky's coal-producing counties will benefit from this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The individuals specified in (3) above will be positively impacted by this newly-created scholarship program in that, if they comply with the prescribed application procedures and satisfy the program eligibility criteria, they will be considered for an award under this program to complete their college education.

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

(a) Initially: There is no cost to implement this administrative regulation.

(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 program is funded in full through transfer of receipts from the coal severance tax levied pursuant to KRS 143.020.

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

(8) State whether or not this administrative regulation 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 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? 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 164.744(2), 164.748(4), 164.753(3), 164.7894

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 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 regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation beyond the program funds provided through coal severance tax

receipts as provided by statute 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:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(New Administrative Regulation)

11 KAR 20:030. Award determination procedure.

RELATES TO: KRS 164.7894

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7894

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7894. KRS 164.7894(6) requires the authority to promulgate administrative regulations as may be needed for the administration of the program. This administrative regulation establishes the school certification and awarding procedures applicable to the Kentucky Coal County College Completion Scholarship Program.

Section 1. Awarding. (1) A person who received a scholarship pursuant to KRS 164.7894 in the spring academic term immediately preceding the award year shall be eligible to apply for and be considered a renewal applicant if the applicant applies by the deadline set forth in 11 KAR 20:020.

(2) Scholarships shall be awarded to eligible certified applicants chronologically based on FAFSA completion date in the following order:

(a) Renewal applicants;

(b) New applicants.

(3) The maximum scholarship award amount for full-time enrollment shall be calculated as set forth in KRS 164.7894(9).

Section 2. Reduction for Less than Full-Time Study. (1) If an eligible student is enrolled less than full-time for an academic term, the maximum award amount to which the student is entitled shall be as follows:

(a) Fifty (50) percent if enrolled for six (6) hours;

(b) Fifty-eight (58) percent if enrolled for seven (7) hours;

(c) Sixty-seven (67) percent if enrolled for eight (8) hours;

(d) Seventy-five (75) percent if enrolled for nine (9) hours;

(e) Eighty-three (83) percent if enrolled for ten (10) hours;

(f) Ninety-two (92) percent if enrolled for eleven (11) hours; and

(g) 100 percent if enrolled for twelve (12) hours or more.

(2) A participating or nonparticipating institution shall determine full-time and less than full-time enrollment status for purposes of subsection (1) of this section in the same manner as the institution uses to determine enrollment status for Pell Grant eligibility.

LISA PAYNE, Chair

APPROVED BY AGENCY: September 30, 2014

FILED WITH LRC: October 10, 2014 t 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, November 24, 2014, 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 on December 1, 2014. 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: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Authority is charged with implementation and administrative of the Kentucky Coal County College Completion Scholarship program created by the General Assembly during the 2014 Regular Legislative Session and codified at KRS 164.7894. This administrative regulation establishes the award determination procedure for this scholarship program.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administrative of the newly-established Kentucky Coal County College Completion Scholarship program pursuant to KRS 164.7894. One such aspect of administration is establishing award determination procedures for the program consistent with the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing award determination procedures applicable to 11 KAR Chapter 20 pertaining to this new scholarship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with the effective administration of the statutes by establishing award determination procedures applicable to the scholarship 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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals who reside in Kentucky's coal-producing counties will benefit from this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The individuals specified in (3) above will be positively impacted by this regulation by being clearly informed regarding the award determination procedures application to this program.

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

(a) Initially: There is no cost to implement this administrative regulation.

(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 program is funded in full through transfer of receipts from the coal severance tax levied pursuant to KRS 143.020.

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

(8) State whether or not this administrative regulation 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 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? 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 164.744(2), 164.748(4), 164.753(3), 164.7894

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 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 regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute 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:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(New Administrative Regulation)

11 KAR 20:040. Disbursement.

RELATES TO: KRS 164.7894

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7894

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7894. KRS 164.7894(6) requires the authority to promulgate administrative regulations as may be needed for the administration of the program. This administrative regulation establishes the disbursement procedures for awards under the Kentucky Coal County College Completion Scholarship Program.

Section 1. Eligibility Verification. Once the census date for each academic term has passed, the institution shall verify the eligibility of students and submit to the authority a complete and accurate eligibility verification record that shall include the following:

(1) The student's enrollment status;

(2) The number of credit hours in which the student is enrolled for the academic term; and

(3) For a nonparticipating institution, confirmation of the student's enrollment in an approved bachelor's degree program of study.

Section 2. Disbursement and Delivery of Funds. (1) The authority shall disburse up to one-half (1/2) of the scholarship awarded for the academic year during each academic term.

(2) Within thirty (30) days following receipt of the eligibility verification record, KCCCC scholarship funds shall be disbursed by the authority to the institution for subsequent delivery to the eligible student or application of the funds to the account of the eligible student.

Section 3. (1) The educational institution shall:

(a) Be responsible for proper disbursement of scholarship funds to the eligible students during the academic term for which the awards are intended;

(b) Not make scholarship funds available to the recipient nor apply those funds to the recipient's account after the end of the academic term for which the funds are received by the institution;

(c) Be liable for disbursement to the wrong individual or to an ineligible student or for untimely disbursement pursuant to this section; and

(d) Make restitution to the authority of any amount improperly disbursed.

(2) Failure of the institution to make restitution when required shall, without precluding other remedies, be deemed cause for limitation, suspension, or termination of the participation of the institution in accordance with 11 KAR 4:020.

LISA PAYNE, Chair

APPROVED: September 30, 2014

FILED WITH LRC: October 10, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, November 24, 2014, 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 on December 1, 2014. 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: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Authority is charged with implementation and administrative of the Kentucky Coal County College Completion Scholarship program created by the General Assembly during the 2014 Regular Legislative Session and codified at KRS 164.7894. This administrative regulation sets forth the disbursement procedures for awards under this scholarship program.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administrative of the newly-established Kentucky Coal County College Completion Scholarship program pursuant to KRS 164.7894. One such aspect of administration is establishing award disbursement procedures applicable to the program consistent with the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing award disbursement procedures applicable to 11 KAR Chapter 20 pertaining to this new scholarship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with the effective administration of the statutes by establishing award disbursement procedures applicable to the scholarship 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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Individuals who reside in Kentucky's coal-producing counties will benefit through this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The individuals specified in (3) above will be positively impacted by this regulation in that they will be clearly advised of how awards under this scholarship program will be disbursed.

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

(a) Initially: There is no cost to implement this administrative regulation.

(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 program is funded in full through transfer of receipts from the coal severance tax levied pursuant to KRS 143.020.

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

(8) State whether or not this administrative regulation 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 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? 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 164.744(2), 164.748(4), 164.753(3), 164.7894

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 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 regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute 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:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(New Administrative Regulation)

11 KAR 20:050. Refunds and repayment.

RELATES TO: KRS 164.7894

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7894

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7894. KRS 164.7894(6) requires the authority to promulgate administrative regulations as may be needed for the administration of the program. This administrative regulation establishes the apportionment of financial assistance refunds from institutions and repayment from students due to the Kentucky Coal County College Completion Scholarship Program.

Section 1. (1) A student who fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after his or her first day of class of the period of

enrollment or changes enrollment status may be due a refund of monies paid to the institution on behalf of that student or may owe a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority, all or a portion of the refund and repayment shall be due to the authority for its financial assistance programs in accordance with Sections 2 and 3 of this administrative regulation.

Section 2. (1) The institution shall adopt and implement a fair and equitable refund and repayment policy for financial assistance administered by the authority which shall be:

(a) A clear and conspicuous written statement;

(b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently enrolled students;

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

(2) The institution's refund and repayment policy for financial assistance administered by the authority may use the same methods and formulas for determining the amount of a refund or repayment as the institution uses for determining the return of federal financial assistance funds or the institution may adopt a separate and distinct policy that is based upon:

(a) The requirements of applicable state law; or

(b) The specific refund standards established by the institution's nationally recognized accrediting agency.

(3) The amount of the refund and repayment shall be determined in accordance with the educational institution's refund and repayment policy relative to financial assistance funds, except as provided in Section 3 of this administrative regulation.

(4) When the institution determines that a refund or repayment of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment in the following descending order of priority prior to allocating the refund to institutional or private sources of financial assistance:

(a) CAP Grant;

(b) KTG;

(c) Go Higher Grant;

(d) Teacher Scholarship;

(e) Kentucky Educational Excellence Scholarship;

(f) Kentucky Coal County College Completion Scholarship;

(g) National Guard Tuition Assistance; and

(h) Early Childhood Development Scholarship.

Section 3. When a scholarship recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an overaward and a full refund or repayment of the scholarship shall be required, notwithstanding any institutional policy to the contrary. If the institution is unable to document the student's last date of attendance, any scholarship disbursement for that award period shall be subject to full refund and repayment. If, at any time, a scholarship recipient's enrollment is terminated with no assessment of tuition and fees by the institution, then the full scholarship shall be subject to cancellation, if not yet disbursed, or refund and repayment if the scholarship has already been disbursed.

Section 4. (1) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(2) Refunds by the institution and notification of student repayment due transmitted to the authority shall be accompanied by:

(a) The student's name and Social Security number;

(b) The reason for the refund or repayment;

(c) The date of enrollment status change;

(d) The semester and year; and

(e) The calculation used for determining the refund or repayment.

LISA PAYNE, Chair

APPROVED BY AGENCY: September 30, 2014

FILED WITH LRC: October 10, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, November 24, 2014, 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 on December 1, 2014. 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: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Authority is charged with implementation and administrative of the Kentucky Coal County College Completion Scholarship program created by the General Assembly during the 2014 Regular Legislative Session and codified at KRS 164.7894. This administrative regulation sets forth the refund and repayment policy applicable to scholarship awards under this program.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administrative of the newly-established Kentucky Coal County College Completion Scholarship program pursuant to KRS 164.7894. One such aspect of administration involves establishing a policy regarding refunds and repayment of awards made pursuant to this program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing a policy regarding apportionment of financial assistance refunds by institutions and repayment by students due to this new scholarship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with the effective administration of the statutes by establishing a policy for application of refunds and repayment applicable to the scholarship 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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals who reside in Kentucky's coal-producing counties will benefit through this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative

regulation, if new, or by the change, if it is an amendment: The individuals specified in (3) above will be positively impacted by this regulation in that award recipients will be clearly apprised as to how refunds and repayment of awards under this scholarship program will be apportioned.

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

(a) Initially: There is no cost to implement this administrative regulation.

(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 program is funded in full through transfer of receipts from the coal severance tax levied pursuant to KRS 143.020.

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

(8) State whether or not this administrative regulation 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 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? 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 164.744(2), 164.748(4), 164.753(3), 164.7894

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 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 regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute 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:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(New Administrative Regulation)

11 KAR 20:060. Records and reports.

RELATES TO: KRS 164.7894

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7894

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7894. KRS 164.7894(6) requires the authority to promulgate administrative regulations as may be needed for the administration of the program. This administrative regulation establishes recording and reporting requirements for educational institutions under the Kentucky Coal County College Completion Scholarship Program.

Section 1. End-of-Term Reporting. (1) At the end of each academic term, the institution shall submit to the authority an accurate and complete record of the scholarship recipient's status including:

(a) Number of credit hours successfully completed during the academic term;

(b) Total credit hours earned as of the end of the academic term; and

(c) If the student has earned a bachelor's degree:

1. The date of graduation;

2. The degree earned; and

3. The degree major.

(2) Reports under this section shall be completed before funds for the next academic term under this program will be disbursed by the authority.

Section 2. Records and Reports. An educational institution shall:

(1) Establish an organized system of records pertaining to scholarship recipient eligibility;

(2) Maintain these records for a period of not less than three (3) years after the award year in which the recipient ceased enrollment; and

(3) Upon request, make available to the authority:

(a) All records relied upon by that institution to certify that any recipient of funds from the authority is an eligible student; and

(b) Information necessary to verify that the institution has complied with:

1. 11 KAR Chapter 20; and

2. Representations and requirements contained in its agreement with the authority.

LISA PAYNE, Chair

APPROVED BY AGENCY: September 30, 2014

FILED WITH LRC: October 10, 2014

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, November 24, 2014, 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 on December 1, 2014. 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: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Authority is charged with implementation and administrative of the Kentucky Coal County College Completion Scholarship program created by the General Assembly during the 2014 Regular Legislative Session and codified at KRS 164.7894. This administrative regulation sets forth record keeping and reporting requirements for institutions participating in this scholarship program.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administrative of the newly-established Kentucky Coal County College Completion Scholarship program pursuant to KRS 164.7894. One such aspect of administrative is establishing institutional record keeping and reporting requirements applicable to this program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing institutional record keeping and reporting requirements applicable to 11 KAR Chapter 20 pertaining to this new scholarship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with the effective administration of the statutes by establishing institutional record keeping and reporting requirements applicable to the scholarship 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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Institutions that participate in this scholarship program will be impacted by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The entities specified in (3) above will be impacted by this regulation in that they will be required to adhere to the record keeping and reporting requirements established herein for this scholarship program.

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

(a) Initially: There is no cost to implement this administrative regulation.

(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 program is funded in full through transfer of receipts from the coal severance tax levied pursuant to KRS 143.020.

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

(8) State whether or not this administrative regulation 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 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? 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 164.744(2), 164.748(4), 164.753(3), 164.7894

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 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 regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute 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:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(New Administrative Regulation)

11 KAR 20:070. Dual enrollment under consortium agreement.

RELATES TO: KRS 164.7894

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7894

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7894. KRS

164.7894(6) requires the authority to promulgate administrative regulations as may be needed for the administration of the program. This administrative regulation sets the conditions for Kentucky Coal County College Completion Scholarship Program eligibility for students simultaneously enrolled in two (2) or more participating educational institutions.

Section 1. For purposes of the Kentucky Coal County College Completion Scholarship Program, a student who is otherwise eligible pursuant to 11 KAR 20:010, except that the student is enrolled simultaneously in two (2) or more educational institutions pursuing an eligible program of study jointly offered by those institutions, shall be eligible under this section if:

(1) The program of study is covered by a consortium agreement between the educational institutions;

(2) The student is carrying a combined academic workload at all educational institutions in the consortium equal to full-time enrollment at the primary institution; and

(3) The primary institution is the institution that the student indicated he or she would be attending at the time the award under this program is made.

Section 2. Consortium Agreement. Two (2) or more eligible educational institutions under the Kentucky Coal County College Completion Scholarship Program, as either participating or nonparticipating institutions, may, for purposes of Section 1 of this administrative regulation, execute a consortium agreement which meets the following terms and conditions:

(1) The agreement shall be written and signed by authorized representatives of each participating educational institution;

(2) The agreement shall designate which educational institution will serve as the primary institution; and

(3) The agreement shall specify:

(a) The tuition, fees, room and board cost, and all other costs assessed to the student by each institution; and

(b) That the primary institution will perform the duties set forth in Section 3 of this administrative regulation.

Section 3. Duties of Primary Institution. For purposes of Section 2 of this administrative regulation, the primary institution designated in a consortium agreement shall assume the following duties and responsibilities:

(1) Counsel students, who are enrolled or accepted for enrollment in programs of study covered by the consortium agreement, concerning student eligibility, rights, and responsibilities under the Kentucky Coal County College Completion Scholarship Program;

(2) Maintain all records, including information from all participating institutions about the student's grades, institutional costs incurred, financial aid received, enrollment, and all other information related to the student's eligibility as is required to be maintained on any other scholarship recipient enrolled only in the primary institution;

(3) Disburse the Kentucky Coal County College Completion scholarship;

(4) Confer academic credit to the student for all courses completed at other educational institutions under the consortium agreement as if the courses had been provided by the primary institution;

(5) Monitor the student's enrollment status at all educational institutions in the consortium and indicate the student's enrollment at the primary institution as the equivalent of the combined enrollment at all educational institutions in the consortium;

(6) Calculate any refund or repayment and make any refund based on the primary institution's refund policy, based upon any change in enrollment at any of the educational institutions in the consortium, as if the student were enrolled only at the primary institution; and

(7) Provide to the authority, on behalf of all educational institutions in the consortium, all reports and notifications required by law or administrative regulation as if the student were enrolled only at the primary institution.

Section 4. The consortium agreement may contain any other terms and conditions, not inconsistent with this administrative regulation, as may be deemed necessary or appropriate by the participating educational institutions.

LISA PAYNE, Chair

APPROVED BY AGENCY: September 30, 2014

FILED WITH LRC: October 10, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, November 24, 2014, 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 on December 1, 2014. 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: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Authority is charged with implementation and administrative of the Kentucky Coal County College Completion Scholarship program created by the General Assembly during the 2014 Regular Legislative Session and codified at KRS 164.7894. This administrative regulation sets forth the conditions for eligibility under this scholarship program for students simultaneously enrolled in two or more eligible education institutions.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administrative of the newly-established Kentucky Coal County College Completion Scholarship program pursuant to KRS 164.7894. One such aspect of administration includes establishing conditions for eligibility under this scholarship program for students simultaneously enrolled in two or more eligible education institutions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing conditions for eligibility under this scholarship program for students simultaneously enrolled in two or more eligible education institutions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with the effective administration of the statutes by establishing conditions for dual enrollment of students under this scholarship 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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: Individuals who reside in Kentucky's coal-producing counties and who are simultaneously enrolled in two or most institutions will benefit through this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The individuals specified in (3) above will be positively impacted by this regulation in that they will be eligible for an award under this scholarship program when enrolled in two or more educational institutions simultaneously.

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

(a) Initially: There is no cost to implement this administrative regulation.

(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 program is funded in full through transfer of receipts from the coal severance tax levied pursuant to KRS 143.020.

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

(8) State whether or not this administrative regulation 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 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? Finance and Administrative 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 164.744(2), 164.748(4), 164.753(3), 164.7894

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 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 regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute 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:

EDUCATION PROFESSIONAL STANDARDS BOARD
(New Administrative Regulation)

16 KAR 5:060: Literacy program requirements for middle school, high school, grades 5-12, and grades P-12 certification programs.

RELATES TO: KRS 161.028, 161.030, 164.945, 164.946, 164.947, 20 U.S.C. 1021-1022h

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel. KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the board. This administrative regulation establishes the literacy preparation requirements for middle school, high school, Grades 5-12, and Grades P-12 certification educator preparation programs.

Section 1. (1) All middle school, high school, Grades 5-12, and Grades P-12 certification educator preparation programs shall require candidates admitted to the program on or after August 1, 2016, to demonstrate the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher as published in the Standards for Reading Professionals – revised 2010.

(2) A middle school, high school, Grades 5-12, or Grades P-12 certification educator preparation program shall require a candidate admitted to the program on or after August 1, 2016, to complete one (1) of the following:

(a) A three (3) hour content literacy course aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher and taught by faculty qualified to deliver literacy instruction; or

(b) One (1) or more courses aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher and taught by faculty qualified to deliver literacy instruction.

(3) In addition to any program approval requirements in 16 KAR 5:010, an educator preparation unit seeking program approval for a middle school, high school, Grades 5-12, or Grades P-12 certification program shall submit the following information:

(a) The course or courses the program has developed to ensure that each candidate demonstrates the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher;

(b) The syllabus for each course aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher;

(c) The assessments, including any scoring instruments, developed for each course aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher to demonstrate the candidate's competency to provide classroom instruction aligned to each standard;

(d) The faculty assigned to teach each course aligned to demonstrate the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher; and

(e) Evidence of qualifications of each faculty member assigned to teach a course aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher.

Section 2. (1) All currently approved middle school, high school, Grades 5-12, and Grades P-12 certification educator preparation programs shall submit the following information to the Education Professional Standards Board by June 1, 2016:

(a) The course or courses the program has developed to ensure that each candidate demonstrates the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher;

(b) The syllabus for each course aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher;

(c) The assessments, including any scoring instruments, developed for each course aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher to demonstrate the candidate's competency to provide classroom instruction aligned to each standard;

(d) The faculty assigned to teach each course aligned to demonstrate the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher; and

(e) Evidence of qualifications of each faculty member assigned to teach a course aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher.

(2) A currently approved middle school, high school, Grades 5-12, or Grades P-12 certification educator preparation program which does not submit the information to the Education Professional Standards Board by June 1, 2016, as required in subsection (1) of this section, shall no longer admit candidates.

Section 3. Incorporation by Reference. (1) "The Standards for Reading Professionals – Revised 2010", 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

CASSANDRA WEBB, Chairperson

APPROVED BY AGENCY: October 13, 2014

FILED WITH LRC: October 14, 2014 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, November 24, 2014 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 1, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, email alicia.sneed@ky.gov, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a literacy course requirement for middle school, high school, middle and high school, and all grade certification programs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform educator preparation programs on the literacy requirements for educator preparation programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel. KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the literacy requirements for each middle school, high school, middle and high school, and all grades certification program to maintain program approval.

(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: twenty-nine (29) educator preparation programs, 173 school districts, and all candidates for middle, high, middle and high, and all grades certification 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:

(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: Educator programs will have to adjust their approved programs in the defined certification areas to include a literacy course or imbed literacy training in other course to ensure that their graduates are prepared to teach literacy to their students. The school districts and educator preparation candidates will not have to do anything to implement the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may be an additional cost to the educator preparation programs for initial implementation of the literacy requirements. This cost will differ amongst institutions depending upon the current curriculum and available faculty.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The school districts will benefit from certified employees able to teach literacy in all content areas. Candidates will benefit from being prepared to better teach students who have reading comprehension issues that might impair their ability achieve in a content area. Educator preparation programs will be able to offer candidates programs that will prepare them to be more successful in the classroom.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

State General Fund.

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

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

(9) TIERING: Is tiering applied? No, tiering will not apply since all programs in these certification areas will be treated the same. Elementary certification programs already are required to teach literacy to their candidates.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, 173 public school districts, and eight (8) public universities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program, although public universities may have initial costs to design and implement the required courses.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program but establishes course work requirements for educator preparation programs.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Repealer)

105 KAR 1:291. Repeal of 105 KAR 1:290 and 105 KAR 1:360.

RELATES TO: KRS 61.645(9)(g), 61.701, 61.702

STATUTORY AUTHORITY: KRS 61.645(9)(g), 61.701, 61.702

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. The provisions of 105 KAR 1:290 and 105 KAR 1:360 are no longer needed as these provisions are being incorporated into the new administrative regulation 105 KAR 1:410. This administrative regulation repeals 105 KAR 1:290 and 1:360.

Section 1. The following administrative regulations are hereby repealed:

(1) 105 KAR 1:290, Medical insurance reimbursement plan; and

(2) 105 KAR 1:360, Health and hospital insurance.

THOMAS ELLIOTT, Chair

APPROVED BY AGENCY: September 11, 2014

FILED WITH LRC: October 2, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2014 at 9:00 a.m. Eastern Time at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business December 1, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jennifer A. Jones, Assistant General Counsel, 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, in accordance with KRS 13A.310, repeals 105 KAR 1:290 and 105 KAR 1:360.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 105 KAR 1:290 and 105 KAR 1:360 because the provisions of these administrative regulations are being incorporated into 105 KAR 1:410.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation repeals administrative regulations regarding direct pay of health insurance premiums and the medical insurance reimbursement plan which are being incorporated into a comprehensive administrative regulation that contains all the provisions regarding the group health insurance plans offered by Kentucky Retirement Systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will eliminate duplicative 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: Not applicable.

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

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: One (1), Kentucky Retirement Systems, a state agency.

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

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

in question (3) will have to take to comply with this administrative regulation or amendment: None. The provisions of these repealed administrative regulations are being incorporated into a comprehensive administrative regulation that contains all the provisions regarding the group health insurance plans offered by Kentucky Retirement Systems.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a comprehensive health insurance administrative regulation.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No 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: This administrative regulation does not contain any fees and does not require additional funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this is a repealer administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action being taken in this administrative regulation. Kentucky Retirement Systems may promulgate administrative regulations necessary or proper to carry out the provisions of KRS 16.505-16.652, 61.510-61.705, and 78.510-78.852.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effective on expenditures and revenues of a state or local government agency.

(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 does 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 administrative regulation does not generate any revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no additional administrative cost to the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no additional administrative cost to the agency.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: None.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(New Administrative Regulation)

105 KAR 1:410. Kentucky Retirement Systems Health Insurance and Kentucky Retirement Systems Insurance Fund Trust.

RELATES TO: KRS 61.645(9)(g), 61.701, 61.702, 26 U.S.C. 105(b), 115, 213(d), Pub.L. 111-148

STATUTORY AUTHORITY: KRS 61.645(9)(g), 61.701, 61.702

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. The Kentucky Retirement Systems Insurance Fund established by KRS 61.701 is a trust fund under the laws of the Commonwealth and is dedicated to providing health insurance benefits as provided in KRS 61.702. KRS 61.702 provides for health and hospital insurance for eligible retirees, spouses, dependents, and beneficiaries. This administrative regulation establishes procedures for the administration of the Kentucky Retirement Systems health and hospital insurance benefits as well as establishing eligibility requirements, necessary documentation for proof of insurance, deadlines for filing for reimbursement, and forms.

Section 1. Definitions. (1) "Monthly contribution rate" means:

(a) The amount determined by the board as the maximum contribution the retirement systems will pay toward the health insurance premium of a retiree whose membership date is on or before June 30, 2003, including retirees who were hired by a participating agency prior to June 30, 2003 and who established a membership date between July 1, 2003 and July 12, 2004; or

(b) For a retiree whose membership date is on or after July 1, 2003, the amount per month earned by the retiree based on years of service as provided in KRS 61.702(8).

(2) For purposes of KRS 61.702(4)(b), "dependent child" shall be defined as in KRS 16.505(17).

(3) "Recipient" shall be defined as in KRS 16.505(26), 61.510(27) and 78.510(26).

Section 2. Trust Fund. (1) The trust fund is created for the purpose of providing a trust fund separate from the retirement funds. Fund assets are dedicated for use for health benefits as provided in KRS 61.702, and as permitted under Sections 105 and 106 of the United States Internal Revenue Code, to retired recipients and employees of employers participating in the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System, and to certain of their dependents or beneficiaries, including, but not limited to, qualified beneficiaries as described in Sections 2201 et seq. of the United States Public Health Service Act.

(2) The board shall manage the assets of the trust fund in the same manner in which it administers the retirement funds. However, separate accounting and financial reporting shall be maintained for the trust fund.

(3) Employers participating in the trust fund are limited to the Commonwealth, political subdivisions of the Commonwealth, and entities the income of which is exempt from taxation under Section 115 of the United States Internal Revenue Code. No other entity may participate in the trust fund.

(4) If the trust fund is terminated, the assets in the trust fund may revert, after the payment of all liabilities, to the participating employers as determined by the board of trustees.

(5) The board of trustees may adopt a trust agreement and take all action necessary and appropriate to provide that the income of the trust fund is exempt from taxation under the United States Internal Revenue Code.

Section 3. (1) A person shall not be eligible to participate in the group health plans administered by Kentucky Retirement Systems until the person is a recipient of a monthly retirement allowance as

defined in KRS 16.505(26), 61.510(27), or 78.510(26), except as provided in KRS 16.576(4).

(2) A person who retires under disability retirement shall not be eligible to participate in the group health plans administered by Kentucky Retirement Systems until the month the person receives the person's first monthly retirement allowance payment.

(3) A recipient's spouse or dependent is not eligible to participate in one (1) of the group health plans administered by Kentucky Retirement Systems unless the recipient is participating in one (1) of the group health plans administered by Kentucky Retirement Systems.

(4) An alternate payee is not eligible for participation in the group health plans administered by Kentucky Retirement Systems.

Section 4. (1) The board shall adopt monthly contribution rates as follows:

(a) Hazardous Medicare eligible coverage;

(b) Non-hazardous Medicare eligible coverage;

(c) Hazardous non Medicare eligible coverage; and

(d) Non-hazardous, non-Medicare eligible coverage.

(2) The board may adopt separate contribution rates for tobacco and non-tobacco users.

Section 5. (1) A recipient, spouse, or dependent who is Medicare eligible shall participate in the Medicare eligible group health plan offered through Kentucky Retirement Systems.

(2) A recipient, spouse, or dependent who is not Medicare-eligible shall participate in the non Medicare eligible group health plan offered through Kentucky Retirement Systems.

(3) If a recipient, spouse, or dependent is eligible for Medicare but the other persons enrolled in the group health plan are not; then the recipient, spouse, or dependent who is not eligible for Medicare shall continue to participate in the non-Medicare eligible group health plan offered through Kentucky Retirement Systems.

Section 6. (1) The monthly contribution rate paid by Kentucky Retirement Systems towards health insurance premiums for a recipient shall not exceed the monthly contribution rate to which the recipient is entitled under KRS 61.702.

(2) A retiree who is not eligible for coverage based on hazardous service and who is receiving more than one (1) monthly retirement allowance from one (1) of the plans administered by Kentucky Retirement Systems shall not receive more than the single monthly contribution rate for the plan chosen by the recipient.

(3) A retiree who retired based on reciprocity with any of the state-administered retirement systems shall only receive the monthly contribution rate to which the retiree is entitled based on the retiree's service credit with the retirement systems administered by Kentucky Retirement Systems.

Section 7. (1)(a) If the retirement system utilizes the group health insurance provided by the Kentucky Department of Employee Insurance to provide health insurance coverage for its non-Medicare eligible recipients, then the retirement system shall provide recipients with the forms required by the Kentucky Department of Employee Insurance for enrollment, waiver, or changes to the group health plan for recipients of a monthly retirement allowance from any of the state-administered retirement systems.

(b) The retirement systems shall provide the Form 6200, Kentucky Retirement Systems Medicare Eligible Insurance Enrollment Form to Medicare-eligible recipients.

(2)(a) The board shall adopt a default plan in which a recipient who did not submit an insurance form shall be enrolled.

(b) If the recipient fails to submit an insurance form to the retirement office by the last day of the month prior to the month the initial retirement allowance is paid, the recipient shall be automatically enrolled in the plan adopted by the board as the default plan.

(c) If the recipient fails to submit an insurance form to the retirement office by the last day of the month the recipient becomes eligible for Medicare, the recipient shall be automatically enrolled in the plan adopted by the board as the default plan.

Section 8. (1) The recipient of health and hospital insurance whose premium exceeds the recipient's monthly retirement allowance shall pay the balance of the health insurance premium to the retirement systems monthly by electronic transfer of funds.

(2) The recipient shall execute a Form 6131, Bank Draft Authorization for Direct Pay Accounts.

(3)(a) If a recipient fails to remit the balance of the health insurance premium by the date provided on the invoice, then the recipient's enrollment in the group health plan provided by the retirement systems shall be cancelled the month after the last month the recipient paid the premium.

(a) If a recipient's health insurance coverage is cancelled pursuant to this section, the recipient shall not be eligible to enroll in the group health insurance plan provided by the retirement systems until the next open enrollment period for health insurance coverage.

Section 9. (1) A recipient may participate in the medical insurance reimbursement plan if the recipient lives in an area outside of the coverage of the group health plan provided by the retirement systems and is:

(a) A retired member of one (1) of the systems administered by Kentucky Retirement Systems;

(b) The beneficiary of a retired member with hazardous service in one (1) of the systems administered by Kentucky Retirement Systems; or

(c) The beneficiary of a retired member with service as a member of the General Assembly.

(2) The reimbursement plan shall be available in any month the recipient is not eligible for:

(a) In-network benefits through a health provider offered through the state group medical insurance administered by the Commonwealth of Kentucky; or

(b) Coverage under an indemnity plan offered to and providing the same payments for medical services to retired members residing in Kentucky.

(3) Medical insurance premiums eligible for reimbursement shall be the premiums for hospital and medical coverage paid for by the eligible recipient up to the applicable monthly contribution rate adopted by the board.

(4) An eligible recipient shall file a Form 6240, Application for Medical Insurance Reimbursement at the retirement office with one (1) or more of the following as proof of payment for hospital and medical insurance premiums:

(a) A copy of the invoice from the insurance company and copy of the receipt of payment;

(b) A copy of the invoice from the insurance company and copy of the front and back of the cancelled check made out to the insurance company;

(c) A copy of the eligible recipient's pay stub if the pay stub clearly shows a deduction for hospital and medical insurance;

(d) A statement from the eligible recipient's employer listing dates and amounts of premiums deducted from wages;

(e) A copy of a bank statement showing deductions for hospital and medical insurance if the statement clearly indicates payment to a company that provides only hospital and medical insurance;

(f) A copy of a bank statement showing deductions to an insurance company along with a statement from the insurance company listing dates and amounts of premiums; or

(g) Other documentation which the retirement system determines is sufficient to prove payment for hospital or medical insurance.

(5) An eligible recipient shall file a Form 6240, Application for Medical Insurance Reimbursement each calendar year for reimbursement. An eligible recipient may file a Form 6240, Application for Medical Insurance Reimbursement each quarter of a calendar year for reimbursement.

(6) If the eligible recipient files a completed Form 6240, Application for Medical Insurance Reimbursement and the required proof, the eligible recipient shall be reimbursed on the following schedule:

(a) In May if the documentation is filed at the retirement office by April 20;

(b) In August if the documentation is filed at the retirement office by July 20;

(c) In November if the documentation is filed at the retirement office by October 20; or

(d) In February if the documentation is filed at the retirement office by January 20.

(7) The retirement system shall not reimburse an eligible recipient for premiums for a calendar year if the eligible recipient fails to file at the retirement office a Form 6240, Application for Medical Insurance Reimbursement and required proof by March 20 of the following calendar year.

(8) The retirement system may verify the recipient's eligibility for reimbursement for hospital and medical insurance by requesting verification of coverage and payments directly from the insurance company indicated on the Form 6240, Application for Medical Insurance Reimbursement.

(9)(a) If a recipient receives a payment from the retirement system which does not qualify as a medical insurance premium reimbursement, the recipient shall return the payment to the retirement system.

(b) If the recipient fails to return the payment, the retirement systems may withhold the payment from the recipient's monthly retirement allowance payment.

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

(a) The Trust Agreement, Kentucky Retirement Systems Insurance Fund Trust, dated August 21, 2008;

(b) Form 6131, "Bank Draft Authorization for Direct Pay Accounts", September 2014;

(c) Form 6240, "Application for Medical Insurance Reimbursement," July 2011; and

(d) Form 6200, "Kentucky Retirement Systems Medicare Eligible Insurance Enrollment Form," September 2014.

(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, 8 a.m. to 4:30 p.m.

THOMAS ELLIOTT, Chair

APPROVED BY AGENCY: September 11, 2014

FILED WITH LRC: October 2, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2014 at 9:00 a.m. Eastern Time at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business December 1, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jennifer A. Jones, Assistant General Counsel, 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 incorporates the Kentucky Retirement Systems Insurance Trust pursuant to KRS 61.701, establishes guidelines and procedures regarding filing for and administration of health insurance benefits pursuant to KRS 61.702, and makes provisions in compliance with the "Patient Protection and Affordable Care Act", Pub.L. 111-148, March 23, 2010, 124 Stat.119, as amended.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to incorporate the Kentucky Retirement Systems Insurance Trust pursuant to KRS 61.701, establish guidelines and procedures regarding filing for and administration of health insurance benefits pursuant to KRS 61.702, and makes provisions in compliance with the "Patient Protection and Affordable Care Act", Pub.L. 111-148, March 23, 2010, 124 Stat.119, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the operating statutes by incorporating the Kentucky Retirement Systems Insurance Trust pursuant to KRS 61.701, establishing guidelines and procedures regarding filing for and administration of health insurance benefits pursuant to KRS 61.702, and makes provisions in compliance with the "Patient Protection and Affordable Care Act", Pub.L. 111-148, March 23, 2010, 124 Stat.119, as amended.

(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 operating statutes by incorporating the Kentucky Retirement Systems Insurance Trust pursuant to KRS 61.701, establishing guidelines and procedures regarding filing for and administration of health insurance benefits pursuant to KRS 61.702, and makes provisions in compliance with the "Patient Protection and Affordable Care Act", Pub.L. 111-148, March 23, 2010, 124 Stat.119, as amended.

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

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

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

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: One (1), Kentucky Retirement Systems, a state agency.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no additional actions required of Kentucky Retirement Systems beyond what it currently must do to administer KRS 61.702.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a comprehensive health insurance administrative regulation.

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

(a) Initially: There are no additional administrative costs.

(b) On a continuing basis: There will be no additional administrative costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administrative costs of Kentucky Retirement Systems are paid by the trust 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: This administrative regulation does not require an increase in fees or

funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The administrative regulation applies to all recipients of the retirement systems administered by Kentucky Retirement Systems who choose to enroll in health insurance.

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 Retirement Systems.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.701; KRS 61.702, KRS 61.645(9)(g).

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional administrative costs to administer 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 (+/-): None.

Expenditures (+/-): None.

Other Explanation: None.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(New Administrative Regulation)

201 KAR 9:270. Professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

RELATES TO: KRS 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the professional standards for physicians practicing in Kentucky who prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

Section 1. Minimum Qualifications for Prescribing or Dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone. A licensed physician shall not prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone unless that physician possesses the minimum qualifications established in this section. (1) The physician shall obtain and maintain in good standing a waiver and license as issued by the Drug Enforcement Administration (DEA) to prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for the treatment of opioid dependence in the Commonwealth of Kentucky.

(2) The physician shall successfully complete the approved educational programs required by this subsection.

(a)1. If the prescribing physician was a DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone prior to July 1, 2015, the physician shall have obtained Buprenorphine certification through completion of a Substance Abuse and Mental Health Services Administration ("SAMHSA") certified course or through personal attendance and completion of a review course approved by the American Society of Addiction Medicine ("ASAM") prior to July 1, 2015.

2. If the prescribing physician becomes a DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone on or after July 1, 2015, the physician shall obtain Buprenorphine certification through personal attendance and completion of a review course approved by the American Society of Addiction Medicine ("ASAM") before the physician prescribes or dispenses Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

(b) For each three (3) year continuing education cycle, each DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall complete at least twelve (12) hours of continuing medical education specific to addiction medicine as part of the required continuing medical education hours set forth in 201 KAR 9:310.

(3) The physician shall enroll and participate in the Kentucky Health Information Exchange.

Section 2. Professional Standards for Prescribing or Dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for Medically-Supervised Withdrawal or the Treatment of Opioid Dependency. (1)(a) Except as provided in paragraph (b) of this subsection, Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall only be prescribed or dispensed for medically-supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid dependence.

(b) Transdermal delivery of Buprenorphine-Mono-Product may be used for treatment of pain.

(2) Buprenorphine-Mono-Product shall not be prescribed or dispensed, except:

(a) To a pregnant patient;

(b) To a patient with demonstrated hypersensitivity to naloxone; or

(c) As an injectable treatment in a physician's office or other healthcare facility.

(3) Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall not be prescribed or dispensed to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants or other opioids, without consultation of a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry.

(4) Each licensed physician who prescribes or dispenses Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for medically-supervised withdrawal or for the treatment of Opioid dependence shall fully comply with the professional standards established in this subsection.

(a) Prior to initiating treatment, the physician shall:

1. Obtain and record a complete and appropriate evaluation of the patient which shall at a minimum include:

a. The patient's history of present illness;

b. The patient's history of substance use;

c. The patient's social and family history;

d. The patient's past medical and psychiatric histories;

e. A physical examination of the patient;

f. The patient's injection use history, which shall include screening for HIV and hepatitis serology; and

g. Appropriate laboratory tests, which shall include a CBC, a drug screen, and a CMP;

2. Obtain the patient's consent and authorizations in order to

obtain the patient's prior medical records.

a. Upon receipt of the medical records, the physician shall review and incorporate the information from the records into the evaluation and treatment of the patient.

b. If the physician is unable, despite best efforts, to obtain the patient's prior medical records, the physician shall document those efforts in the patients chart;

3. Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the evaluation and treatment of the patient;

4. Explain treatment alternatives and the risks and the benefits of treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to the patient;

5. Obtain written informed consent from the patient in a manner that meets professional standards; and

6. If the patient is a female of child-bearing age and ability, meet the requirements of paragraph (b) of this subsection.

(b) The requirements of this paragraph shall apply to the treatment of a female of child-bearing age and ability.

1. Prior to initiating treatment, the physician shall require that the patient first submit to a pregnancy test and the physician shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with patient education material on neonatal abstinence syndrome from the American Congress of Obstetricians and Gynecologists, American Academy of Pediatrics, American Society of Addiction Medicine and the Kentucky Department for Public Health, and offer means to prevent pregnancy.

2.a. A physician shall not prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to a patient who is pregnant or breastfeeding unless the prescribing physician first obtains and documents consultation with another physician for an opinion as to whether the potential benefit of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone use outweighs the potential risk of use.

b. The consultation shall be obtained from a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry or from an obstetrician or maternal-fetal medicine specialist who is also qualified to prescribe buprenorphine.

(c) While initiating treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the physician shall comply with the requirements of this paragraph.

1. The physician shall recommend to the patient an in-office observed induction protocol.

a. Except as provided in clause b. of this subparagraph, the physician shall conduct the in-office observed induction protocol.

b. If an in-office observed induction does not occur, the physician shall appropriately record the circumstances in the patient chart and shall implement a SAMHSA-recognized or ASAM-recognized home-based induction protocol.

2. The physician shall document the presence of opioid withdrawal before the first dose is given by using a standardized instrument, such as the clinic opioid withdrawal scale (COWS) or other similarly recognized instrument.

3. The physician shall initiate treatment with up to four (4) milligrams, which:

a. May be followed by subsequent doses if withdrawal persists and is not improving; and

b. Shall not exceed a total of sixteen (16) milligrams on the first day of treatment.

(d) After initial induction of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, a physician shall meet the requirements established in this paragraph.

1. If the physician prescribes or dispenses Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone medication, the physician shall implement a treatment plan that requires objective behavioral modification by the patient. The behavioral modification shall include the patient's participation in a behavioral modification program that may include counseling or a twelve (12) step facilitation.

2. The physician shall prescribe or dispense to the patient an amount of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone that:

a. Is necessary to minimize craving and opiate withdrawal;

b. Does not produce opiate sedation;

c. Is to be taken no more frequently than once daily; and

d. Is able only to supply the patient until the next physician visit, which shall be scheduled as required by subparagraph 3. of this paragraph.

3.a. The patient shall be seen by the physician:

(i) No later than ten (10) days after induction and then at intervals of no more than ten (10) days for the first month after induction; and

(ii) At intervals of no more than fourteen (14) days for the second month after induction.

b.(i) If the patient demonstrates objective signs of positive treatment progress, the patient shall be seen by a physician or a qualified physician extender at least once monthly thereafter.

(ii) A physician shall see the patient in shorter intervals if the patient demonstrates any noncompliance with the treatment plan.

c. If extenuating circumstances arise that require a patient to unexpectedly reschedule a physician visit, the prescribing physician shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

4. Every three (3) months after initiation of treatment, the prescribing physician shall evaluate the patient to determine whether the patient's dosage should be continued or modified and shall appropriately document that evaluation and clinical reasoning in the patient's chart.

5. At least once every three (3) months, the prescribing physician shall obtain KASPER reports to help guide the treatment plan.

a. If the KASPER indicates any abnormal findings, the physician shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

b. Appropriate clinical reasoning may include adjustment of dose strength or frequency of visits, increased screening, a consultation with a specialist, or an alternative treatment.

c. Every twelve (12) months following initiation of treatment, if a patient's prescribed daily dosage includes more than sixteen (16) milligrams of buprenorphine per day, then the prescribing physician shall refer the patient for consultation by a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry for an opinion as to whether continued treatment and dosage is appropriate and shall accurately document the results of that consultation in the patient chart.

d. The physician shall adjust dosages according to the individual patient's condition and within acceptable and prevailing medical standards, with the goal of improving the patient's quality of life and ability to function in the community.

e. Every twelve (12) months following initiation of treatment, the prescribing physician shall evaluate for and document the medical necessity for continued treatment at the established dose.

f. The physician shall obtain at least eight (8) drug screens from the patient within each twelve (12) month period of treatment in order to help guide the treatment plan.

(i) At least two (2) of the drug screens shall be random and shall be coupled with a pill count.

(ii) Each drug screen shall at a minimum screen for buprenorphine, methadone, oxycodone, other opioids, THC, benzodiazepines, amphetamines, and cocaine.

(iii) If a drug screen indicates any abnormal findings, the physician shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

(iv) Appropriate clinical reasoning may include adjustment of dose strength or frequency of visits, increased screening, a consultation with a specialist, or an alternative treatment.

6. The physician shall document a plan for handling any lost or stolen medication, which:

a. Shall not provide for the automatic replacement of medication prior to the specified interval date; and

b. Shall require the patient to first report the lost or stolen medications to police or other law enforcement agencies.

Section 3. Violations. Failure to comply with or a violation of the professional standards established in Section 2 of this administrative regulation shall constitute a "departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky," in violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(4) and may constitute a violation of KRS 311.595(9), as illustrated by KRS 311.597(3), subjecting the licensed physician to sanctions authorized by KRS 311.595.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: October 13, 2014

FILED WITH LRC: October 15, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2014 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 14, 2014, 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 on December 1, 2014. 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: Leanne K. Diakov, 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: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation; Not applicable.

(b) The necessity of the amendment to this administrative regulation; Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes. Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians licensed in Kentucky who prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians will be required to follow the professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with the requirements of this administrative regulation known to the board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to the physician include having professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone which will help curb the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: None.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Medical Licensure 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 311.565(1)(a)

(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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Office of Vital Statistics
(New Administrative Regulation)

901 KAR 5:025. Kentucky Electronic Death Registration System.

RELATES TO: KRS 213.076

STATUTORY AUTHORITY: KRS 194A.050, 213.021, 213.076

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 213 authorizes the Cabinet for Health and Family Services to regulate the registration of deaths in Kentucky. Pursuant to KRS 213.076(1), effective January 1, 2015, all certificates of death shall be filed with the cabinet using the Kentucky Electronic Death Registration System. This administrative regulation establishes a uniform procedure for the filing of all certificates of death through the Kentucky Electronic Death Registration System.

Section 1. Definitions. (1) "Funeral director" is defined by KRS 316.080.

(2) "Kentucky Electronic Death Registration System" or "KY-EDRS" means the system established by the state registrar for accepting certificates of death through electronic means.

(3) "Medical certifier" means an individual authorized under KRS 213.076(5) to certify the cause of death.

Section 2. Registration. (1) A medical certifier or funeral director who is required pursuant to KRS 213.076 to supply information concerning a death to the state registrar shall provide the information using the KY-EDRS.

(2) A medical certifier or funeral director shall register and obtain access to the KY-EDRS by telephoning the Kentucky Office of Vital Statistics and supplying the following information:

(a) Name;

(b) Address;

(c) Telephone number;

(d) Facsimile number; and

(e) Electronic mail address.

(3) A registered user shall notify the Office of Vital Statistics of a change to any of the information provided in subsection (2) of this section within fifteen (15) calendar days of the change.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: October 8, 2014

FILED WITH LRC: October 9, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2014, at 9:00 a.m. in the Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business on December 1, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Allyson Taylor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a uniform procedure for filing all certificates of death through the Kentucky Electronic Death Registration System (KY-EDRS).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance on the procedure of obtaining access to the KY-EDRS. As of January 1, 2015, use of the electronic system will be required to register a death in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the proper way to submit a certificate of death as required by KRS 213.076(1)(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the proper way to submit a certificate of death to the Office of Vital Statistics (OVS).

(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: Approximately 2,000 physicians, over 550 funeral homes, and 498 local County Coroners and Deputy Coroners who complete certificates of death will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity that completes a certificate of death will be required to complete the information electronically.

(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 anticipated costs due to implementation of this regulation for any certifier who has access to a computer with internet access.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in (3) will benefit from this regulation in that it will offer more security and fraud prevention, increase accuracy, reduce errors and improve timeliness and quality of death data. Most importantly, Kentuckians awaiting death certificates of family members will be able to obtain those certificates much more quickly.

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

(a) Initially: Development of the KY-EDRS was accomplished by cabinet staff with funding from a federal grant and Office of Vital Statistics (OVS) revenues resulting in no cost to users. OVS revenues will cover the cost of implementation, training, and maintenance, initially.

(b) On a continuing basis: Development of the KY-EDRS was accomplished by cabinet staff with funding from a federal grant and Office of Vital Statistics (OVS) revenues resulting in no cost to users. OVS revenues will cover the cost of implementation, training, and maintenance on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal grants and OVS revenues have been used to develop and support implementation and enforcement.

(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 regulation.

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

(9) TIERING: Is tiering applied? No. All aspects of this administrative regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There are 120 local coroners' offices affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 213.021, and 213.076 authorize the cabinet to regulate the registration of deaths in Kentucky.

(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 additional revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? Program costs will not change in the first year due to this regulation.

(d) How much will it cost to administer this program for subsequent years? Program costs will not change in subsequent years due to this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Prevention and Quality Improvement
(New Administrative Regulation)

902 KAR 21:010. Eligibility for the Kentucky Physicians Care (KPC) program.

RELATES TO: KRS 211.400, 211.402

STATUTORY AUTHORITY: KRS 194A.050(1), 211.400, 211.402

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.402(5) requires the cabinet to promulgate administrative regulations to establish eligibility criteria and implement the provisions of KRS 211.400 and 211.402 for the Kentucky Physicians Care Program. This administrative regulation establishes the eligibility requirements for the Kentucky Physicians Care (KPC) program.

Section 1. Definitions. (1) "Applicant" means an individual or family applying for the Kentucky Physicians Care Program.

(2) "Cabinet" is defined by KRS 194A.005(1) and KRS 216B.015(6).

(3) "Cabinet approved site" means an organization that has been approved by the cabinet to be a satellite site to provide eligibility determination for KPC applicants: including:

(a) Free or charitable clinics;

(b) Local health departments;

(c) Federally qualified health centers;

(d) Hospitals;

(e) University health systems; and

(f) Social service agencies.

(3) "Health professional" means a person that has a license that is not suspended or revoked under disciplinary proceedings in any jurisdiction as a:

(a) Physician, which is defined by KRS 311.720(9);

(b) Physician assistant, which is defined by KRS 311.840(3);

(c) Advanced practice registered nurse, which is defined by KRS 314.011(7); or

(d) Dentist, which is defined by KRS 313.010(10).

(4) "KPC" means Kentucky Physicians Care.

(5) "Resource limit" means a cash resource including those in a savings or checking account and the following liquid assets:

(a) Stocks;

(b) Bonds;

(c) Certificates of deposit;

(d) Property value assessments for rental properties; and

(e) Similar other liquid assets.

Section 2. Application. An applicant may apply to enroll in the KPC program at a local:

(1) Department for Community Based Services office; or

(2) Cabinet approved site.

Section 3. Eligibility Requirements for Oral Health Services. In order to be eligible for KPC oral health services, an individual shall:

(1) Be a Kentucky resident;

(2) Have a gross income at or below 100 percent of the federal poverty level;

(3) Be ages eighteen (18) to sixty-four (64);

(4) Have a resource limit of $2,000 or less;

(5) Not qualify for government medical assistance programs;

(6) Not be covered by a health benefit plan as defined under Subtitle 17A of KRS Chapter 304;

(7) Submit the KPC PA-47 form; and

(8) Submit the Authorization to Use and Disclose Protected Health Information for Auditing Purposes.

Section 4. Eligibility Requirements for Prescription Assistance. In order to be eligible for KPC prescription assistance services, an individual shall:

(1) Be a Kentucky Resident;

(2) Have a gross income limit as determined by each participating pharmaceutical manufacturer for prescription assistance;

(3) Not qualify for Medicare, Medicaid, or other governmental medical assistance programs, including Medicare Part D;

(4) Be ages eighteen (18) to sixty-four (64);

(5) Not have prescription drug benefits that cover the requested prescription medication;

(6) Submit the KPC PA-47 form; and

(7) Submit the Authorization to Use and Disclose Protected Health Information for Auditing Purposes.

Section 5. Eligibility Determination. (1) The cabinet shall

require an applicant enrolling in the KPC program to provide proof of eligibility.

(2) Proof of eligibility shall include:

(a) Proof of Income, which shall be determined by one (1) of the following:

1. A check stub indicating the applicant's most recent income;

2. A W-2 form or income tax records from the previous year;

3. A letter from an applicant's employer on company letterhead indicating the applicant's monthly salary;

4. An IRS 1040C form for self-employment;

5. A Social Security Administration Benefits Statement SSA-1099 form;

6. A notarized letter from a non-relative stating that the applicant has no income;

7. A DCBS form PAFS-700, Verification of Employment and Wages;

8. A DCBS form PAFS-702, Income Verification;

9. A current DCBS Food Stamp approval letter that indicates the applicant's income; or

10. A copy of the applicant's unemployment benefits pay-stub;

(b) Proof of Kentucky residency, which shall be determined by a:

1. Valid Kentucky Driver's License with a current Kentucky address;

2. Valid Kentucky state issued ID card with a current Kentucky address;

3. One (1) of the following current utility bills with the name and address submitted on the KPC-PA 47:

a. Electric bill;

b. Water bill;

c. Gas bill;

d. Cable bill; or

e. Utility bill;

4. Current rental or mortgage contract with the name and address submitted on the KPC PA-47; or

5. Facility issued picture identification card from a center that provides services to homeless populations;

(c) Proof of income resources, if applicable, including:

1. Savings and checking account statements;

2. Property value assessments for rental property, which shall include income from a part of the applicant's home;

3. Stocks;

4. Bonds;

5. Certificates of Deposit; and

4. Other income resources; and

(d) If applicable, documentation demonstrating that the medication requested for assistance is not covered by the applicant's insurance plan. The prescription coverage shall not permit either the name brand or generic of the medication requested for assistance through the KPC program.

Section 6. Referrals. (1) An individual determined to be eligible for the KPC program may call the Health Care Access toll-free hotline, 1-800-633-8100, for information and referral services.

(2) KPC may refer the individual to a participating volunteer:

(a) Health professional; or

(b) Pharmacy.

(3) If a participating health provider is not available in the individual's locality or the services requested are not available under the KPC program, KPC may refer an individual to a:

(a) Health care organization;

(b) Free clinic; or

(c) Community health center.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KPC PA-47", 3/2014; and

(b) "Authorization to Use and Disclose Protected Health Information for Auditing Purposes", 4/2013.

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

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2014

FILED WITH LRC: September 15, 2104 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held November 21, 2014 on the first floor of the 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, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is receive by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business December 1, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street, 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Workman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Kentucky Physicians Care program for uninsured and underinsured populations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide eligibility requirements to social service agencies and DCBS for the Kentucky Physicians Care program. The program provides eligible uninsured and underinsured populations to obtain charitable dental and prescription assistance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation established eligibility criteria as required by KRS 211.402(5) and implements the provisions of KRS 211.400 and 211.402 for the Kentucky Physicians Care program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the eligibility requirements to participation in the 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 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: There are 120 local DCBS Offices and approximately seventy-five (75) approved local cabinet approved satellite sites that may provide registration services or eligibility determination. In addition, the KPC program has historically assisted approximately 15,000 uninsured and underinsured patients receive necessary health care services.

(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 registration or eligibility determination site will need to make their staff aware of the changed eligibility requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs to the providers are anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): With the expansion of services contained in this regulation, additional low income uninsured and underinsured Kentuckians will be eligible for assistance through the KPC program.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no additional cost 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: 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 increase in fees of funding will be necessary due to this amendment.

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

(9) TIERING: Is tiering applied? All aspects of this administrative regulation will be applied equally to the affected parties

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There are 120 DCBS local offices affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.400 and 211.402. KRS 211.402(5) requires the cabinet to promulgate administrative regulations to establish eligibility criteria for the Kentucky Physicians Care program.

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

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

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

(c) How much will it cost to administer this program for the first year? This program costs $109,000 per year to operate. There are no additional costs to the program as a result of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? This program costs $109,000 per year to operate. There are no additional costs to the program as a result of 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:

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

907 KAR 15:040. Coverage provisions and requirements regarding targeted case management for individuals with a substance use disorder.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396n(g).

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for Medicaid recipients with a substance use disorder.

Section 1. General Coverage Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Medically necessary; and

(2) Provided:

(a) To a recipient; and

(b) By a provider that meets the provider participation requirements established in Section 3 of this administrative regulation.

Section 2. Eligibility Criteria. To be eligible to receive targeted case management services under this administrative regulation, a recipient shall:

(1) Have a primary moderate or severe substance use disorder diagnosis or co-occurring moderate or severe substance use disorder and mental health diagnoses;

(2) Have:

(a) A lack of access to recovery supports;

(b) A need for assistance with access to housing, vocational, medical, social, educational, or other community services and supports; or

(c) Involvement with one (1) or more child welfare or criminal justice agencies but not be an inmate of a public institution; and

(3) Not be:

(a) Between the age of twenty-one (21) years and sixty-four (64) years while receiving services in an institution for mental diseases; or

(b) An inmate of a public institution.

Section 3. Provider Requirements. (1) To be eligible to provide services under this administrative regulation, an individual, entity, or organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

(c) Be:

1. A community mental health center authorized to provide services pursuant to 907 KAR 1:044;

2. An individual or provider group authorized to provide behavioral health services pursuant to 907 KAR 15:010; or

3. A behavioral health services organization authorized to provide behavioral health services pursuant to 907 KAR 15:020; and

(d) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Demonstrated experience in serving the population of

individuals with behavioral health disorders relevant to the particular services provided;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs;

5. The capacity to document and maintain individual case records;

6. Demonstrated programmatic and administrative experience in providing comprehensive case management services; and

7. Demonstrated referral systems and linkages and referral ability with essential social and health services agencies.

(2) In accordance with 907 KAR 17:015, Section 3(3), a targeted case management services provider which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A targeted case management services provider shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the act.

Section 4. Case Manager Requirements. (1) A case manager shall:

(a) Have at least a bachelor of arts or sciences degree in a behavioral science including:

1. Psychology;

2. Sociology;

3. Social work;

4. Family studies;

5. Human services;

6. Counseling;

7. Nursing; or

8. Another human service degree program approved by the department;

(b) Have successfully completed case management training approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) within six (6) months of employment; and

(c) Successfully completed recertification requirements approved by DBHDID every three (3) years.

(2)(a) Supervision by a behavioral health professional who has completed case management training approved by DBHDID shall occur at least twice per month.

(b) At least one (1) of these supervisory contacts shall be on an individual basis and face-to-face.

(3)(a) Except as established in paragraph (b) of this subsection, a case manager shall have at least one (1) year of full-time employment working directly with individuals in a human service setting after completing the educational requirements.

(b) A master's degree in one (1) of the following behavioral science disciplines may substitute for the one (1) year of experience:

1. Psychology;

2. Sociology;

3. Social work;

4. Family studies;

5. Human services;

6. Counseling;

7. Nursing; or

8. Another human service degree program approved by the department.

(4) A behavioral health professional shall be:

(a) An advanced practice registered nurse;

(b) A licensed clinical social worker;

(c) A licensed marriage and family therapist;

(d) A licensed professional clinical counselor;

(e) A licensed psychological practitioner;

(f) A licensed psychologist;

(g) A licensed professional art therapist;

(h) A physician;

(i) A psychiatrist;

(j) A behavioral health practitioner under supervision;

(k) A registered nurse working under the supervision of a physician or advanced practice registered nurse; or

(l) An individual with a bachelor's degree in a behavioral science program or other human service degree program approved by the department who:

1. Is working under the supervision of a billing supervisor; and

2. Has at least five (5) years of documented full-time experience providing specialized case management services.

Section 5. Freedom of Choice of Provider. (1) A recipient shall have the freedom to choose from which:

(a) Case manager to receive services within the recipient's geographic area identified in the recipient's care plan; and

(b) Provider of non-targeted case management Medicaid covered services to receive services.

(2) A case manager shall not have the authority to authorize or deny the provision of non-targeted case management Medicaid covered services to a recipient.

(3) A recipient shall not be required to receive targeted case management services as a condition of receiving non-targeted case management Medicaid-covered services.

Section 6. Covered Services. (1) Targeted case management services covered under this administrative regulation shall:

(a) Be services furnished to assist a recipient in gaining access to needed medical, social, educational, or other services; and

(b) Include:

1. A comprehensive assessment and periodic reassessments of the recipient's needs to determine the need for any medical, educational, social, or other services;

2. The development and periodic revision of a specific care plan for the recipient;

3. A referral or related activities to help the recipient obtain needed services;

4. Monitoring or follow-up activities; or

5. Contacts with non-recipients who are directly related to help with identifying the recipient's needs and care for the purpose of:

a. Helping the recipient access services;

b. Identifying supports necessary to enable the recipient to obtain services;

c. Providing a case manager with useful input regarding the recipient's past or current functioning, symptoms, adherence to treatment, or other information relevant to the recipient's behavioral health condition; or

d. Alerting a case manager to a change in the recipient's needs.

(2)(a) An assessment or reassessment shall include:

1. Taking the recipient's history;

2. Identifying the recipient's strengths and needs and completing related documentation; and

3. Gathering information from other sources including family members, medical providers, social workers, or educators, to form a complete assessment of the recipient.

(b) A face-to-face assessment or reassessment shall be completed:

1. At least annually; or

2. More often if needed based on changes in the recipient's condition.

(3) The development and periodic revision of the recipient's care plan shall:

(a) Specify the goals and actions to address the medical, social, educational, or other services needed by the recipient;

(b) Include ensuring the active participation of the recipient and working with the recipient, the recipient's authorized health care decision maker, or others to develop the goals; or

(c) Identify a course of action to respond to the assessed needs of the recipient.

(4) A referral or related activities shall include activities that help link the recipient with medical providers, social providers, educational providers, or other programs and services that are capable of providing needed services to:

(a) Address the identified needs; and

(b) Achieve goals specified in the care plan.

(5)(a) Monitoring and follow-up activities shall:

1. Be activities and contacts that:

a. Are necessary to ensure that the recipient's care plan is implemented;

b. Adequately address the recipient's strengths and needs; and

c. May be with the recipient, the recipient's family members, the recipient's service providers, or other entities or individuals;

2. Be conducted as frequently as necessary; and

3. Include making necessary adjustments in the recipient's care plan and service arrangements with providers.

(b) Monitoring shall:

1. Occur at least once every three (3) months;

2. Be face-to-face; and

3. Determine if:

a. The services are being furnished in accordance with the recipient's care plan;

b. The services in the recipient's care plan are adequate to meet the recipient's needs; and

c. Changes in the needs or status of the recipient are reflected in the care plan.

Section 7. No Duplication of Service. (1) The department shall not pay for targeted case management services which duplicate services provided by another public agency or a private entity.

(2)(a) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(b) For example, if a recipient is receiving targeted case management service from an independent behavioral health provider, the department shall not reimburse for targeted case management services provided to the same recipient during the same time period by a behavioral health services organization.

Section 8. Exclusions and Limits. (1) Targeted case management services shall not include services defined in 42 C.F.R. 440.169 if the activities:

(a) Are an integral and inseparable component of another covered Medicaid service; or

(b) Constitute the direct delivery of underlying medical, educational, social, or other services to which an eligible recipient has been referred, including:

1. Foster care programs;

2. Research gathering and completing documentation required by the foster care program;

3. Assessing adoption placements;

4. Recruiting or interviewing potential foster care parents;

5. Serving legal papers;

6. Home investigations;

7. Providing transportation;

8. Administering foster care subsidies; or

9. Making placement arrangements.

(2) A recipient who is receiving case management services under a 1915(c) home and community based waiver program shall not be eligible to receive targeted case management services under this administrative regulation.

(3) An individual who provides targeted case management to a recipient shall not provide any Medicaid covered service other than targeted case management.

Section 9. Records Maintenance, Documentation, Protection, and Security. (1) A targeted case management services provider shall maintain a current case record for each recipient.

(2)(a) A case record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(b) The individual who provided the service shall date and sign the case record on the date that the individual provided the service.

(3) A case record shall:

(a) Include:

1. The recipient's name;

2. The time and date corresponding to each occasion in which a targeted case management service was provided to the recipient;

3. The name of the targeted case management services:

a. Provider agency, if an agency; and

b. Practitioner who provided the targeted case management services;

4. The nature, content, and units of the targeted case management services provided;

5. Whether or not goals in the recipient's care plan have been achieved;

6. Whether or not the recipient has declined to receive any services in the recipient's care plan;

7. A timeline for obtaining needed services; and

8. A timeline for reevaluating the recipient's care plan; and

(b) Be:

1. Maintained in an organized and secure central file;

2. Furnished upon request:

a. To the Cabinet for Health and Family Services; or

b. For an enrollee, to the managed care organization in which the recipient is enrolled;

3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or

b. Personnel of the managed care organization in which the recipient is enrolled if applicable;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient.

(4)(a) A discharge summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the recipient toward reaching goals and objectives established in the recipient's care plan; and

b. Recipient's condition upon termination and disposition.

(b) A case record relating to a recipient who was terminated from receiving services shall be fully completed within ten (10) business days following termination.

(5) If a recipient's case is reopened within ninety (90) calendar days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(6) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring targeted case management services provider shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

(a)1. The Health Insurance Portability and Accountability Act;

2. 42 U.S.C. 1320d-2 to 1320d-8; and

3. 45 C.F.R. Parts 160 and 164; or

(b)1. 42 U.S.C. 290ee-3; and

2. 42 C.F.R. Part 2.

(7)(a) If a targeted case management services provider's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the case records of the targeted case management services provider shall:

1. Remain the property of the targeted case management services provider; and

2. Be subject to the retention requirements established in subsection (8) of this section.

(b) A targeted case management services provider shall have a written plan addressing how to maintain case records in the event of an owner's death or owners' deaths.

(8)(a) Except as established in paragraph (b) or (c) of this subsection, a targeted case management services provider shall maintain a case record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17 the period established by the secretary shall be the required period.

(9)(a) A targeted case management services provider shall comply with 45 C.F.R. Part 164.

(b) All information contained in a case record shall:

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and

3. Be disclosed to an authorized representative of the:

a. Department; or

b. Federal government.

(c)1. Upon request, a targeted case management services provider shall provide to an authorized representative of the department or federal government information requested to substantiate:

a. Staff notes detailing a service that was rendered;

b. The professional who rendered a service; and

c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information referenced in subparagraph 1 of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 10. Medicaid Program Participation Compliance. (1) A targeted case management services provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a targeted case management services provider receives any duplicate payment or overpayment from the department, regardless of reason, the targeted case management services provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the targeted case management services provider accepts the payment:

1. The payment shall be considered payment in full;

2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the provider.

(b)1. A targeted case management services provider may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

a. Recipient requests the service; and

b. Targeted case management services provider makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1 of this paragraph, the:

a. Targeted case management services provider shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the targeted case management services provider regarding the service.

(4)(a) A targeted case management services provider attests by the targeted case management services provider signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;

2. Cabinet for Health and Family Services, Office of Inspector General or its designee;

3. Kentucky Office of Attorney General or its designee;

4. Kentucky Office of the Auditor for Public Accounts or its designee; or

5. United States General Accounting Office or its designee.

(c) If a targeted case management services provider receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the targeted case management services provider shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a targeted case management services provider shall result in the suspension or termination of the targeted case management services provider from Medicaid Program participation.

Section 11. Third Party Liability. (1) A targeted case management services provider shall comply with KRS 205.622.

(2) If a third party is liable to pay for targeted case management services, the department shall not pay for the services.

Section 12. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A targeted case management services provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the targeted case management services provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the targeted case management services provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 13. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 14. Federal Approval and Federal Financial Participation. The department’s coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services’ approval for the coverage.

Section 15. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care

organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 9, 2014

FILED WITH LRC: September 16, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2014 at 9:00 a.m. in Suite B of 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 November 14, 2014, 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 1, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for Medicaid recipients with a substance use disorder. This administrative regulation is being promulgated in conjunction with 907 KAR 15:045E (Reimbursement for targeted case management service services for individuals with a substance use disorder). Targeted case management services are services that assist Medicaid recipients in accessing needed medical, social, educational, and other services. The components of targeted case management include assessing the recipient's need for services by taking the recipient's history, identifying the recipient's needs, and gathering information from other sources (family members, medical providers, social workers, and educators) to form a complete assessment; developing a customized care plan for the recipient; referring the recipient or related activities to help the recipient obtain needed services; and monitoring activities to ensure that the recipient's care plan is implemented effectively and adequately addresses the recipient's strengths and needs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to help ensure that recipients (who have a substance use disorder) receive necessary services and care. The targeted case manager provider is the individual or entity responsible for coordinating the recipient's services/care, facilitating access to services/care, and monitoring individual's progress or difficulties while receiving services/care. Targeted case management helps ensure that the recipient receives the appropriate and necessary services and care they need rather than randomly receive services/care or fail to receive any services/care at all.

(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 helping ensure that recipients with a substance use disorder receive necessary services and care.

(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 helping ensure that recipients with a substance use disorder receive necessary services and care.

(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 rather than an amendment.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities eligible to provide targeted case management services (such as community mental health centers, individual behavioral health service providers/provider group or behavioral health services organizations) will be affected by this administrative regulation as well as the various professionals who are authorized to provide services either independently or via the aforementioned providers. Medicaid recipients who qualify for targeted case management services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify and wish to provide targeted case management services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation [complete and application and submit it to the Department for Medicaid Services (DMS)] and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. The professionals authorized to provide services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of targeted case management will benefit from having the option to receive these services.

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

(a) Initially: DMS estimates that implementing the administrative regulation will cost approximately $1.05 million state funds/$3.87 million federal funds initially.

(b) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately $1.79 million state funds/$6.64 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for recipients eligible under "Medicaid expansion" recedes from its current 100 percent to 90 percent.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(10)(B).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Targeted case management services are not federally mandated however, substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the targeted case management service provider base to include targeted case management for substance use disorders will help ensure Medicaid recipient access to these services.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(10)(B).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS estimates that implementing the administrative regulation will cost approximately $1.05 million state funds/$3.87 million federal funds initially.

(d) How much will it cost to administer this program for subsequent years?: DMS estimates that implementing the administrative regulation will cost approximately $1.79 million state funds/$6.64 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for recipients eligible under "Medicaid expansion" recedes from its current 100% to 90%.

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
(New Administrative Regulation)

907 KAR 15:045. Reimbursement provisions and requirements for targeted case management services for individuals with a substance use disorder.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program targeted case management services for individuals with a substance use disorder who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Medically necessary;

(2) Provided:

(a) To a recipient;

(b) By a provider that meets the provider participation requirements established in 907 KAR 15:040; and

(c) In accordance with the requirements established in 907 KAR 15:040; and

(3) Covered in accordance with 907 KAR 15:040.

Section 2. Reimbursement. (1) The department shall reimburse a monthly rate of $334 in total for all targeted case management services provided to a recipient during the month.

(2) To qualify for the reimbursement referenced in subsection (1) of this section, a targeted case management services provider shall provide services to a recipient consisting of at least four (4) targeted case management service contacts including:

(a) At least two (2) face-to-face contacts with the recipient; and

(b) At least two (2) additional contacts which shall be:

1.a. By telephone; or

b. Face-to-face; and

2. With the recipient or with another individual or agency on behalf of the recipient.

Section 3. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving targeted case management services from an independent behavioral health provider, the department shall not reimburse for the targeted case management services provided to the same recipient during the same time period by a behavioral health services organization.

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 15:040; and

(2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 9, 2014

FILED WITH LRC: September 16, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2014 at 9:00 a.m. in Suite B of 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 November 14, 2014, 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 1, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for individuals with a substance use disorder. This administrative regulation is being promulgated in conjunction with 907 KAR 15:040E (Coverage provisions and requirements regarding targeted case management for individuals with a substance use disorder). Targeted case management services are services that assist Medicaid recipients in accessing needed medical, social, educational, and other services. The components of targeted case management include assessing the individual's need for services by taking the individual's history, identifying the individual's needs, and gathering information from other sources (family members, medical providers, social workers, and educators) to form a complete assessment; developing a customized care plan for the individual; referring the individual or related activities to help the individual obtain needed services; and monitoring activities to ensure that the individual's care plan is implemented effectively and adequately addresses the individual's needs. For these services the Department for Medicaid Services (DMS) will pay a monthly rate (encompassing all services provided to the recipient in the given month) of $334.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to help ensure that individuals (who have a substance use disorder) receive necessary services and care. The targeted case manager provider is the individual or entity responding for coordinating the individual's services/care, facilitating access to services/care, and monitoring individual's progress or difficulties while receiving services/care. Targeted case management helps ensure that the individual receives the appropriate and necessary services and care they need rather than randomly receive services/care or fail to receive any services/care at all.

(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 helping ensure that individuals with a substance use disorder receive necessary services and care.

(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 helping ensure that individuals with a substance use disorder receive necessary services and care.

(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 rather than an amendment.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities eligible to provide targeted case management services (such as community mental health centers, individual behavioral health service providers/provider group, behavioral health provider groups, or behavioral health services organizations) will be affected by this administrative regulation as well as the various professionals who are authorized to provide services either independently or via the aforementioned providers. Medicaid recipients who qualify for targeted case management services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify and wish to provide targeted case management services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation [complete and application and submit it to the Department for Medicaid Services (DMS)] and

sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. The professionals authorized to provide services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of targeted case management will benefit from having the option to receive these services.

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

(a) Initially: DMS estimates that implementing the administrative regulation will cost approximately $1.05 million state funds/$3.87 million federal funds initially.

(b) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately $1.79 million state funds/$6.64 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for individuals eligible under "Medicaid expansion" recedes from its current 100 percent to 90 percent.

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

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Similarly, 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(10)(B).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS estimates that implementing the administrative regulation will cost approximately ($1.05 million state funds/$3.87 million federal funds) initially.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that implementing the administrative regulation will cost approximately $1.79 million state funds/$6.64 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for individuals eligible under "Medicaid expansion" recedes from its current 100% to 90%.

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
(New Administrative Regulation)

907 KAR 15:050. Coverage provisions and requirements regarding targeted case management for individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396n(g).

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for Medicaid recipients with co-occurring mental health or substance use disorders and chronic or complex physical health issues.

Section 1. General Coverage Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Medically necessary; and

(2) Provided:

(a) To a recipient; and

(b) By a provider that meets the provider participation requirements established in Section 3 of this administrative regulation.

Section 2. Eligibility Criteria. (1) To be eligible for targeted case management services under this administrative regulation, a recipient shall:

(a) Have a primary moderate or severe substance use disorder diagnosis;

(b) Have a severe mental illness;

(c) Be a child with a severe emotional disability as defined in KRS 200.503(2);

(d) Have a chronic or complex physical health issue;

(e) Not be:

1. Over the age of twenty-one (21) years and under the age of sixty-four (64) years while receiving services in an institution for mental diseases; or

2. An inmate of a public institution; and

(f)1. Need assistance with access to:

a. Housing; or

b. Vocational, medical, social, educational, or other community services or supports;

2. Have been involved with at least one (1) child welfare agency or criminal justice agency; or

3. Be:

a. In the custody of the Department for Community Based Services;

b. At risk of an out-of-home placement; or

c. At risk of inpatient mental health treatment.

(2)(a) A severe mental illness shall be a diagnosis of a major mental disorder as included in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders™ under:

1. Schizophrenia spectrum and other psychiatric disorders;

2. Bipolar and related disorders;

3. Depressive disorders;

4. Post-traumatic stress disorders (under trauma and stressor related disorders); and

5. Personality disorders.

(b) A recipient's information and history, for the purpose of determining if the recipient has a severe mental illness, shall indicate that the recipient exhibits persistent disability and significant impairment in major areas of community living.

(c) In addition to the requirements established in paragraph (a) and (b) of this subsection, to qualify as having a severe mental illness, a recipient shall:

1. Have clinically significant symptoms which have persisted for a continuous period of at least two (2) years; or

2.a. Have been hospitalized for mental illness more than once within the past two (2) years; and

b. Be significantly impaired in the ability to function socially or occupationally or both.

Section 3. Provider Requirements. (1) To be eligible to provide services under this administrative regulation, an individual, entity, or organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

(c) Be:

1. A community mental health center authorized to provide services pursuant to 907 KAR 1:044;

2. An individual or provider group authorized to provide behavioral health services pursuant to 907 KAR 15:010; or

3. A behavioral health services organization authorized to provide behavioral health services pursuant to 907 KAR 15:020; and

(d) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Demonstrated experience in serving the population of individuals with behavioral health disorders relevant to the particular services provided;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs;

5. The capacity to document and maintain individual case records;

6. Demonstrated programmatic and administrative experience in providing comprehensive case management services; and

7. Demonstrated referral systems and linkages and referral ability with essential social and health services agencies.

(2) In accordance with 907 KAR 17:015, Section 3(3), a targeted case management services provider which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A targeted case management services provider shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the act.

Section 4. Case Manager Requirements. (1) A case manager shall:

(a) Have at least a bachelor of arts or sciences degree in a behavioral science including:

1. Psychology;

2. Sociology;

3. Social work;

4. Family studies;

5. Human services;

6. Counseling;

7. Nursing; or

8. Another human service degree program approved by the department;

(b) Have successfully completed case management training approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) within six (6) months of employment; and

(c) Successfully completed recertification requirements approved by DBHDID every three (3) years.

(2)(a) Supervision by a behavioral health professional who has completed case management training approved by DBHDID shall occur at least twice per month.

(b) At least one (1) of these supervisory contacts shall be on an individual basis and face-to-face.

(3)(a) Except as established in paragraph (b) of this subsection, a case manager shall have at least one (1) year of full-time employment working directly with individuals in a human service setting after completing the educational requirements.

(b) A master's degree in one (1) or more of the following behavioral science disciplines may substitute for the one (1) year of experience:

1. Psychology;
2. Sociology;
3. Social work;
4. Family studies;
5. Human services;
6. Counseling;
7. Nursing; or
8. Another human service degree program approved by the department.

(4) A behavioral health professional shall be:

(a) An advanced practice registered nurse;

(b) A licensed clinical social worker;

(c) A licensed marriage and family therapist;

(d) A licensed professional clinical counselor;

(e) A licensed psychological practitioner;

(f) A licensed psychologist;

(g) A licensed professional art therapist;

(h) A physician;

(i) A psychiatrist;

(j) A behavioral health practitioner under supervision except that a certified alcohol and drug counselor shall not be considered a behavioral health professional for the purpose of providing targeted case management to an individual with a complex or chronic physical health issue;

(k) A registered nurse working under the supervision of a physician or advanced practice registered nurse; or

(l) An individual with a bachelor's degree in a behavioral science program or other human service degree program approved by the department who:

1. Is working under the supervision of a billing supervisor; and
2. Has at least five (5) years of documented full-time experience providing specialized case management services for the target population.

Section 5. Freedom of Choice of Provider. (1) A recipient shall have the freedom to choose from which:

(a) Case manager to receive services within the recipient's geographic area identified in the recipient's care plan; and

(b) Provider of non-targeted case management Medicaid covered services to receive services.

(2) A case manager shall not have the authority to authorize or deny the provision of non-targeted case management Medicaid covered services to a recipient.

(3) A recipient shall not be required to receive targeted case management services as a condition of receiving non-targeted case management Medicaid-covered services.

Section 6. Covered Services. (1) Targeted case management services covered under this administrative regulation shall:

(a) Be services furnished to assist a recipient in gaining access to needed medical, social, educational, or other services; and

(b) Include:

1. A comprehensive assessment and periodic reassessments of the recipient's needs to determine the need for any medical, educational, social, or other services;
2. The development and periodic revision of a specific care plan for the recipient;
3. A referral or related activities to help the recipient obtain needed services;
4. Monitoring or follow-up activities; or
5. Contacts with non-recipients who are directly related to help with identifying the recipient's needs and care for the purpose of:

a. Helping the recipient access services;

b. Identifying supports necessary to enable the recipient to obtain services;

c. Providing a case manager with useful input regarding the recipient's past or current functioning, symptoms, adherence to treatment, or other information relevant to the recipient's behavioral health condition; or

d. Alerting a case manager to a change in the recipient's needs.

(2)(a) An assessment or reassessment shall include:

1. Taking the recipient's history;
2. Identifying the recipient's strengths and needs and completing related documentation; and
3. Gathering information from other sources including family members, medical providers, social workers, or educators, to form a complete assessment of the recipient.

(b) A face-to-face assessment or reassessment shall be completed:

1. At least annually; or
2. More often if needed based on changes in the recipient's condition.

(3) The development and periodic revision of the recipient's care plan shall:

(a) Specify the goals and actions to address the medical, social, educational, or other services needed by the recipient;

(b) Include ensuring the active participation of the recipient and working with the recipient, the recipient's authorized health care decision maker, or others to develop the goals; or

(c) Identify a course of action to respond to the assessed needs of the recipient.

(4) A referral or related activities shall include activities that help link the recipient with medical providers, social providers, educational providers, or other programs and services that are capable of providing needed services to:

(a) Address the identified needs; and

(b) Achieve goals specified in the care plan.

(5)(a) Monitoring and follow-up activities shall:

1. Be activities and contacts that:

a. Are necessary to ensure that the recipient's care plan is implemented;

b. Adequately address the recipient's strengths and needs; and

c. May be with the recipient, the recipient's family members, the recipient's service providers, or other entities or individuals;

2. Be conducted as frequently as necessary; and
3. Include making necessary adjustments in the recipient's care plan and service arrangements with providers.

(b) Monitoring shall:

1. Occur at least once every three (3) months;
2. Be face-to-face; and
3. Determine if:

a. The services are being furnished in accordance with the recipient's care plan;

b. The services in the recipient's care plan are adequate to meet the recipient's needs; and

c. Changes in the needs or status of the recipient are reflected in the care plan.

Section 7. No Duplication of Service. (1) The department shall not pay for targeted case management services which duplicate services provided by another public agency or a private entity.

(2)(a) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(b) For example, if a recipient is receiving targeted case management service from an independent behavioral health provider, the department shall not reimburse for targeted case management services provided to the same recipient during the same time period by a behavioral health services organization.

Section 8. Exclusions and Limits. (1) Targeted case management services shall not include services defined in 42 C.F.R. 440.169 if the activities:

(a) Are an integral and inseparable component of another covered Medicaid service; or

(b) Constitute the direct delivery of underlying medical, educational, social, or other services to which an eligible recipient has been referred, including:

1. Foster care programs;

2. Research gathering and completing documentation required by the foster care program;

3. Assessing adoption placements;

4. Recruiting or interviewing potential foster care parents;

5. Serving legal papers;

6. Home investigations;

7. Providing transportation;

8. Administering foster care subsidies; or

9. Making placement arrangements.

(2) A recipient who is receiving case management services under a 1915(c) home and community based waiver program shall not be eligible to receive targeted case management services under this administrative regulation.

(3) An individual who provides targeted case management to a recipient shall not provide any Medicaid covered service other than targeted case management to any recipient.

Section 9. Records Maintenance, Documentation, Protection, and Security. (1) A targeted case management services provider shall maintain a current case record for each recipient.

(2)(a) A case record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(b) The individual who provided the service shall date and sign the case record on the date that the individual provided the service.

(3) A case record shall:

(a) Include:

1. The recipient's name;

2. The time and date corresponding to each occasion in which a service was provided to the recipient;

3. The name of the targeted case management services:

a. Provider agency, if an agency; and

b. Practitioner who provided the targeted case management services;

4. The nature, content, and units of the targeted case management services provided;

5. Whether goals in the recipient's care plan have been achieved;

6. Whether the recipient has declined to receive any services in the recipient's care plan;

7. A timeline for obtaining needed services; and

8. A timeline for reevaluating the recipient's care plan; and

(b) Be:

1. Maintained in an organized and secure central file;

2. Furnished upon request:

a. To the Cabinet for Health and Family Services; or

b. For an enrollee, to the managed care organization in which the recipient is enrolled;

3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or

b. Personnel of the managed care organization in which the recipient is enrolled if applicable;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient.

(4)(a) A discharge summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the recipient toward reaching goals and objectives established in the recipient's care plan; and

b. Recipient's condition upon termination and disposition.

(b) A case record relating to a recipient who was terminated from receiving services shall be fully completed within ten (10) business days following termination.

(5) If a recipient's case is reopened within ninety (90) calendar days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(6) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring targeted case management services provider shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

(a)1. The Health Insurance Portability and Accountability Act;

2. 42 U.S.C. 1320d-2 to 1320d-8; and

3. 45 C.F.R. Parts 160 and 164; or

(b)1. 42 U.S.C. 290ee-3; and

2. 42 C.F.R. Part 2.

(7)(a) If a targeted case management services provider's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the case records of the targeted case management services provider shall:

1. Remain the property of the targeted case management services provider; and

2. Be subject to the retention requirements established in subsection (8) of this section.

(b) A targeted case management services provider shall have a written plan addressing how to maintain case records in the event of an owner's death or owners' deaths.

(8)(a) Except as established in paragraph (b) or (c) of this subsection, a targeted case management services provider shall maintain a case record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17 the period established by the secretary shall be the required period.

(9)(a) A targeted case management services provider shall comply with 45 C.F.R. Part 164.

(b) All information contained in a case record shall:

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and

3. Be disclosed to an authorized representative of the:

a. Department; or

b. Federal government.

(c)1. Upon request, a targeted case management services provider shall provide to an authorized representative of the department or federal government information requested to substantiate:

a. Staff notes detailing a service that was rendered;

b. The professional who rendered a service; and

c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information referenced in subparagraph 1 of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 10. Medicaid Program Participation Compliance. (1) A targeted case management services provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a targeted case management services provider receives any duplicate payment or overpayment from the department, regardless of reason, the targeted case management services provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the targeted case management services provider accepts the payment:

1. The payment shall be considered payment in full;

2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the provider.

(b)1. A targeted case management services provider may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

a. Recipient requests the service; and

b. Targeted case management services provider makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1 of this paragraph, the:

a. Targeted case management services provider shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the targeted case management services provider regarding the service.

(4)(a) A targeted case management services provider attests by the targeted case management services provider signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;

2. Cabinet for Health and Family Services, Office of Inspector General or its designee;

3. Kentucky Office of Attorney General or its designee;

4. Kentucky Office of the Auditor for Public Accounts or its designee; or

5. United States General Accounting Office or its designee.

(c) If a targeted case management services provider receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the targeted case management services provider shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a targeted case management services provider shall result in the suspension or termination of the targeted case management services provider from Medicaid Program participation.

Section 11. Third Party Liability. (1) A targeted case management services provider shall comply with KRS 205.622.

(2) If a third party is liable to pay for targeted case management services, the department shall not pay for the services.

Section 12. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A targeted case management services provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the targeted case management services provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the targeted case management services provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 13. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 14. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 15. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 9, 2014

FILED WITH LRC: September 16, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2014 at 9:00 a.m. in Suite B of 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 November 14, 2014, 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 1, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort,

Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for Medicaid recipients with co-occurring mental health or substance use disorders and chronic or complex physical health issues. This administrative regulation is being promulgated in conjunction with 907 KAR 15:055E (Reimbursement provisions and requirements regarding targeted case management for individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues.) Targeted case management services are services that assist Medicaid recipients in accessing needed medical, social, educational, and other services. The components of targeted case management include assessing the recipient's need for services by taking the recipient's history, identifying the recipient's needs, and gathering information from other sources (family members, medical providers, social workers, and educators) to form a complete assessment; developing a customized care plan for the recipient; referring the recipient or related activities to help the recipient obtain needed services; and monitoring activities to ensure that the recipient's care plan is implemented effectively and adequately addresses the recipient's needs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to help ensure that recipients (who have co-occurring mental health or substance use disorders and chronic or complex physical health issues) receive necessary services and care. The targeted case manager provider is the individual or entity responding for coordinating the individual's services/care, facilitating access to services/care, and monitoring individual's progress or difficulties while receiving services/care. Targeted case management helps ensure that the recipient receives the appropriate and necessary services and care they need rather than randomly receive services/care or fail to receive any services/care at all.

(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 helping ensure that recipients with co-occurring mental health or substance use disorders and chronic or complex physical health issues receive necessary services and care.

(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 helping ensure that recipients with co-occurring mental health or substance use disorders and chronic or complex physical health issues receive necessary services and care.

(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 rather than an amendment.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities eligible to provide targeted case management services (such as community mental health centers, individual behavioral health service providers or behavioral health provider groups, behavioral health services organizations, federally-qualified health centers (FQHCs), FQHC look-alikes, rural health clinics, primary care centers) will be affected by this administrative regulation as well as the various professionals who are authorized to provide services either independently or via the aforementioned providers. Medicaid recipients who qualify for targeted case management services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify and wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete and application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. The professionals authorized to provide services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of targeted case management will benefit from having the option to receive these services.

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

(a) Initially: DMS estimates that implementing the administrative regulation will cost approximately $1.33 million state funds/$5.47 million federal funds initially.

(b) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately $2.28 million state funds/$9.38 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for recipients eligible under "Medicaid expansion" recedes from its current 100 percent to 90 percent.

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

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law.

Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Targeted case management services are not federally mandated; however, Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the targeted case management service provider base to include targeted case management for recipients with co-occurring mental health or substance use disorders and chronic or complex physical health issues will help ensure Medicaid recipient access to these services.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(10)(B).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS estimates that implementing the administrative regulation will cost approximately $1.33 million state funds/$5.47 million federal funds initially.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that implementing the administrative regulation will cost approximately $2.28 million state funds/$9.38 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for recipients eligible under "Medicaid expansion" recedes from its current 100% to 90%.

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
(New Administrative Regulation)

907 KAR 15:055. Reimbursement provisions and requirements regarding targeted case management for individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program targeted case management services for individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Medically necessary;

(2) Provided:

(a) To a recipient;

(b) By a provider that meets the provider participation requirements established in 907 KAR 15:050; and

(c) In accordance with the requirements established in 907 KAR 15:050; and

(3) Covered in accordance with 907 KAR 15:050.

Section 2. Reimbursement. (1) The department shall reimburse a monthly rate of $541 in total for all targeted case management services provided to a recipient during the month.

(2) To qualify for the reimbursement referenced in subsection (1) of this section, a targeted case management services provider shall provide services to a recipient consisting of at least five (5) targeted case management service contacts including:

(a) At least three (3) face-to-face contacts with:

1. The recipient; or

2. If the recipient is under twenty-one (21) years of age, with:

a. The recipient; or

b. A parent or legal guardian of the recipient; and

(b) At least two (2) additional contacts which shall be:

1.a. By telephone; or

b. Face-to-face; and

2. With the recipient or with another individual on behalf of the recipient.

Section 3. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than

one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving targeted case management services from an independent behavioral health provider, the department shall not reimburse for the targeted case management services provided to the same recipient during the same time period by a behavioral health services organization.

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 15:050; and

(2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 9, 2014

FILED WITH LRC: September 16, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2014 at 9:00 a.m. in Suite B of 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 November 14, 2014, 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 1, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program targeted case management services for individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues. This administrative regulation is being promulgated in conjunction with 907 KAR 15:050E (Coverage provisions and requirements regarding targeted case management for individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues). Targeted case management services are services that assist Medicaid recipients in accessing needed medical, social, educational, and other services. The components of targeted case management include assessing the individual's need for services by taking the individual's history, identifying the individual's needs, and gathering information from other sources (family members, medical providers, social workers, and educators) to form a complete assessment; developing a customized care plan for the individual; referring the individual or related activities to help the individual obtain needed services; and monitoring activities to ensure that the individual's care plan is implemented effectively and adequately addresses the individual's needs. For these services, the Department for Medicaid Services (DMS) will pay a monthly rate (encompassing all services provided to the recipient in the month) of $541.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to help ensure that individuals (who have co-occurring mental health or substance use disorders and chronic or complex physical health issues) receive necessary services and care. The targeted case manager provider is the individual or entity responding for coordinating the individual's services/care, facilitating access to services/care, and monitoring individual's progress or difficulties while receiving services/care. Targeted case management helps ensure that the individual receives the appropriate and necessary services and care they need rather than randomly receive services/care or fail to receive any services/care at all.

(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 helping ensure that individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues receive necessary services and care.

(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 helping ensure that individuals with co-occurring mental health or substance use disorders and chronic or complex physical health issues receive necessary services and care.

(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 rather than an amendment.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities eligible to provide targeted case management services (such as community mental health centers, individual behavioral health service providers/provider group, behavioral health provider groups, or behavioral health services organizations) will be affected by this administrative regulation as well as the various professionals who are authorized to provide services either independently or via the aforementioned providers. Medicaid recipients who qualify for targeted case management services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify and wish to provide targeted case management services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation [complete and application and submit it to the Department for Medicaid Services (DMS)] and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could

experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. The professionals authorized to provide services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of targeted case management will benefit from having the option to receive these services.

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

(a) Initially: DMS estimates that implementing the administrative regulation will cost approximately $1.33 million state funds/$5.47 million federal funds initially.

(b) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately $2.28 million state funds/$9.38 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for individuals eligible under "Medicaid expansion" recedes from its current 100 percent to 90 percent.

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

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Targeted case management services are not federally mandated; however, Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Similarly, 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(10)(B).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS estimates that implementing the administrative regulation will cost approximately $1.33 million state funds/$5.47 million federal funds initially.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that implementing the administrative regulation will cost approximately $2.28 million state funds/$9.38 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for individuals eligible under "Medicaid expansion" recedes from its current 100% to 90%.

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
(New Administrative Regulation)

907 KAR 15:060. Coverage provisions and requirements regarding targeted case management for individuals with a severe mental illness and children with a severe emotional disability.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396n(g).

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for individuals with a severe mental illness and children who have a severe emotional disability.

Section 1. General Coverage Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Medically necessary; and

(2) Provided:

(a) To a recipient; and

(b) By a provider that meets the provider participation requirements established in Section 3 of this administrative regulation.

Section 2. Eligibility Criteria. (1) To be eligible for targeted case management services under this administrative regulation, a recipient shall:

(a)1. Have a severe mental illness; or

2. Be a child with a severe emotional disability as defined in KRS 200.503(3);

(b) Not be:

1. Over the age of twenty-one (21) years and under the age of sixty-four (64) years while receiving services in an institution for mental diseases; or

2. An inmate of a public institution; and

(c)1. Need assistance with access to:

a. Housing; or

b. Vocational, medical, social, educational, or other community services or supports;

2. Have been involved with at least one (1) child welfare agency or criminal justice agency; or

3. Be:

a. In the custody of the Department for Community Based Services;

b. At risk of an out-of-home placement; or

c. At risk of inpatient mental health treatment.

(2)(a) A severe mental illness shall be a diagnosis of a major mental disorder as included in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders™ under:

1. Schizophrenia spectrum and other psychiatric disorders;

2. Bipolar and related disorders;

3. Depressive disorders;

4. Post-traumatic stress disorders (under trauma and stressor related disorders); and

5. Personality disorders.

(b) A recipient's information and history, for the purpose of determining if the recipient has a severe mental illness, shall indicate that the recipient exhibits persistent disability and significant impairment in major areas of community living.

(c) In addition to the requirements established in paragraph (a) and (b) of this subsection, to qualify as having a severe mental illness, a recipient shall:

1. Have clinically significant symptoms which have persisted for a continuous period of at least two (2) years; or

2.a. Have been hospitalized for mental illness more than once within the past two (2) years; and

b. Be significantly impaired in the ability to function socially or occupationally or both.

Section 3. Provider Requirements. (1) To be eligible to provide services under this administrative regulation, an individual, entity, or organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

(c) Be:

1. A community mental health center authorized to provide services pursuant to 907 KAR 1:044;

2. An individual or provider group authorized to provide behavioral health services pursuant to 907 KAR 15:010; or

3. A behavioral health services organization authorized to provide behavioral health services pursuant to 907 KAR 15:020; and

(d) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Demonstrated experience in serving the population of individuals with behavioral health disorders relevant to the particular services provided;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs;

5. The capacity to document and maintain individual case records;

6. Demonstrated programmatic and administrative experience in providing comprehensive case management services; and

7. Demonstrated referral systems and linkages and referral ability with essential social and health services agencies.

(2) In accordance with 907 KAR 17:015, Section 3(3), a targeted case management services provider which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A targeted case management services provider shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the act.

Section 4. Case Manager Requirements. (1) A case manager shall:

(a) Have at least a bachelor of arts or sciences degree in a behavioral science including:

1. Psychology;

2. Sociology;

3. Social work;

4. Family studies;

5. Human services;

6. Counseling;

7. Nursing; or

8. Another human service degree program approved by the department;

(b) Have successfully completed case management training approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) within six (6) months of employment; and

(c) Successfully completed recertification requirements approved by DBHDID every three (3) years.

(2)(a) Supervision by a behavioral health professional who has completed case management training approved by DBHDID shall occur at least twice per month.

(b) At least one (1) of these supervisory contacts shall be on

an individual basis and face-to-face.

(3)(a) Except as established in paragraph (b) of this subsection, a case manager for a:

1. Recipient with a severe mental illness shall have at least one (1) year of full-time employment experience working directly with adults in a human service setting after completing the educational requirements; or

2. Child with a severe emotional disability shall have at least one (1) year of full-time employment experience working directly with individuals under the age of twenty-one (21) years in a human service setting after completing the educational requirements.

(b) A master's degree in one (1) of the following behavioral science disciplines may substitute for the one (1) year of experience:

1. Psychology;
2. Sociology;
3. Social work;
4. Family studies;
5. Human services;
6. Counseling;
7. Nursing; or
8. Another human service degree program approved by the department.

(4) A behavioral health professional shall be:

(a) An advanced practice registered nurse;
(b) A licensed clinical social worker;
(c) A licensed marriage and family therapist;
(d) A licensed professional clinical counselor;
(e) A licensed psychological practitioner;
(f) A licensed psychologist;
(g) A licensed professional art therapist;
(h) A physician;
(i) A psychiatrist;
(j) A behavioral health practitioner under supervision except for a certified alcohol and drug counselor;
(k) A registered nurse working under the supervision of a physician or advanced practice registered nurse; or
(l) An individual with a bachelor's degree in a behavioral science program or other human service degree program approved by the department who:

1. Is working under the supervision of a billing supervisor; and
2. Has at least five (5) years of documented full-time experience providing specialized case management services for the target population.

Section 5. Freedom of Choice of Provider. (1) A recipient shall have the freedom to choose from which:

(a) Case manager to receive services within the recipient's geographic area identified in the recipient's care plan; and
(b) Provider of non-targeted case management Medicaid covered services to receive services.

(2) A case manager shall not have the authority to authorize or deny the provision of non-targeted case management Medicaid covered services to a recipient.

(3) A recipient shall not be required to receive targeted case management services as a condition of receiving non-targeted case management Medicaid-covered services.

Section 6. Covered Services. (1) Targeted case management services covered under this administrative regulation shall:

(a) Be services furnished to assist a recipient in gaining access to needed medical, social, educational, or other services; and
(b) Include:

1. A comprehensive assessment and periodic reassessments of the recipient's needs to determine the need for any medical, educational, social, or other services;
2. The development and periodic revision of a specific care plan for the recipient;
3. A referral or related activities to help the recipient obtain needed services;
4. Monitoring or follow-up activities; or
5. Contacts with non-recipients who are directly related to help with identifying the recipient's needs and care for the purpose of:

a. Helping the recipient access services;
b. Identifying supports necessary to enable the recipient to obtain services;
c. Providing a case manager with useful input regarding the recipient's past or current functioning, symptoms, adherence to treatment, or other information relevant to the recipient's behavioral health condition; or
d. Alerting a case manager to a change in the recipient's needs.

(2)(a) An assessment or reassessment shall include:

1. Taking the recipient's history;
2. Identifying the recipient's strengths and needs and completing related documentation; and
3. Gathering information from other sources to form a complete assessment of the recipient including:

a. Family members;
b. Medical providers;
c. Social workers; or
d. Educators.

(b) A face-to-face assessment or reassessment shall be completed:

1. At least annually; or
2. More often if needed based on changes in the recipient's condition.

(3) The development and periodic revision of the recipient's care plan shall:

(a) Specify the goals and actions to address the medical, social, educational, or other services needed by the recipient;
(b) Include ensuring the active participation of the recipient and working with the recipient, the recipient's authorized health care decision maker, or others to develop the goals; or
(c) Identify a course of action to respond to the assessed needs of the recipient.

(4) A referral or related activities shall include activities that help link the recipient with medical providers, social providers, educational providers, or other programs and services that are capable of providing needed services to:

(a) Address the identified needs; and
(b) Achieve goals specified in the care plan.

(5)(a) Monitoring and follow-up activities shall:

1. Be activities and contacts that:

a. Are necessary to ensure that the recipient's care plan is implemented;
b. Adequately address the recipient's strengths and needs; and
c. May be with:
(i) The recipient;
(ii) The recipient's family members;
(iii) The recipient's service providers; or
(iv) Other entities or recipients;

2. Be conducted as frequently as necessary; and
3. Include making necessary adjustments in the recipient's care plan and service arrangements with providers.

(b) Monitoring shall:

1. Occur at least once every three (3) months;
2. Be face-to-face; and
3. Determine if:

a. The services are being furnished in accordance with the recipient's care plan;
b. The services in the recipient's care plan are adequate to meet the recipient's needs; and
c. Changes in the needs or status of the recipient are reflected in the care plan.

Section 7. No Duplication of Service. (1) The department shall not pay for targeted case management services which duplicate services provided by another public agency or a private entity.

(2)(a) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(b) For example, if a recipient is receiving targeted case management service from an independent behavioral health provider, the department shall not reimburse for targeted case

management services provided to the same recipient during the same time period by a behavioral health services organization.

Section 8. Exclusions and Limits. (1) Targeted case management services shall not include services defined in 42 C.F.R. 440.169 if the activities:

(a) Are an integral and inseparable component of another covered Medicaid service; or

(b) Constitute the direct delivery of underlying medical, educational, social, or other services to which an eligible recipient has been referred, including:

1. Foster care programs;

2. Research gathering and completing documentation required by the foster care program;

3. Assessing adoption placements;

4. Recruiting or interviewing potential foster care parents;

5. Serving legal papers;

6. Home investigations;

7. Providing transportation;

8. Administering foster care subsidies; or

9. Making placement arrangements.

(2) A recipient who is receiving case management services under a 1915(c) home and community based waiver program shall not be eligible to receive targeted case management services under this administrative regulation.

(3) An individual who provides targeted case management to a recipient shall not provide any other Medicaid covered service to any recipient.

Section 9. Records Maintenance, Documentation, Protection, and Security. (1) A targeted case management services provider shall maintain a current case record for each recipient.

(2)(a) A case record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(b) The individual who provided the service shall date and sign the case record on the date that the individual provided the service.

(3) A case record shall:

(a) Include:

1. The recipient's name;

2. The time and date corresponding to each occasion in which a service was provided to the recipient;

3. The name of the targeted case management services:

a. Provider agency, if an agency; and

b. Practitioner who provided the targeted case management services;

4. The nature, content, and units of the targeted case management services provided;

5. Whether goals in the recipient's care plan have been achieved;

6. Whether the recipient has declined to receive any services in the recipient's care plan;

7. A timeline for obtaining needed services; and

8. A timeline for reevaluating the recipient's care plan; and

(b) Be:

1. Maintained in an organized and secure central file;

2. Furnished upon request:

a. To the Cabinet for Health and Family Services; or

b. For an enrollee, to the managed care organization in which the recipient is enrolled;

3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or

b. Personnel of the managed care organization in which the recipient is enrolled if applicable;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient.

(4)(a) A discharge summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the recipient toward reaching goals and objectives established in the recipient's care plan; and

b. Recipient's condition upon termination and disposition.

(b) A case record relating to a recipient who was terminated from receiving services shall be fully completed within ten (10) business days following termination.

(5) If a recipient's case is reopened within ninety (90) calendar days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(6) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring targeted case management services provider shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

(a)1. The Health Insurance Portability and Accountability Act;

2. 42 U.S.C. 1320d-2 to 1320d-8; and

3. 45 C.F.R. Parts 160 and 164; or

(b)1. 42 U.S.C. 290ee-3; and

2. 42 C.F.R. Part 2.

(7)(a) If a targeted case management services provider's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the case records of the targeted case management services provider shall:

1. Remain the property of the targeted case management services provider; and

2. Be subject to the retention requirements established in subsection (8) of this section.

(b) A targeted case management services provider shall have a written plan addressing how to maintain case records in the event of an owner's death or owners' deaths.

(8)(a) Except as established in paragraph (b) or (c) of this subsection, a targeted case management services provider shall maintain a case record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17 the period established by the secretary shall be the required period.

(9)(a) A targeted case management services provider shall comply with 45 C.F.R. Part 164.

(b) All information contained in a case record shall:

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and

3. Be disclosed to an authorized representative of the:

a. Department; or

b. Federal government.

(c)1. Upon request, a targeted case management services provider shall provide to an authorized representative of the department or federal government information requested to substantiate:

a. Staff notes detailing a service that was rendered;

b. The professional who rendered a service; and

c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information referenced in subparagraph 1 of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 10. Medicaid Program Participation Compliance. (1) A targeted case management services provider shall comply with:

(a) 907 KAR 1:671;
(b) 907 KAR 1:672; and
(c) All applicable state and federal laws.
(2)(a) If a targeted case management services provider receives any duplicate payment or overpayment from the department, regardless of reason, the targeted case management services provider shall return the payment to the department.
(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:
1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.
(3)(a) When the department makes payment for a covered service and the targeted case management services provider accepts the payment:
1. The payment shall be considered payment in full;
2. A bill for the same service shall not be given to the recipient; and
3. Payment from the recipient for the same service shall not be accepted by the provider.
(b)1. A targeted case management services provider may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:
a. Recipient requests the service; and
b. Targeted case management services provider makes the recipient aware in advance of providing the service that the:
(i) Recipient is liable for the payment; and
(ii) Department is not covering the service.
2. If a recipient makes payment for a service in accordance with subparagraph 1 of this paragraph, the:
a. Targeted case management services provider shall not bill the department for the service; and
b. Department shall not:
(i) Be liable for any part of the payment associated with the service; and
(ii) Make any payment to the targeted case management services provider regarding the service.
(4)(a) A targeted case management services provider attests by the targeted case management services provider signature that any claim associated with a service is valid and submitted in good faith.
(b) Any claim and substantiating record associated with a service shall be subject to audit by the:
1. Department or its designee;
2. Cabinet for Health and Family Services, Office of Inspector General or its designee;
3. Kentucky Office of Attorney General or its designee;
4. Kentucky Office of the Auditor for Public Accounts or its designee; or
5. United States General Accounting Office or its designee.
(c) If a targeted case management services provider receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the targeted case management services provider shall provide the requested information to the department within the timeframe requested by the department.
(d)1. All services provided shall be subject to review for recipient or provider abuse.
2. Willful abuse by a targeted case management services provider shall result in the suspension or termination of the targeted case management services provider from Medicaid Program participation.

Section 11. Third Party Liability. (1) A targeted case management services provider shall comply with KRS 205.622.
(2) If a third party is liable to pay for targeted case management services, the department shall not pay for the services.

Section 12. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.
(2) A targeted case management services provider that chooses to use electronic signatures shall:
(a) Develop and implement a written security policy that shall:
1. Be adhered to by each of the targeted case management services provider's employees, officers, agents, or contractors;
2. Identify each electronic signature for which an individual has access; and
3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
(b) Develop a consent form that shall:
1. Be completed and executed by each individual using an electronic signature;
2. Attest to the signature's authenticity; and
3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
(c) Provide the department, immediately upon request, with:
1. A copy of the targeted case management services provider's electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 13. Auditing Authority. The department shall have the authority to audit any:
(1) Claim;
(2) Medical record; or
(3) Documentation associated with any claim or medical record.

Section 14. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:
(1) Receipt of federal financial participation for the coverage; and
(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 15. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.
(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 9, 2014
FILED WITH LRC: September 16, 2014 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2014 at 9:00 a.m. in Suite B of 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 November 14, 2014, 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 1, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for individuals with a severe mental illness or children with a severe emotional disability. This administrative regulation is being promulgated in conjunction with 907 KAR 15:065E (Reimbursement provisions and requirements regarding targeted case management for individuals with a severe mental illness and children with a severe emotional disability.) Targeted case management services are services that assist Medicaid recipients in accessing needed medical, social, educational, and other services. The components of targeted case management include assessing the recipient's need for services by taking the recipient's history, identifying the recipient's needs, and gathering information from other sources (family members, medical providers, social workers, and educators) to form a complete assessment; developing a customized care plan for the recipient; referring the recipient or related activities to help the recipient obtain needed services; and monitoring activities to ensure that the recipient's care plan is implemented effectively and adequately addresses the recipient's needs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to help ensure that children who have a severe emotional disability or individuals who have a severe mental illness receive necessary services and care. The targeted case manager provider is the individual or entity responding for coordinating the recipient's services/care, facilitating access to services/care, and monitoring recipient's progress or difficulties while receiving services/care. Targeted case management helps ensure that the recipient receives the appropriate and necessary services and care they need rather than randomly receive services/care or fail to receive any services/care at all.

(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 helping ensure that children with a severe emotional disability and individuals with a severe mental illness receive necessary services and care.

(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 helping ensure that children with a severe emotional disability and individuals with a severe mental illness receive necessary services and care.

(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 rather than an amendment.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities eligible to provide targeted case management services (such as community mental health centers, individual behavioral health service providers/provider group, behavioral health provider groups, or behavioral health services organizations) will be affected by this administrative regulation as well as the various professionals who are authorized to provide services either independently or via the aforementioned providers. Medicaid recipients who qualify for targeted case management services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify and wish to provide targeted case management services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation [complete and application and submit it to the Department for Medicaid Services (DMS)] and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. The professionals authorized to provide services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of targeted case management will benefit from having the option to receive these services.

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

(a) Initially: DMS estimates that implementing the administrative regulation will cost approximately ($1.35 million state funds/$12.04 million federal funds) initially.

(b) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately $2.32 million state funds/$20.64 million federal funds for the second year of implementation. The federal funding will decrease somewhat when the federal matching percent for recipients eligible under "Medicaid expansion" recedes from its current 100 percent to 90 percent .

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

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Targeted case management services are not federally mandated however, Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder

services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the targeted case management service provider base to include targeted case management for children with a severe emotional disability or individuals with a severe mental illness will help ensure Medicaid recipient access to these services.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(10)(B).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS estimates that implementing the administrative regulation will cost approximately $1.05 million state funds/$3.87 million federal funds initially.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that implementing the administrative regulation will cost approximately $1.79 million state funds/$6.64 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for individuals eligible under "Medicaid expansion" recedes from its current 100% to 90%.

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
(New Administrative Regulation)

907 KAR 15:065. Reimbursement provisions and requirements regarding targeted case management for individuals with a severe mental illness and children with a severe emotional disability.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program targeted case management services for individuals with a severe mental illness and children with a severe emotional disability who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Medically necessary;

(2) Provided:

(a) To a recipient;

(b) By a provider that meets the provider participation requirements established in 907 KAR 15:060; and

(c) In accordance with the requirements established in 907 KAR 15:060; and

(3) Covered in accordance with 907 KAR 15:060.

Section 2. Reimbursement. (1) The department shall reimburse a monthly rate of $334 in total for all targeted case management services provided to a recipient during the month.

(2) To qualify for the reimbursement referenced in subsection (1) of this section, a targeted case management services provider shall provide services to a recipient consisting of at least four (4) targeted case management service contacts including:

(a) At least two (2) face-to-face contacts with the recipient; and

(b) At least two (2) additional contacts which shall be:

1.a. By telephone; or

b. Face-to-face; and

2. With the recipient or with another individual on behalf of the recipient.

Section 3. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving targeted case management services from an independent behavioral health provider, the department shall not reimburse for the targeted case management services provided to the same recipient during the same time period by a behavioral health services organization.

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 15:060; and
(2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:
(1) Receipt of federal financial participation for the reimbursement; and
(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 9, 2014
FILED WITH LRC: September 16, 2014 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2014 at 9:00 a.m. in Suite B of 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 November 14, 2014, 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 1, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for individuals with a severe mental illness and children with a severe emotional disability. This administrative regulation is being promulgated in conjunction with 907 KAR 15:060E (Coverage provisions and requirements regarding targeted case management for individuals with a severe mental illness and children with a severe emotional disability.) Targeted case management services are services that assist Medicaid recipients in accessing needed medical, social, educational, and other services. The components of targeted case management include assessing the individual's need for services by taking the individual's history, identifying the individual's needs, and gathering information from other sources (family members, medical providers, social workers, and educators) to form a complete assessment; developing a customized care plan for the individual; referring the individual or related activities to help the individual obtain needed services; and monitoring activities to ensure that the individual's care plan is implemented effectively and adequately addresses the individual's needs. For these services the Department for Medicaid Services (DMS) will pay a monthly rate (encompassing all services provided to the recipient during the given month) of $334.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to help ensure that children who have a severe emotional disability or individuals who have a severe mental illness receive necessary services and care. The targeted case manager provider is the individual or entity responding for coordinating the individual's services/care, facilitating access to services/care, and monitoring individual's progress or difficulties while receiving services/care. Targeted case management helps ensure that the individual receives the appropriate and necessary services and care they need rather than randomly receive services/care or fail to receive any services/care at all.
(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 helping ensure that children who have a severe emotional disability and individuals who have a severe mental illness receive necessary services and care.
(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 helping ensure that children who have a severe emotional disability and individuals who have a severe mental illness receive necessary services and care.
(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 rather than an amendment.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation rather than an amendment.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation rather than an amendment.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation rather than an amendment.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities eligible to provide targeted case management services (such as community mental health centers, individual behavioral health service providers/provider group, behavioral health provider groups, or behavioral health services organizations) will be affected by this administrative regulation as well as the various professionals who are authorized to provide services either independently or via the aforementioned providers. Medicaid recipients who qualify for targeted case management services will also be affected by this administrative regulation.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify and wish to provide targeted case management services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation [complete and application and submit it to the Department for Medicaid Services (DMS)] and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. The professionals authorized to provide services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of targeted case management will benefit from having the option to receive these services.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: DMS estimates that implementing the administrative regulation will cost approximately $1.05 million state funds/$3.87 million federal funds initially.

(b) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately $1.79 million state funds/$6.64 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for individuals eligible under "Medicaid expansion" recedes from its current 100 percent to 90 percent.

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

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Similarly, 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(10)(B).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS estimates that implementing the administrative regulation will cost approximately $1.05 million state funds/$3.87 million federal funds initially.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that implementing the administrative regulation will cost approximately $1.79 million state funds/$6.64 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for individuals eligible under "Medicaid expansion" recedes from its current 100% to 90%.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 14, 2014

Call to Order and Roll Call

The October 2014 meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 14, 2014, at 1:00 p.m., in Room 149 of the Capitol Annex. Representative Mary Lou Marzian, Chair, called the meeting to order, the roll call was taken. The minutes of the September 2014 meeting were approved.

Present were:

Members: Senators Perry Clark, Sara Beth Gregory, Ernie Harris, and Alice Forgy Kerr; and Representatives Robert Damron, Jimmie Lee, Mary Lou Marzian, and Tommy Turner.

LRC Staff: Donna Little, Emily Caudill, Sarah Amburgey, Carrie Klaber, Karen Howard, Emily Harkenrider, Ange Bertholf, and Betsy Cupp.

Guests: Lynn Zellen, Maryellen Allen, Board of Elections; Dick Carroll, Board of Accountancy; Connie Calvert, Jerald Combs, William Reynolds, Board of Optometric Examiners; Kathleen Schell, Board of Embalmers and Funeral Directors; Larry Disney, Brian Judy, Tom Veit, Real Estate Appraisers Board; Angela Evans, Board of Marriage and Family Therapists; Jeremy Reed, Dietitian and Nutritionists Board; Brian Judy, Martin Wesley, Board of Licensed Professional Counselors; Dennis Shepherd, Department of Veteran Affairs; Ron Brooks, Davis Wicker, Department of Fish and Wildlife Resources; Julie Roney, Larry Taylor, Department for Environmental Protection; Keith Smith, Office of the Reclamation Guaranty Fund; Amy Barker, Department of Corrections; Dana Todd, Department of Criminal Justice Training; Chris Gillum, LaDonna Koebel, Kevin Warford, Department of Juvenile Justice; Russell Coy, D.J. Wasson, Department of Insurance; Katherine Paisley, Horse Racing Commission; Jeff Jagnow, Hollie Sands, Department of Public Health; Elizabeth Caywood, Jason Dunn, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Tuesday, October 14, 2014, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

STATE BOARD OF ELECTIONS: Statewide Voter Registration

31 KAR 3:030. Voting precinct and address of overseas voter whose last place of residence in the Commonwealth is no longer a recognized residential address. Lynn Zellen, general counsel, and Maryellen Allen, executive director, represented the board.

In response to a question by Co-Chair Harris, Ms. Zellen stated that the corresponding emergency administrative regulations were filed in August and became effective upon their filing. Clerks had received appropriate training to administer these requirements, and the absentee voting process was going well so far.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Forms and Procedures

31 KAR 4:130 & E. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically.

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 citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

31 KAR 4:140 & E. Submission of the federal postcard application via electronic mail.

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 citations; and (2) to amend the NECESSITY FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

Voting

31 KAR 5:010 & E. Use of the federal write-in absentee ballot.

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 citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: State Board of Accountancy: Board

201 KAR 1:190. Examination sections, applications, and procedures. Richard Carroll, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 4, 5, 9, and 11 and the material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A; (4) to amend Section 3 to: (a) clarify that the board may grant one (1) request to extend the time to retain a passing examination score to a candidate that has sat for one (1) section of the exam during the same testing window when the passing score was to expire; and (b) establish a deadline for extension to retain an exam score; and (5) to amend Section 5 to establish examples of what the board may consider as "good cause" for extending a notice to schedule the examination. Without objection, and with agreement of the agency, the amendments were approved.

Board of Optometric Examiners: Board

201 KAR 5:055. Telehealth. Dr. Jerald Combs, president, and Dr. William Reynolds, vice president, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 3, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to amend Section 1 to add a definition for "practice of optometry"; and (4) to amend Section 5 to clarify who the sponsor shall be for a course offered through telehealth, including that educational hours obtained through telehealth shall be considered as part of the maximum five (5) continuing education hours granted through the use of the internet in accordance with 201 KAR 5:030, Section 6(1). Without objection, and with agreement of the agency, the amendments were approved.

Board of Embalmers and Funeral Directors: Board

201 KAR 15:015. Per diem compensation of board members. Kathleen Schell, board counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs 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.220; and (3) to amend Section 1 to clarify that each board member shall receive a $175 per diem fee beginning January 1, 2015. Without objection, and with agreement of the agency, the amendments were approved.

Real Estate Appraisers Board: Board

201 KAR 30:125. Continuing education for appraisers. Larry Disney, executive director; Brian Judy, assistant attorney general; and Tom Veit, executive assistant, represented the board.

201 KAR 30:180. Distance education standards.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 3, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:200. Reciprocity requirements for applicants licensed or certified in another state.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 4 to delete outdated material previously incorporated by reference that is no longer used by the agency. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Marriage and Family Therapists: Board

201 KAR 32:035. Supervision of marriage and family therapist associates. Angela Evans, assistant attorney general, represented the board.

In response to questions by Co-Chair Harris, Ms. Evans stated that the national association established the standard for five (5) years of supervision. This administrative regulation was being amended to specifically establish that standard for one (1) of the categories of therapists. The Diagnostic and Statistical Manual of Mental Disorders had been updated and was in the process of being updated again.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; (4) to amend Section 2 to reinsert the current provisions regarding who a board-approved supervisor shall be until December 31, 2015 before the new provisions take effect on January 1, 2016; (5) to amend Section 3 to clarify what constitutes an undue burden for the board approving an alternative form of supervision other than direct face-to-face contact between a supervisor and a supervisee; (6) to amend Section 3 to reference the current editions of the Diagnostic and Statistical Manual of Mental Disorders; and (7) to amend Section 8 to clarify the time frame for the supervisee notifying the board of the extenuating circumstances in which temporary supervision is permitted. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure and Certification for Dietitians and Nutritionists: Board

201 KAR 33:010. Fees. Jeremy Reed, assistant attorney general, represented the board.

Kentucky Department of Veterans' Affairs: Veterans' Program Trust Fund: Fund

201 KAR 37:010. Kentucky Veterans' Program Trust Fund, administration of fund. Dennis Shepherd, staff attorney, represented the department.

In response to questions by Co-Chair Harris, Mr. Shepherd stated that the fund had been operating for fifteen (15) years under the previous requirements. The National Guard had not previously been included, and the department wanted to clarify what constituted appropriate fund use to avoid problems the fund had experienced. For example, sometimes funds had been allotted but went unused by the recipients.

In response to a question by Co-Chair Marzian, Mr. Shepherd stated that the fund was comprised of revenue from the veterans' specialty license plate sales and from private donations.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to: (a) make a technical correction; and (b) correct statutory citations; and (2) to amend Sections 2 and 3 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 1:410. Taking of fish by nontraditional fishing methods. Ron Brooks, fisheries director, and David Wicker, general counsel, represented the department.

In response to questions by Representative Turner, Mr. Brooks stated that alligator gar were being restocked after they had been extirpated in past decades. Alligator gar was a unique species for local ecologies and for sport fishing. Typically alligator gar did not compete with other species for food. It was possible that young alligator gar, especially in low-light conditions, could be mistaken for other gar species; therefore, fish and wildlife officers had been instructed to take that into consideration in the enforcement of this administrative regulation.

In response to a question by Co-Chair Harris, Mr. Brooks stated that the department expected it to take ten (10) to twelve (12) years to reestablish alligator gar. Currently, the department was in the fourth year of this endeavor. The species was intentionally stocked in two (2) rivers but had migrated to other waterbodies and was expected to continue to migrate.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department of Environmental Protection: Division of Water: Public Water Supply

401 KAR 8:200. Microbiological monitoring. Julie Roney, drinking water coordinator, and Larry Taylor, legislative liaison, represented the division.

In response to questions by Co-Chair Harris, Mr. Taylor stated that these administrative regulations were being updated to coincide with federal updates. Ms. Roney stated that no increased cost for drinking water treatment facilities was expected; however, there were additional steps that would be required in certain situations.

A motion was made and seconded to approve the following amendments: to amend Section 3 to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 8:300. Lead and copper.

A motion was made and seconded to approve the following amendment: to amend Section 1 to consolidate citations. Without objection, and with agreement of the agency, the amendment was approved.

401 KAR 8:700. Bottled water.

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.

Department for Natural Resources: Office of the Reclamation Guaranty Fund: Bond and Insurance Requirements

405 KAR 10:025 & E. Extension of performance bond subsidization. Keith Smith, executive director, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:060. Northpoint Training Center. Amy Barker, assistant general counsel, represented the department.

In response to a question by Co-Chair Harris, Ms. Barker stated that this administrative regulation was being updated similar to the other recent policy revisions to specific detention facilities. This was part of the annual review to retain the facility's accreditation and to update procedures as necessary.

A motion was made and seconded to approve the following amendments: (1) to amend policies 10-01-01, 11-05-02, 14-01-01, 15-03-02, 16-02-01, 17-01-01, and 25-03-01 to: (a) update citations; (b) clarify provisions; and (c) make technical changes; and (2) to amend Section 1 to change the edition date of the amended policies. Without objection, and with agreement of the agency, the amendments were approved.

Law Enforcement Council: Council

503 KAR 1:070. Training: qualifications; application. Dana Todd, assistant general counsel, represented the council.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

503 KAR 1:080. Certification of schools.

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 update citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

503 KAR 1:100. Certification of instructors.

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 update citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Juvenile Justice: Child Welfare

505 KAR 1:110. Department of Juvenile Justice Policies and Procedures: program services. Chris Gillum, facilities regional administrator; LaDonna Koebel, assistant general counsel; and Kevin Warford, quality assurance branch manager, represented the department.

Co-Chair Harris stated that he appreciated the department's willingness to further work with stakeholders to address issues of concern and to protect children in the department's care. Ms. Koebel stated that Protection and Advocacy did not have concerns regarding this administrative regulation. The Department for Public Advocacy did have changes, which the department made.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to correct policy titles and to change the edition date for the revised policies; (2) to amend policy 300 to: (a) align the definition of "meritorious good time" with KRS 197.045; and (b) clarify definitions; (3) to amend policy 300.1 to require annual rather than periodic assessment of the collective service needs of program youth; (4) to amend policy 300.2 to require admission letters to be mailed within seven rather than fourteen days to the committing judge; (5) to amend policy 301 to delete screening requirements that are contained in another policy; (6) to amend policy 301.1 to allow the personal property inventory to be kept in the youth's individual client record and to delete the provision that allowed jewelry, including medical alert jewelry and religious medallions, to be worn upon approval; (7) to amend policy 301.2 to limit culturally sensitive hair care maintenance to when a licensed professional is available and to remove hair setting and maintenance of existing cornrows from the provided services; (8) to amend policy 310 to require facility mail, telephone, and visitation procedures to be reviewed annually; (9) to amend policy 315 to allow a facility to maintain a petty cash fund of $100 from the youth activity account fund for certain specified uses; (10) to amend policy 317 to except the Cadet Leadership and Education Program from the prohibition against using exercise as punishment and to limit the allowed exercise to the Exercise of the Day; (11) to amend policy 318.2 to clarify that when a juvenile signs a disciplinary report, he is verifying that he received the report and had an opportunity to respond rather than its accuracy; (12) to amend policy 319 to reduce the youth worker to juvenile staffing ratio at youth development centers from 1:16 to 1:12 and to reduce the staff ratio at group homes from 1:8 to 2:8 except when the youth are at school; (13) to amend policy 321 to delete the requirement that a youth's parent and juvenile service worker be notified of the use of restraints resulting in injury; (14) to amend policy 324 to require notification to a youth's juvenile service worker and parents or caregiver within 24 hours of the: (a) use of mechanical restraints, other than shackling for transportation purposes; (b) initiation of therapeutic restraints; or (c) use of a physical restraint resulting in an injury to the child, except where the injury consists only of minor cuts, scratches, bruises, or red marks; (15) to amend policy 325 to require strip search procedures to be reviewed rather than reviewed and authorized by the director of medical services and the superintendent; (16) to amend policy 327 to require documented notification of a parent within two hours of a juvenile's unexpected absence from a day treatment program, foster care placement, or private child care agency; (17) to amend policy 329 to delete procedures for weekly progress summaries; (18) to amend policy 332 to require notification of a furlough seven rather than ten days before the furlough; (19) to amend policy 344 to require youths in group homes to receive library services though local school districts; (20) to amend policy 345 to require a response to a dietary request within seven business days; (21) to amend policy 347 to align the procedures for various sentence credits for youthful offenders with KRS 197.045; (22) to amend policy 351 to align the parole hearing procedures for youthful offenders with KRS 439.340; and (23) to amend policies 300, 300.2-303, 307, 308, 310, 315-318.1, 318.3, 319, 321-329, 331, 332, 334.2, 345, 347, and 351 to make minor clarifications and technical changes. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Financial Standards and Examination Division: Insurance Holding Company Systems

806 KAR 37:010. Insurance holding company systems. Russell Coy, insurance program manager, and DJ Wasson, administrative coordinator, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend

the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1 through 4, 7, 8, 9, 13, 14, 15, 18, and 19 to comply with the drafting requirements of KRS Chapter 13A; (3) to amend Section 5 to establish examples of what kinds of further material information may be requested by the commissioner to make information contained in a filing not misleading; and (4) to amend the material incorporated by reference to correct a statutory citation on Form A, which cited to a repealed statute. Without objection, and with agreement of the agency, the amendments were approved.

Horse Racing Commission: Thoroughbred Racing

810 KAR 1:027. Entries, subscriptions, and declarations. Katherine Paisley, deputy general counsel, represented the commission.

A motion was made and seconded to approve the following amendments: to amend Sections 5, 7, 9, 12, and 15 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:070. Entries, subscriptions and declarations.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 6, 7, 9, and 15 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Epidemiology and Health Planning: Communicable Diseases

902 KAR 2:055. Immunization data reporting and exchange. Jeff Jagnow, internal policy analyst, and Hollie Sands, epidemiologist, represented the cabinet.

In response to a question by Co-Chair Marzian, Ms. Sands stated that this administrative regulation discontinued requirements pertaining to childcare facilities to parallel changes made by the Centers for Disease Control and Prevention in 2008.

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 2 to state that immunization results shall be reported for kindergartens and sixth grades and on specified immunization survey forms; (3) to amend Section 3 to incorporate by reference the required forms; and (4) to amend the STATUTORY AUTHORITY paragraph and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Family Support: Supplemental Nutrition Assistance Program

921 KAR 3:035. Certification process. Elizabeth Caywood, internal policy analyst, and Jason Dunn, program director, represented the cabinet.

In response to questions by Representative Lee, Ms. Caywood stated that the six (6) month resubmission requirement was not a federally mandated policy, but was necessary because there had been problems for participants who failed to file or improperly filed a required six (6) month update. With this policy change, all participants shall resubmit the application each six (6) months. Some participants were confused about the update and did not submit the appropriate information; therefore, they had had benefits suspended. The application submittal may be made through the cabinet's Web portal, via a call services center, or through a paper submittal. The data from the six (6) month submission was not yet used at the state level in Kentucky to demonstrate the effectiveness of the program. The average household allotment was $200 to $250 per month. There was not a monthly maximum allotment because the amount was calculated based on the number of household members. The program was limited to those at or below 130 percent of the federal poverty guidelines.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 8 and the Six Month Review Form to provide additional information to the SNAP recipient about the provision and use of the recipient's Social Security number in accordance with federal review findings from September 2014. Without objection, and with agreement of the agency, the amendments were approved.

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

The following administrative regulations were deferred to the November 14, 2014, meeting of the Subcommittee:

EDUCATION PROFESSIONAL STANDARDS BOARD: Teaching Certificates

16 KAR 2:120. Emergency certification and out-of-field teaching.

FINANCE AND ADMINISTRATION CABINET: Commonwealth Office of Technology: General Administration

200 KAR 1:015. Data Breach Notification Forms.

GENERAL GOVERNMENT CABINET: Board of Licensed Professional Counselors: Board

201 KAR 36:060. Qualifying experience under supervision. Brian Judy, assistant attorney general, represented the board.

Mr. Judy requested that these administrative regulations be deferred for consideration at the November 14 meeting of the Subcommittee. Without objection, and with agreement of the Subcommittee, these administrative regulations were deferred.

201 KAR 36:080. Inactive and retired licensure status.

JUSTICE AND PUBLIC SAFETY CABINET: Law Enforcement Council: Council

503 KAR 1:090. Approval of course curriculums.

TRANSPORTATION CABINET: Kentucky Bicycle and Bikeways Commission: Motorcycle and Bicycle Safety

601 KAR 14:020. Bicycle Safety standards.

Department of Highways: Division of Maintenance: Billboards

603 KAR 10:001. Definitions.

603 KAR 10:010. Static advertising devices.

603 KAR 10:020. Electronic advertising devices.

603 KAR 10:030. Removal of vegetation related to advertising devices.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: School Terms, Attendance and Operation

702 KAR 7:140. School calendar.

FINANCE AND ADMINISTRATION CABINET: School Facilities Construction Commission: Procedures

750 KAR 1:030. Emergency and Targeted Investment Fund.

PUBLIC PROTECTION CABINET: Horse Racing Commission: Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:090. Objections and complaints.

Office of Occupations and Professions: Board of Home Inspectors: Board

815 KAR 6:001. Definitions for 815 KAR Chapter 6.

815 KAR 6:080. Continuing education provider.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Health Care: Health Services and Facilities

902 KAR 20:008. License procedures and fee schedule.

Department for Medicaid Services: Division of Policy and Operations: Hospital Service Coverage and Reimbursement

907 KAR 10:825. Diagnosis-related group (DRG) inpatient hospital reimbursement.

Department for Behavioral Health, Developmental and Intellectual Disabilities: Division of Administration and Financial Management: Institutional Care

908 KAR 3:060. “Means test” for determining patient liability.

The Subcommittee adjourned at 1:50 p.m. until November 14, 2014 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 24, 2014

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 24, 2014, having been referred to the Committee on September 3, 2014, pursuant to KRS 13A.290(6):

815 KAR 20:040
815 KAR 20:050
815 KAR 20:060
815 KAR 20:070
815 KAR 20:090
815 KAR 20:130
815 KAR 20:191

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 24, 2014 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 7, 2014

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Transportation for its meeting of October 7, 2014, having been referred to the Committee on October 1, 2014, pursuant to KRS 13A.290(6):

601 KAR 11:030

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 7, 2014 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of October 15, 2014

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 15, 2014, having been referred to the Committee on October 1, 2014, pursuant to KRS 13A.290(6):

201 KAR 2:030
201 KAR 2:040
900 KAR 6:070
900 KAR 7:030
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
910 KAR 1:180

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October

15, 2014 meeting, which are hereby incorporated by reference.

SPECIAL SUBCOMMITTEE ON ENERGY
Meeting of October 17, 2014

The following administrative regulations were available for consideration and placed on the agenda of the Special Subcommittee on Energy for its meeting of October 17, 2014, having been referred to the Subcommittee on October 1, 2014, pursuant to KRS 13A.290(6). The Special Subcommittee did not take action on these administrative regulations because a quorum was not present.

807 KAR 5:001
807 KAR 5:011
807 KAR 5:068
807 KAR 5:069
807 KAR 5:075
807 KAR 5:076
807 KAR 5:110
807 KAR 5:120

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 17, 2014 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **E - 2**

The Locator Index lists all administrative regulations published in VOLUME 41 of the *Administrative Register of Kentucky* from July 2014 through June 2015. 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 40 are those administrative regulations that were originally published in VOLUME 40 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2014 Kentucky Administrative Regulations Service* was published.

KRS Index **E - 11**

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 41 of the *Administrative Register of Kentucky*.

Technical Amendment Index **E - 17**

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2014 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.312(2), or 13A.320(1)(d). 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 **E - 18**

The Subject Index is a general index of administrative regulations published in VOLUME 41 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

VOLUME 40

The administrative regulations listed under VOLUME 40 are those administrative regulations that were originally published in Volume 40 (last year's) issues of the Administrative Register but had not yet gone into effect when the 13 bound Volumes were published.

SYMBOL KEY:

* Statement of Consideration not filed by deadline
** Withdrawn before being printed in Register
**** Emergency expired after 180 days
‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))
(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.)

Regulation Number	40 Ky.R. Page No.	Effective Date
30 KAR 6:010E	2401	3-24-14
Replaced		See 41 Ky.R.
907 KAR 1:019E	1573	12-30-13
Replaced	2703	7-7-14
907 KAR 1:030E	1581	12-26-13
Replaced	2709	7-7-14
907 KAR 1:038E	1585	12-26-13
Replaced	2712	7-7-14
907 KAR 1:039E	1591	12-26-13
Replaced	2716	7-7-14
907 KAR 1:044E	1595	12-30-13
Replaced	2718	7-7-14
907 KAR 1:045E	1600	12-30-13
Replaced	2721	7-7-14
907 KAR 1:054E	1603	12-30-13
Replaced	2722	7-7-14
907 KAR 1:082E	1617	12-30-13
Replaced	2736	7-7-14
907 KAR 1:604E	1631	12-26-13
Replaced	2749	7-7-14
907 KAR 1:631E	1638	12-26-13
Replaced	2755	7-7-14
907 KAR 1:632E	1642	12-26-13
Replaced	2757	7-7-14
907 KAR 1:913E*(r)*	1646	12-26-13
907 KAR 3:005E	1648	12-26-13
Replaced	2759	7-7-14
907 KAR 8:005E	1655	12-26-13
Replaced	2765	7-7-14
907 KAR 8:010E	1657	
Reprinted	2095	12-26-13
Replaced	2765	7-7-14
907 KAR 8:015E	1660	12-26-13
Replaced	2766	7-7-14
907 KAR 8:020E	1662	12-26-13
Replaced	2767	7-7-14
907 KAR 8:025E	1665	12-26-13
Replaced	2768	7-7-14
907 KAR 8:030E	1668	12-26-13
Replaced	2769	7-7-14
907 KAR 8:035E	1671	12-26-13
Replaced	2770	7-7-14
907 KAR 10:014E	1673	12-26-13
Replaced	2771	7-7-14
907 KAR 12:020E	2109	2-6-14
Withdrawn		7-8-14
907 KAR 13:005E	1677	12-26-13
Replaced	2776	7-7-14
907 KAR 13:010E	1680	12-26-13
Replaced	2776	7-7-14
907 KAR 13:015E	1683	12-26-13
Replaced	2777	7-7-14
907 KAR 15:005E	1686	12-30-13
Replaced	2778	7-7-14
907 KAR 15:010E	1688	
Reprinted	2098	12-30-13
Replaced	2779	7-7-14
907 KAR 15:015E	1691	12-30-13
Replaced	2788	7-7-14
907 KAR 18:001E	2404	3-24-14
Replaced		See 41 Ky.R.
907 KAR 18:005E	2405	3-24-14
Replaced		See 41 Ky.R.
908 KAR 2:240E	2112	2-6-14
Replaced	2793	6-18-14
908 KAR 2:250E	2115	2-6-14
Replaced	2795	6-18-14

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	40 Ky.R. Page No.	Effective Date
16 KAR 2:010		
Amended	2584	See 41 Ky.R.
16 KAR 4:060		
Amended	2581	See 41 Ky.R.
30 KAR 6:010	2646	See 41 Ky.R.
102 KAR 1:270		
Amended	2320	
As Amended	2675	7-7-14
102 KAR 1:320		
Amended	2321	
As Amended	2675	7-7-14
103 KAR 43:330		
Amended	2589	See 41 Ky.R.
109 KAR 15:020		
Amended	2194	
As Amended	2411	
As Amended	2678	6-25-14
201 KAR 3:025		
Amended	2325	7-7-14
201 KAR 3:090		
Amended	2326	
As Amended	2678	7-7-14
201 KAR 8:016	2385	
As Amended	2679	See 41 Ky.R.
201 KAR 8:532		
Amended	2328	
As Amended	2680	6-18-14
201 KAR 8:550		
Amended	2332	See 41 Ky.R.
201 KAR 8:562		
Amended	2338	
As Amended	2683	6-18-14
201 KAR 8:571		
Amended	2343	See 41 Ky.R.
201 KAR 9:300		
Repealed	2648	8-1-14
201 KAR 9:301*(r)*	2648	8-1-14
201 KAR 9:305		
Amended	2591	See 41 Ky.R.
201 KAR 9:307		
Amended	2592	See 41 Ky.R.
201 KAR 11:011		
Amended	2810	See 41 Ky.R.

Regulation Number	40 Ky.R. Page No.	Effective Date
201 KAR 11:105		
Amended	2811	See 41 Ky.R.
201 KAR 11:121		
Amended	2812	See 41 Ky.R.
201 KAR 14:085		
Amended	1863	See 41 Ky.R.
201 KAR 14:090		
Amended	2195	
As Amended	2686	7-7-14
201 KAR 14:115		
Amended	1866	
As Amended	2688	7-7-14
201 KAR 18:192		
Amended	2593	See 41 Ky.R.
201 KAR 20:056		
Amended	2596	See 41 Ky.R.
201 KAR 20:057		
Amended	2599	See 41 Ky.R.
201 KAR 20:161		
Amended	2602	See 41 Ky.R.
201 KAR 20:360		
Amended	2346	See 41 Ky.R.
201 KAR 20:370		
Amended	2605	See 41 Ky.R.
201 KAR 20:411		
Amended	2607	See 41 Ky.R.
201 KAR 20:450		
Amended	2609	See 41 Ky.R.
201 KAR 22:040		
Amended	2612	See 41 Ky.R.
201 KAR 22:160		
Amended	2227	See 41 Ky.R.
201 KAR 23:015		
Amended	2614	See 41 Ky.R.
201 KAR 34:060	2387	See 41 Ky.R.
201 KAR 42:035		
Amended	2202	See 41 Ky.R.
201 KAR 42:040		
Amended	2204	See 41 Ky.R.
201 KAR 42:060		
Amended	2206	See 41 Ky.R.
201 KAR 42:080		
Amended	2207	See 41 Ky.R.
201 KAR 42:110		
Amended	2210	See 41 Ky.R.
201 KAR 43:100	2649	See 41 Ky.R.
301 KAR 1:201		
Amended	2814	See 41 Ky.R.
301 KAR 2:132		
Amended	2349	
As Amended	2689	7-7-14
301 KAR 2:300		
Amended	2615	See 41 Ky.R.
500 KAR 8:030		
Amended	2219	
As Amended	2692	7-7-14
501 KAR 6:020		
Amended	2353	See 41 Ky.R.
501 KAR 6:110		
Amended	2819	See 41 Ky.R.
505 KAR 1:110		
Amended	2821	See 41 Ky.R.
600 KAR 6:040		
Amended	2355	7-1-14
601 KAR 1:230	2389	
As Amended	2694	7-1-14
601 KAR 14:020		
Amended	2223	
603 KAR 10:001	2019	
Amended	2453	
603 KAR 10:010		
Amended	1889	
Amended	2456	
603 KAR 10:020	2022	
Amended	2474	
603 KAR 10:030	2027	
Amended	2478	
702 KAR 7:065		
Amended	2618	See 41 Ky.R.
704 KAR 3:345		
Repealed	2925	8-11-14
704 KAR 3:346*(r)*	2925	8-11-14
704 KAR 3:370	2651	See 41 Ky.R.
739 KAR 2:090	2231	
Amended	2798	See 41 Ky.R.
803 KAR 2:300		
Amended	2823	9-5-14
803 KAR 2:306		
Amended	2825	9-5-14
803 KAR 2:308		
Amended	2828	9-5-14
803 KAR 2:309		
Amended	2830	9-5-14
803 KAR 2:314		
Amended	2832	9-5-14
803 KAR 2:317		
Amended	2834	9-5-14
803 KAR 2:318		
Amended	2837	9-5-14
803 KAR 2:400		
Amended	2839	See 41 Ky.R.
803 KAR 2:404		
Amended	2841	9-5-14
803 KAR 2:406		
Amended	2843	See 41 Ky.R.
803 KAR 2:412		
Amended	2845	See 41 Ky.R.
803 KAR 2:421		
Amended	2849	9-5-14
803 KAR 2:423		
Amended	2851	9-5-14
803 KAR 2:500		
Amended	2852	9-5-14
803 KAR 2:505		
Amended	2854	See 41 Ky.R.
803 KAR 2:550		
Repealed	2926	9-5-14
803 KAR 2:551*(r)*	2926	9-5-14
803 KAR 50:010		
Amended	1440	
As Amended	2695	7-7-14
804 KAR 1:051*(r)*	2391	7-7-14
804 KAR 1:100		
Amended	2857	9-5-14
804 KAR 9:050		
Amended	2358	
As Amended	2702	7-7-14
804 KAR 11:040	2927	10-3-14
806 KAR 30:020		
Amended	2622	See 41 Ky.R.
806 KAR 38:100		
Amended	2623	See 41 Ky.R.
806 KAR 47:010		
Amended	2629	See 41 Ky.R.
815 KAR 7:120		
Amended	2630	8-1-14
815 KAR 7:125		
Amended	2633	8-1-14
900 KAR 6:055		
Amended	2858	See 41 Ky.R.
900 KAR 6:070		
Amended	2860	See 41 Ky.R.

Regulation Number	40 Ky.R. Page No.	Effective Date
900 KAR 6:075		
Amended	2862	See 41 Ky.R.
900 KAR 7:030		
Amended	2865	See 41 Ky.R.
902 KAR 30:001		
Amended	2869	See 41 Ky.R.
902 KAR 30:110		
Amended	2872	See 41 Ky.R.
902 KAR 30:120		
Amended	2876	See 41 Ky.R.
902 KAR 30:130		
Amended	2879	See 41 Ky.R.
902 KAR 30:150		
Amended	2883	See 41 Ky.R.
902 KAR 30:160		
Amended	2887	10-15-14
902 KAR 30:180		
Amended	2889	See 41 Ky.R.
902 KAR 30:200		
Amended	2893	10-15-14
902 KAR 55:045		
Amended	2635	See 41 Ky.R.
902 KAR 55:090		
Amended	2639	10-3-14
907 KAR 1:019		
Amended	1933	
As Amended	2703	7-7-14
907 KAR 1:030		
Amended	1941	
As Amended	2709	7-7-14
907 KAR 1:038		
Amended	1945	
Amended	2481	
As Amended	2712	7-7-14
907 KAR 1:039		
Amended	1951	
As Amended	2716	7-7-14
907 KAR 1:044		
Amended	1955	
Amended	2487	
As Amended	2718	7-7-14
907 KAR 1:045		
Amended	1959	
Amended	2492	
As Amended	2721	7-7-14
907 KAR 1:054		
Amended	1962	
Amended	2495	
As Amended	2722	7-7-14
907 KAR 1:082		
Amended	1977	
Amended	2510	
As Amended	2736	7-7-14
907 KAR 1:604		
Amended	1991	
Amended	2524	
As Amended	2749	7-7-14
907 KAR 1:631		
Amended	1998	
Amended	2532	
As Amended	2755	7-7-14
907 KAR 1:632	2034	
Amended	2536	
As Amended	2757	7-7-14
907 KAR 1:835		
Amended	2899	See 41 Ky.R.
907 KAR 3:005		
Amended	2002	
Amended	2540	
As Amended	2759	7-7-14
907 KAR 8:005	2038	
As Amended	2765	7-7-14
907 KAR 8:010	2040	
As Amended	2765	7-7-14
907 KAR 8:015	2043	
Amended	2547	
As Amended	2766	7-7-14
907 KAR 8:020	2045	
As Amended	2767	7-7-14
907 KAR 8:025	2048	
Amended	2550	
As Amended	2768	7-7-14
907 KAR 8:030	2051	
As Amended	2769	7-7-14
907 KAR 8:035	2054	
Amended	2552	
As Amended	2770	7-7-14
907 KAR 10:014		
Amended	2009	
Amended	2554	
As Amended	2771	7-7-14
907 KAR 10:825		
Amended	1491	
Amended	2305	
907 KAR 13:005	2056	
As Amended	2776	7-7-14
907 KAR 13:010	2058	
Amended	2560	
As Amended	2776	7-7-14
907 KAR 13:015	2062	
As Amended	2777	7-7-14
907 KAR 15:005	2064	
Amended	2564	
As Amended	2778	7-7-14
907 KAR 15:010	2066	
Amended	2566	
As Amended	2779	7-7-14
907 KAR 15:015	2076	
Amended	2577	
As Amended	2788	7-7-14
907 KAR 18:001	2658	See 41 Ky.R.
907 KAR 18:005	2660	See 41 Ky.R.
908 KAR 2:240	2234	
As Amended	2793	6-18-14
908 KAR 2:250	2236	
As Amended	2795	6-18-14
910 KAR 2:040		
Amended	2361	
AmComments	2801	See 41 Ky.R.
921 KAR 1:430		
Amended	2642	8-1-14
921 KAR 2:055		
Amended	2369	See 41 Ky.R.
921 KAR 2:060		
Amended	2910	9-5-14
921 KAR 3:030		
Amended	2912	9-5-14
921 KAR 3:042		
Amended	2914	9-5-14
921 KAR 3:050		
Amended	2917	9-5-14
921 KAR 3:060		
Amended	2921	9-5-14
921 KAR 3:070		
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922 KAR 1:320		
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922 KAR 1:480		
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SYMBOL KEY:
* Statement of Consideration not filed by deadline
** Withdrawn before being printed in Register
**** Emergency expired after 180 days
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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31 KAR 4:140E	372	7-22-14
31 KAR 5:010E	375	7-22-14
101 KAR 2:210	717	9-15-14
103 KAR 15:180E	4	6-5-14
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301 KAR 2:225E	719	8-22-14
405 KAR 8:030E	379	8-6-14
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405 KAR 10:025E	235	6-30-14
804 KAR 4:230E	237	7-15-14
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907 KAR 1:516E*(r)*	995	9-16-14
907 KAR 3:005E	721	8-20-14
907 KAR 15:005E	401	7-22-14
907 KAR 15:020E	404	7-22-14
907 KAR 15:025E	413	7-22-14
907 KAR 15:040E	996	9-16-14
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907 KAR 15:070E	727	8-20-14
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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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40.460	201 KAR 37:010
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136.330	103 KAR 15:180
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136.370	103 KAR 15:180
136.390	103 KAR 15:180
141.020	103 KAR 15:180
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141.63	401 KAR 8:200
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158.035	702 KAR 1:160
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158.160	702 KAR 1:160
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158.6453	703 KAR 5:122
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158.782	703 KAR 5:122
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158.805	703 KAR 5:122
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158.810	705 KAR 4:250
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160.345	16 KAR 9:080
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230.310	810 KAR 1:027
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278.300	807 KAR 5.001
	807 KAR 5:069
278.310	807 KAR 5:076
278.380	807 KAR 5:076
278.410	807 KAR 5:001
278.702	807 KAR 5:110
278.704	807 KAR 5:110
278.706	807 KAR 5:110
278.708	807 KAR 5:110
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325.270	201 KAR 1:190
332.095	791 KAR 1:070
333.130	902 KAR 2:020
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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2014 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http://www.lrc.ky.gov/home.htm.

‡ - Pursuant to KRS 13A.320(e), this indicates a technical change was made to this administrative regulation during the promulgation process.

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