ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 41, NUMBER 6
MONDAY, DECEMBER 1, 2014

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, November 14, 2014.

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The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet December 9, 2014, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **1295-1298** 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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Commissioner's Office

Medicaid Services

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Commissioner's Office

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Division of Policy and Operations

Behavioral Health

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

907 KAR 15:040 & E. Coverage provisions and requirements regarding targeted case management for individuals with a substance use disorder. ("E" expires 3/15/2015)

907 KAR 15:045 & E. Reimbursement provisions and requirements for targeted case management services for individuals with a substance use disorder. ("E" expires 3/15/2015)

907 KAR 15:050 & E. 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. ("E" expires 3/15/2015)

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907 KAR 15:060 & E. Coverage provisions and requirements regarding targeted case management for individuals with a severe mental illness and children with a severe emotional disability. ("E" expires 3/15/2015)

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Board of Medical Licensure

Board

201 KAR 9:270. Professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone. (Comments Received)
201 KAR 9:310. Continuing medical education. (Deferred from December)
201 KAR 9:450. Fee schedule regarding acupuncturists. (Deferred from December)
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Motorcycle and Bicycle Safety

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Department of Highways
Division of Maintenance

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603 KAR 10:030. Removal of vegetation related to advertising devices. (Amended After Comments) (Deferred from May)

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Department for Public Health
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Radiology

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907 KAR 3:005 & E. Coverage of physicians' services. ("E" expires 3/19/2015) (Comments Received, SOC ext.)

Division of Policy and Operations

Behavioral Health

907 KAR 15:070 & E. Coverage provisions and requirements regarding services provided by residential crisis stabilization units. ("E" expires 3/19/2015) (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.

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
301 KAR 2:221E

This emergency administrative regulation establishes season dates, limits, shooting hours, and other requirements for hunting waterfowl. Waterfowl hunting season frameworks are set annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons shall do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until days before the start of the waterfowl season. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency regulation.

KAREN WALDROP, Deputy Commissioner
For GREGORY K. JOHNSON, Commissioner
STEVEN L. BESHEAR, Governor

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(Emergency Amendment)

301 KAR 2:221E. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990
STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21
EFFECTIVE: October 27, 2014
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dark goose" means a Canada goose, white-fronted goose, or brant.
(2) "Light Goose" means a snow goose or Ross's goose.
(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60
(4) "Waterfowl" is defined by KRS 150.010(40).

Section 2. (1) Except as established in[~~authorized by~~] 301 KAR 2:222, 2:225, or 2:226, a person shall not hunt waterfowl except during the seasons established in this administrative regulation.
(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Season dates. (1) Duck, coot, and merganser. The season shall:
(a) Begin[~~Beginning~~] on Thanksgiving Day for four (4) consecutive days; and
(b) Be for fifty-six (56) consecutive days ending on the last Sunday in January of the following year.
(2) Canada goose.[~~:~~]
(a) In the Eastern, Pennyrile, and Western Goose Zones, the season shall begin[~~beginning~~] on Thanksgiving Day and continue[~~continuing~~] until[~~the last day in~~] January 31.
(b) In the Northeast Goose Zone, the season shall begin[~~: Beginning~~] on the third Saturday in December and continue until January 31[~~1 for thirty-one (31) consecutive days~~].
(3) White-fronted and brant geese. The season shall begin[~~, beginning~~] on Thanksgiving Day and continue[~~continuing~~] until[~~the last day in~~] January 31.
(4) Light goose. The season shall begin[~~:~~
~~(a) Beginning~~] on Thanksgiving Day and continue[~~continuing~~] until[~~the last day in~~] January 31.
(5) [~~; and~~
~~(b)~~] Light Goose Conservation Order.
(a) In the[~~season:~~
~~1.~~] Western Duck Zone, the season shall be[~~:~~] from February 1 through March 31, except:
1.[~~a.~~] The season shall be closed during the first full weekend in February; and
2.[~~b.~~] Youth hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226.
(b) In the[~~2.~~] Eastern Duck Zone, the season shall be from February 1 through March 31.
(6)[~~(5)~~] A person shall not hunt a light or dark goose in:
(a) The areas of Laurel River Lake as posted by sign; or
(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. In the Ballard Zone that is established in 301 KAR 2:224:
(1) A person hunting waterfowl shall:
(a) Hunt from a blind unless hunting in flooded, standing timber;
(b) Not hunt from or establish a blind:
1. Within 100 yards of another blind; or
2. Within fifty (50) yards of a property line; and
(c) Not possess more than one (1) shotgun while in a blind.
(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in 301 KAR 2:221, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits. (1) Ducks.[~~:~~] The daily limit shall be six (6), which[~~that~~] shall not include more than:
(a) Four (4) mallards;
(b) Two (2) hen mallards;
(c) Three (3) wood ducks;
(d) One (1) black duck;
(e) Two (2) redheads;
(f) Two (2) pintails;
(g) Three (3) scaup;
(h) One (1) mottled duck; or
(i) One (1)[~~Two (2)~~] canvasback.
(2) Coot. The[~~:~~] daily limit shall be fifteen (15).
(3) Merganser. The[~~:~~] daily limit shall be five (5), which shall not include more than two (2) hooded mergansers.
(4) Dark goose. The[~~:~~] daily limit shall be five (5), which[~~that~~] shall not include more than:
(a) Three (3) Canada geese;
(b) Two (2) white-fronted geese; or
(c) One (1) brant.
(5) Light goose. The[~~:~~] daily limit shall be twenty (20), except that there shall not be a limit during the Light Goose Conservation Order season.
(6) The possession limit shall be triple the daily limit, except that there shall not be a light goose possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:
(1) 2 p.m. if hunting geese in the Northeast Goose Zone during a Canada goose season;
(2) Sunset in the remainder of the state, except as established in 301 KAR 2:222; or
(3) One-half (1/2) hour after sunset if hunting light geese during the Light Goose Conservation Order season.

Section 7. Falconry Waterfowl Season and Limits. (1)

The[~~Season dates:~~

~~(a)~~] Light goose season shall be[:] November 5 through January 31.

(2)[~~; (b)~~] Light Goose Conservation Order season.

(a) In the[:

~~1.~~] Western Duck Zone, the season shall be[:] from February 1 through March 31, except:

1.[~~a.~~] The season shall be closed during the first full weekend in February; and

2.[~~b.~~] Youth hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226.

(b) In the[~~2.~~] remainder of the state, the season shall be[:] from February 1 through March 31.

(3) The season for all[~~; and~~

~~(c)~~] other waterfowl shall be from[:] November 5 through January 31.

(4) The[~~(2)~~] daily limit shall be[:] three (3) waterfowl, except that there shall not be a limit on light goose during the Light Goose Conservation Order season.

(3) The possession limit shall be nine (9)[~~: six (6)~~] waterfowl, except that there shall not be a possession limit on light goose during the Light Goose Conservation Order season.

Section 8. Permit for the Light Goose Conservation Order season. (1) A person hunting light goose during the Light Goose Conservation Order season shall first obtain a free permit by completing the online Snow Goose Conservation Order Permit process on the department's Web site at fw.ky.gov.

(2) A person hunting light goose during the Light Goose Conservation Order season shall submit a Snow Goose Conservation Order Permit Survey to the department by April 10.

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

(a) "Snow Goose Conservation Order Permit", January 2014; and

(b) "Snow Goose Conservation Order Permit Survey", January 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane[~~Game Farm Road~~], Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN WALDROP, Deputy Commissioner
For GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: October 13, 2014

FILED WITH LRC: October 27, 2014 at 4 p.m.

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2014-2015 waterfowl hunting seasons in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates and bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing hunting season and bag limit requirements and providing reasonable hunting opportunity consistent with state, national, and international management requirements and strategies.

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

(a) How the amendment will change the existing administrative regulation: This amendment will add days to the Canada goose season in Kentucky's Northeast Goose Zone. In addition, the amendment will adjust waterfowl daily bag and possession limits to reflect that permitted by federal waterfowl season frameworks under the current season structure.

(b) The necessity of the amendment to this administrative regulation: Waterfowl seasons and limits are set on an annual basis following the establishment of federal frameworks by the U.S. Fish and Wildlife Service each summer. It is the Department's responsibility to allow quality hunting opportunity within these federal frameworks. The added days will overlap the Christmas holiday period which will provide more regional opportunity for local waterfowl hunters.

(c) How does the amendment conform to 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 that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that may 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: The current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting season and bag limits.

(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 costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be an increased opportunity to hunt waterfowl in the state.

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

(a) Initially: There will not be an additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of funding to be used for 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 fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Wildlife Division and Law Enforcement Division.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(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 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 amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? No new costs will be incurred in the administration of this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No new costs will be incurred in the administration of 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters. The season on snow geese is shorter than the federal framework because migration patterns for this species result in a paucity of birds early in the federal framework. The Canada goose season in the Northeast Goose Zone is shorter than is permitted in the rest of the state because of the desire to maintain a huntable population in that region of the state.

STATEMENT OF EMERGENCY
301 KAR 2:222E

This emergency administrative regulation establishes season dates, limits, shooting hours and other requirements for hunting waterfowl on public lands. Waterfowl hunting season frameworks are set annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons shall do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until days before the start of the waterfowl season. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

KAREN WALDROP, Deputy Commissioner
For GREGORY K. JOHNSON, Commissioner
STEVEN L. BESHEAR, Governor

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(Emergency Amendment)

301 KAR 2:222E. Waterfowl hunting requirements on public lands.

RELATES TO: KRS 150.010(40), 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21

EFFECTIVE: October 27, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Blind" means a:

(a) Concealed enclosure;

(b) Pit; or

(c) Boat.

(2) "Department blind" means a permanently fixed blind structure built by the department.

(3) "Hunt site" means a specific location where waterfowl hunting is allowed, as approved by the department or the U.S. Army Corps of Engineers.

(4) "Layout blind" means a portable blind that when fully deployed allows one (1) person to be concealed above the surface of the ground.

(5) "Party" means:

(a) A person hunting alone; or

(b) Two (2) to four (4) people who share a department blind or hunt site.

(6) "Permanent blind" means a blind left in place by a waterfowl hunter longer than twenty-four (24) hours.

(7) "Regular waterfowl season" means the open waterfowl season that does not include the Light Goose Conservation Order or the September wood duck, teal, and Canada goose seasons as established in 301 KAR 2:221 and 2:225.

(8)[~~"Waterfowl" is defined by KRS 150.010(40).~~

~~(9)~~] "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. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:
(1) Longer than three and one-half (3 1/2) inches; or
(2) Containing:
(a) Lead shot;
(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
(c) Shot larger than size "T".

Section 3. (1) Except as established in this section or in Section 4 of this administrative regulation, on a Wildlife Management Area:
(a) A person hunting waterfowl shall not:
1. Establish or hunt from a permanent waterfowl blind;
2. Hunt within 200 yards of:
a. Another occupied hunt site;
b. Another legal waterfowl hunting party; or
c. An area closed to waterfowl hunting;
(b) A person shall not hunt in a designated recreation area or access point;
(c) More than four (4) persons shall not occupy a waterfowl blind or hunt site; and
(d) A hunter shall remove decoys and personal items daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt.
(2) In order to establish or use a permanent waterfowl blind or hunt site on Lake Barkley, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug Travis Wildlife Management Areas, a person:
(a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;
(b) May designate one (1) other person as a partner; and
(c) Shall not hold more than one (1) permit per area.
(3) A person who participates in a drawing for a hunt site permit shall:
(a) Be at least eighteen (18) years of age; and
(b) Possess:
1. A valid Kentucky hunting license;
2. A Kentucky waterfowl permit; and
3. A federal duck stamp.
(4) The holder of a hunt site permit shall:
(a) Construct or establish the blind or hunt site before November 20 or forfeit the permit;
(b) Not lock a waterfowl blind; and
(c) Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department based on weather or water level conflicts.
(5) A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.
(6) A waterfowl blind restriction established in this section shall not apply to a falconer if a gun or archery season is not open.

Section 4. Wildlife Management Area Requirements. (1) The regular waterfowl season provisions shall apply, as established in 301 KAR 2:221, except as established in this section.
(2) The provisions of this section shall not apply to a waterfowl hunting season that opens prior to October 15, as established in 301 KAR 2:225.
(3) A person shall not:
(a) Hunt on an area marked by a sign as closed to hunting;
(b) Enter an area marked by signs as closed to public access; or
(c) Hunt a species on an area marked by signs as closed to hunting for that species.
(4) On Wildlife Management Areas in Ballard County:
(a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:
1. The daily bag limit for ducks is greater than three (3); and
2. The daily bag limit for Canada goose is greater than or equal to two (2); and
(b) At least one (1) person in a waterfowl blind shall be eighteen (18) years of age or older if hunting in a department waterfowl blind or hunt site[~~at Ballard or Boatwright WMA~~].
(5) At Ballard WMA:
(a) The duck, coot, merganser, and goose season shall be the first Wednesday in December through the last Sunday in January;
(b) Youth waterfowl season shall be the first full weekend in February;
(c) A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Day, or New Year's Day; and
(d) A person hunting waterfowl shall:
1. Apply for the waterfowl quota hunt as established in Section 5 of this administrative regulation;
2. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream of Dam 53 to fifty (50) yards downstream from the southern border of Ballard Wildlife Management Area from October 15 through March 15; and
3. Exit the area by 2 p.m. during the regular waterfowl season, except as authorized by the department.
(6) At Boatwright WMA, including the Olmsted, Peal, and Swan Lake units:
(a) A party shall:
1. Not hunt on Monday, Tuesday, Christmas Day, or New Year's Day;
2. Obtain a daily check-in card by 8 a.m. before entering the area from the first Wednesday in December through the last Sunday in January; and
3. Check out the same day by:
a. Visiting the designated Check station prior to 8 a.m.; or
b. Depositing the check-in card at a department-designated drop point after 8 a.m.;
(b) Duck season shall be open one-half (1/2) hour before sunrise to sunset beginning Thanksgiving Day for four (4) consecutive days on areas of Boatwright WMA that are open to hunting;
(c) A department blind or hunt site shall be assigned through a daily drawing through the last Sunday in January;
(d) A department blind or hunt site shall be offered to another hunter on a first-come, first-served basis, if the blind or hunt site has not been assigned during the daily drawing;
(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season;
(f) A boat blind shall not be permitted in flooded timber, except:
1. During periods of flood if no other access is possible; or
2. A mobility-impaired hunter may hunt from a boat; and
(g) A party shall only hunt waterfowl:
1. From a department blind; or
2. From layout blinds set so that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party, and within 200 yards of a hunt site in December and January during the regular waterfowl season.
(7)[~~; (h)~~] On the Peal unit of Boatwright WMA:
(a)[~~1.~~] More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;
(b)[~~2.~~] More than four (4) parties shall not hunt at the same time on Fish Lake;
(c)[~~3.~~] More than three (3) parties shall not hunt at the same time on First Lake or Second Lake; and
(d)[~~4.~~] A party shall not hunt waterfowl except within twenty-five (25) feet of a hunt site during December and January.
(8)[~~; and~~
~~(i)~~] On the Swan Lake Unit of Boatwright WMA:
(a)[~~1.~~] A person shall not hunt waterfowl from Thanksgiving Day through the first Tuesday in December;
(b)[~~2.~~] The area open to hunting during the regular waterfowl season shall be open for the Light Goose Conservation Order season as established in 301 KAR 2:221; and
(c)[~~3.~~] Blind restrictions shall not apply to the Light Goose Conservation Order season.
(9)[~~(7)~~] Lake Barkley WMA.

(a) A permanent blind shall only be established within ten (10) yards of a blind site.

(b) Waterfowl refuge areas shall be:

1. The area west of the Cumberland River channel, as marked by buoys, between river mile fifty-one (51), at Hayes Landing Light, south to the Tennessee Valley Authority's power transmission lines at river mile fifty-five and five-tenths (55.5) shall be closed from November 1 through February 15; and

2. The area within Honker Bay and Fulton Bay, as marked by buoys and signs, which shall be closed from November 1 through March 15.

(c) A person shall not hunt from October 15 through March 15:

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(10)[~~(8)~~] Barren River Lake WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(11)[~~(9)~~] Miller Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

(12)[~~(10)~~] Lake Cumberland WMA. The following sections shall be closed to the public from October 15 through March 15:

(a) The Wesley Bend area, bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road; and

(b) The Yellowhole area, bounded by Fishing Creek Road and Hickory Nut Road.

(13)[~~(11)~~] Pioneer Weapons WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(14)[~~(12)~~] Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(d) On Black Lake, Fish Lake, Forked Lake, Indian Camp Lake, Number Four Lake, and Upper Goose Lake, all waterfowl hunting after November 1:

1. Shall be from hunt sites assigned by a random preseason drawing; and

2. Shall be within ten (10) yards of a hunt site, including periods of Mississippi River flooding.

(15)[~~(13)~~] Grayson Lake WMA. A person shall not hunt waterfowl:

(a) Within the no-wake zone at the dam site marina;

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; or

(d) Within three-quarters (3/4) of a mile from the dam.

(16)[~~(14)~~] Green River Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(17)[~~(15)~~] Kaler Bottoms WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(18) Kentucky River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(19)[~~(16)~~] Land Between the Lakes National Recreation Area.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;

2. The eastern one-third (1/3) of Smith Bay, as marked by buoys; and

3. The eastern two-thirds (2/3) of Duncan Bay, as marked by buoys;

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit if hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat on a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A person hunting waterfowl shall remove decoys and personal items daily.

(20)[~~(17)~~] Obion Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(21)[~~(18)~~] Ohio River Islands WMA.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to the power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to public access from October 15 through March 15.

(c) Shooting hours shall be one-half (1/2) hours before sunrise until 2 p.m.

(d) A person shall not enter a hunting area prior to 4 a.m. daily.

(22)[~~(19)~~] Peabody WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) The following areas, as posted by signs, shall be closed to the public from October 15 through March 15:

1. The Sinclair Mine area, bounded by Hwy 176, the haul road, and Goose Lake Road; and

2. The Ken area, bounded by Wysox Road, H2 Road, H1 Road, and H6 Road.

(23)[~~(20)~~] Robinson Forest WMA. The main block of the WMA shall be closed to waterfowl hunting.

(24)[~~(21)~~] Sloughs WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall exit the area by 2 p.m. during the regular waterfowl season.

(d)[~~On the Grassy Pond Powell's Lake Unit, a person hunting waterfowl:~~

~~1. Shall hunt:~~

~~a. From a department blind; or~~

~~b. From a blind within twenty-five (25) yards of a blind site; and~~

~~2. Shall remove decoys and personal items from the area on a daily basis.~~

~~(e)~~] On the Jenny Hole-Highlands Creek and Grassy Pond Powell's Lake units[~~Unit~~], a person hunting waterfowl shall:

1. Hunt:

a. From a department blind;

b. Within twenty-five (25) yards of a hunt site; or

c. No closer than 200 yards of another hunting party; and

2. Remove decoys and personal items from the area on a daily basis.

(e)[~~(f)~~] If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds; and

2. Shall not hunt closer than 200 yards from another boat.

(f)[~~(g)~~] If hunting waterfowl on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. A person shall hunt from a blind assigned by the department through a drawing as established in Section 5 of this administrative regulation;

2. A person may occupy a permitted blind if not claimed by the

permittee within one (1) hour before sunrise;

3. A person shall not possess more than fifteen (15) shotgun shells, except that the shotgun shell possession limit shall be twenty-five (25) if:

a. The daily bag limit for ducks is greater than three (3); and

b. The daily bag limit for Canada goose is greater than or equal to two (2);

4. If under eighteen (18) years of age, a person shall be accompanied by an adult; and

5. The waterfowl blind for a mobility-impaired person shall be open to the public if the permit holder or another mobility-impaired person has not claimed the blind on that day by one (1) hour before sunrise.

(g)[~~(h)~~] The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except for:

1. Waterfowl from November 1 through March 15; and

2. The modern gun deer season.

(h)[~~(i)~~] The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(i)[~~(j)~~] A hunter drawn to hunt Sloughs WMA through a preseason draw shall submit a completed Sloughs WMA Waterfowl Hunter Survey Report at the conclusion of the hunt or shall be ineligible to participate in the waterfowl blind or quota draw the following year.

(25)[~~(22)~~] South Shore WMA.

(a) The WMA shall be closed to hunting from November 15 through January 15, except for waterfowl and dove hunting.

(b) A hunter shall use a department blind.

(c) A department blind shall be available daily on a first-come, first-served basis.

(26)[~~(23)~~] Taylorsville Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(27)[~~(24)~~] Yatesville Lake WMA. The following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north from the mouth of the Greenbrier Creek embayment to the dam, including the island.

(28)[~~(25)~~] Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(29)[~~(26)~~] Cedar Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(30)[~~(27)~~] Dix River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(31)[~~(28)~~] J.C. Williams WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

Section 5. Ballard WMA and Sloughs WMA. (1) A person applying to hunt waterfowl on Ballard WMA or the Sauerheber Unit of Sloughs WMA shall:

(a) Apply by:

1. Calling 1-877-598-2401 and completing the telephone application process; or

2. Completing the online Ballard or Sloughs Waterfowl Quota Hunt Form process on the department's Web site at fw.ky.gov;

(b) Apply from September 1 through September 30;

(c) Pay a three (3) dollar application fee for each application; and

(d) Not apply more than one (1) time for each hunt.

(2) A person drawn to hunt may bring up to three (3) additional hunters.

(3) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs that have a preseason or daily drawing.

Section 6. State Parks. (1) Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 13 through January 31 on designated areas of state parks at:

(a) Barren River;

(b) Grayson Lake;

(c) Greenbo Lake;

(d) Lake Barkley;

(e) Lincoln Homestead;

(f) Nolin Lake;

(g) Paintsville Lake;

(h) Pennyrile Lake;

(i) Rough River Lake; and

(j) Yatesville Lake.

(2) Hunters shall check in each day at the front desk of the state park or a designated check-in location on days that the park office is not open.

(3) During check-in hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

(4) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days that the park office is not open.

Section 7. Youth-Mentor and Mobility-Impaired Waterfowl Hunts. (1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries each Saturday and Sunday in January.

(2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with each youth-mentor hunt.

(3) A youth or mobility-impaired person shall register in advance and carry a department provided postcard notification on the day of the hunt.

(4) A mobility-impaired person shall also submit a mobility-impaired access permit pursuant to 301 KAR 3:026.

(5) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(6) Each youth shall not be accompanied by more than one (1) adult.

(7) One (1) adult may accompany two (2) youths.

(8) A mobility-impaired hunter may be accompanied by no more than one (1) assistant who may also hunt.

(9) A person shall:

(a)[~~Shall~~] Hunt from an established blind; and

(b)[~~Shall~~] Not change blinds.

(10) A blind shall not be used by more than four (4) hunters.

(11) A person shall only discharge a firearm from a blind.

(12) A person shall not possess more than fifteen (15) shotshells.

(13) A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.

(14) A person shall encase a firearm if traveling to and from a blind.

(15) A hunter shall:

(a) Cease hunting by noon; and

(b) Exit the area by 1 p.m.

(16) All decoys and equipment shall be removed at the end of each day's hunt.

(17) A hunter shall report harvest by depositing a completed hunt permit at the designated location.

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

(a) "Sloughs WMA Waterfowl Hunter Survey Report", January 2014; and

(b) "Ballard or Sloughs Waterfowl Quota Hunt Form", January 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane[~~Game Farm Road~~], Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN WALDROP, Deputy Commissioner
For GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary
APPROVED BY AGENCY: October 13, 2014
FILED WITH LRC: October 27, 2014 at 4 p.m.
CONTACT PERSON: Rose Mac, 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 the administrative regulation does: This administrative regulation establishes waterfowl seasons, bag limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the U.S. Fish and Wildlife Service (USFWS).
(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2014-2015 waterfowl hunting requirements on public lands in accordance with the USFWS and Department management objectives.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to establish hunting season dates, bag limits and other hunting requirements. KRS 150.360 authorizes the department to restrict methods and hunting hours for taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation assists the above statutes by managing waterfowl populations and hunting opportunity consistent with state and national management requirements and strategies.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: This amendment sets hunting dates on Ballard and the Swan Lake Unit of Boatwright WMAs, sets daily stop times for waterfowl hunting on Kentucky River and Yellowbank WMA's, and opens the Grassy Pond-Powell's Lake Unit on Sloughs WMA to walk-in waterfowl hunters.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide quality public hunting opportunity with minimal area use conflict that is consistent with meeting state and federal waterfowl management objectives.
(c) How does the amendment conform to 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 that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that may 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 of 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 in season dates and hunting requirements will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting seasons.
(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 or amended costs to those identified in question (3).
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity for quality waterfowl hunting on public areas.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: This administrative regulation change will not result in any additional cost for the Department to administer initially.
(b) On a continuing basis: There will be no additional cost on a continuing basis.
(6) What is the source of funding to be used for 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 funding to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation does not establish any fees directly or increase fees indirectly.
(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Wildlife Division and Law Enforcement Division.
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.
(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation amendment 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? No revenue will be generated by this administrative regulation amendment in subsequent years.
(c) How much will it cost to administer this program for the first year? No new costs will be incurred in the administration of this program for the first year.
(d) How much will it cost to administer this program for subsequent years? No new costs will be incurred in the administration of 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters. The greatest wintering and migrating waterfowl concentrations are located on public lands managed by the Department. The Department imposes more restrictive hunting regulations on these lands in effort to meet waterfowl management objectives while still providing quality hunting opportunity.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Commonwealth Office of Technology
(As Amended at ARRS, November 14, 2014)

200 KAR 1:015. Data Breach Notification Forms.

RELATES TO: KRS 61.932, 61.933
STATUTORY AUTHORITY: KRS 42.726(2)(b), 61.932***(2)(b)2.***, 61.933
NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.726(2)(b) authorizes the Finance and Administration Cabinet, Commonwealth Office of Technology ("COT") to promulgate administrative regulations relating to COT's duties. KRS 61.933 specifically authorizes COT to ***promulgate administrative regulations prescribing[prescribe]*** forms necessary for notification by state agencies and nonaffiliated third parties when they suspect or have determined that a breach of personal information that the state agency or nonaffiliated third party maintains or otherwise possesses on behalf of another agency has occurred. KRS 61.932***(2)(b)2.*** specifically authorizes COT to ***promulgate administrative regulations prescribing a form to be used if[prescribe forms when]*** law enforcement agencies have requested a delay of notification to allow for investigation of the suspected or determined breach. This administrative regulation establishes the required forms for notification of a suspected or determined breach of personal information or a request to delay notification by law enforcement.

Section 1. Administrative - Required Forms. (1) Finance Form FAC-001, Suspected and Determined Breach Notification Form, shall be completed by a state agency or nonaffiliated third party to notify the agency for whom it maintains or otherwise possesses personal information regarding a suspected or determined breach in data.
(2) Finance Form FAC-002, Delay Notification Record, shall be completed by a state agency or nonaffiliated third party ***if[when]*** a law enforcement agency has requested a delay of notification to allow for investigation of the suspected or determined breach.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Finance Form FAC-001, "Suspected and Determined Breach Notification Form," ***January 1, 2015[August, 2014]***; and
(b) Finance Form FAC-002, "Delay Notification Record," August, 2014.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Commonwealth Office of Technology, 101 Cold Harbor Drive, Frankfort, Kentucky 40601 Monday through Friday, 8 a.m. to 5 p.m., and on the Finance and Administration Cabinet Web site, http://finance.ky.gov/Pages/default.aspx.

STEVE RUCKER, Deputy Secretary
APPROVED BY AGENCY: August 14, 2014
FILED WITH LRC: August 14, 2014 at 10 a.m.
CONTACT PERSON: Doug Hendrix, Deputy General Counsel, Finance and Administration Cabinet, 702 Capitol Avenue, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

GENERAL GOVERNMENT CABINET
Kentucky Board of Optometric Examiners
(As Amended at Interim Joint Committee on Health and Welfare, November 19, 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 ***licensed pursuant to KRS Chapter 320[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)*.

Section 6. This administrative regulation shall not be construed as giving jurisdiction over physicians licensed under KRS Chapter 311 to the Kentucky Board of Optometric Examiners.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Professional Counselors
(As Amended at ARRS, November 14, 2014)

201 KAR 36:060. Qualifying experience under supervision.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.505(4) allows a student intern or trainee in professional counseling to use the title of "professional counselor intern" or "student in training" if the activities are performed under the supervision or direction of an approved supervisor and the activities are a part of a supervised program of study. KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. This administrative regulation establishes the requirements relating to supervision and the requirements for experience under supervision.

Section 1. Definitions. (1) "Face-to-face" means supervision that may include interactive, simultaneous video and audio media with a minimum of one ***(1)*** direct meeting per month that is in person where the supervisor and supervisee are physically present in the same room.

(2) "Individual supervision" means supervision of one (1) or two (2) supervisees with the supervisor.

(3) "Practice of ***professional*** counseling" means professional counseling services within the scope of Section 2 of this administrative regulation and which involve the application of mental health and development principals, methods or procedures, including assessment, evaluation, diagnosis, and treatment of emotional disorders or mental illnesses, to assist individuals to achieve more effective personal, social, educational, or career development and adjustment.

(4)[~~(3)~~] "Supervisee" means a licensed professional counselor associate who works with clients under supervision.

(5)[~~(4)~~] "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing professional counseling services to meet the requirements of KRS 335.525(1)(e).

(6)[~~(5)~~] "Supervisor" means a member of a mental health or behavioral-services profession listed in Section 3(1) of this administrative regulation who controls, oversees, guides, and takes responsibility for the professional clinical counseling practice of a supervisee in accordance with this administrative regulation.

(7) "Supervisor of record" means the person listed on the supervisory agreement and approved by the board in accordance with Section 4 of this administrative regulation.

Section 2. Requirements for the Practice of Professional Counseling. (1) The practice of professional counseling shall be based on knowledge of areas including interpersonal, cognitive, cognitive behavioral, psychodynamics, human relations, crisis intervention, psychopathology, group dynamics, and effective methods and strategies necessary to help the client achieve mental, vocational, emotional, physical, social, moral, and spiritual development and adjustment throughout the client's life span.

(2) In providing counseling services, a licensee shall possess and utilize skills in the following areas:

(a) The helping relationship, including counseling theory and practice;

(b) Human growth and development;

(c) Lifestyle and career development;

(d) Group dynamics, process, counseling, and consulting;

(e) Assessment, appraisal, and testing of individuals;

(f) Social and cultural foundation, including multicultural issues;

(g) Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;

(h) Research and evaluation; and

(i) Professional orientation and ethics.

Section 3. Supervision. (1) A supervisor shall be properly credentialed under Kentucky law as a member of one (1) of the following professions:

(a) A licensed professional clinical counselor;

(b) A licensed psychologist, licensed psychological practitioner, or a certified psychologist with autonomous functioning;

(c) A licensed clinical social worker;

(d) A licensed psychiatrist;

(e) A nurse with a master's degree and psychiatric certification; or

(f) A licensed marriage and family therapist.

(2) The supervisor shall:

(a) Provide supervision to a person obtaining the experience required under KRS 335.525(1)(e);

(b) Not have:

1. An unresolved citation filed against the supervisor by the board that licenses or certifies that profession;

2. A suspended or probated license or certificate;

3. An order from the board under which the supervisor is licensed or certified prohibiting the supervisor from providing supervision; or

4. A previous or existing dual relationship or other personal relationship with a supervisee;

(c) Have been in the practice of his or her profession for two (2) years following licensure or certification in that profession; and

(d) Have completed the supervisor training required by subsection (3) of this section.***[1. Except as provided in subparagraph 2 of this paragraph,]*** Experience acquired under the supervision of an individual who has not completed the supervisor training shall not count toward the requirements of KRS 335.525(1)(e).***[2. A supervisor who is providing supervision on the effective date of this administrative regulation shall complete the training by October 31, 2010.]***

(3) In order to obtain board-approved supervisor status, a supervisor shall complete three (3) hours of board-approved supervisor training.

(a) The board-approved supervisor training shall cover Kentucky law governing the practice of professional counseling, both administrative regulations and statutes, theories of supervision, ethical issues involved in supervision, and supervisor responsibilities such as logs, treatment, planning, recording, and proper documentation.

(b) Supervisor training shall be conducted by an instructor who is a Licensed Professional Clinical Counselor and who has demonstrated proficiency in the curriculum established in paragraph (a) of this subsection.

(c) To maintain board-approved supervisor status, a supervisor shall retake the board-approved supervisor training every three (3) years.

(4) A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than twelve (12)[~~six (6)~~] persons obtaining experience for certification or licensure at the same time.

(5) After January 1, 2016, a supervisor ***of record*** shall be licensed by the board as a licensed professional clinical counselor, except as established in this subsection.

(a) A ***supervisory[~~supervision~~]*** agreement that has been approved prior to January 1, 2016 that involves other licensees listed in***[~~201 KAR 36:060,~~]*** Section 3(1) ***of this administrative regulation[,]*** may continue to be in effect until termination.

(b) An applicant may submit a hardship request for the ability to utilize one (1) of the licensees listed in***[~~201 KAR 36:060,~~]*** Section 3(1) ***of this administrative regulation[,]*** if the nature of the circumstances shows that the ability to obtain supervision from a licensed professional clinical counselor is prohibited by the difficulty to do so. ***Circumstances showing difficulty in obtaining supervision may include engaging in the practice of counseling in a rural area where there is not a licensed professional clinical counselor within a fifty (50) mile radius, or working within an agency where no licensed professional clinical counselor is available to supervise.*** The submittal for a hardship exemption shall be accompanied by the ***supervisory[~~supervision~~]*** agreement.

Section 4. Supervisory Agreement. (1) A supervisee shall enter into a written supervisory agreement with an approved supervisor. The supervisory agreement shall contain:

(a) The name and address of the supervisee;

(b) The name, address, license or certification number, and number of years of practice of the supervisor of record;

(c) The name, address, license or certification number, and number of years of practice of other supervisors;

(d) The agency, institution, or organization where the experience will be received;

(e) A detailed description of the nature of the practice including the type of:

1. Clients which will be seen;

2. Therapies and treatment modalities which will be used including the prospective length of treatment; and

3. Problems which will be treated;

(f) The nature, duration, and frequency of the supervision, including the:

1. Number of hours of supervision per week;

2. Number of hours of individual supervision;

3. Methodology for transmission of case information; and

4. Number of hours of face-to-face supervision which meet the requirements of KRS 335.525(1)(e);

(g) A statement that supervision shall:

1. Occur a minimum of three (3) times per month and one (1) hour per meeting for a full time practice which consists of twenty-five (25) clock hours or greater per week; or

2. Occur a minimum of one (1) hour for every thirty (30) hours of client contact for a part time practice which consists of less than twenty-five (25) clock hours per week;

(h) The conditions or procedures for termination of the supervision;

(i) A statement that:

1. The supervisor of record understands that the supervisor shall be held accountable to the board for the care given to the supervisee's clients; and

2. The supervisor of record meets the criteria established in Section 3 of this administrative regulation; and

(j) The signatures of both the supervisor and the supervisee. If a supervisee changes his or her supervisor of record as identified in the supervisory agreement, the supervisee shall submit a new supervisory agreement which sets forth the information required by subsection (1) of this section and which identifies the new supervisor of record.

(2) The supervisory agreement shall be approved by the board before the licensed professional counselor associate begins the practice of professional counseling.

Section 5. Experience Under Supervision. (1) Experience under supervision shall consist of:

(a) Direct responsibility for a specific individual or group of clients; and

(b) Broad exposure and opportunity for skill enhancement with a variety of developmental issues, dysfunctions, diagnoses, acuity levels, and population groups.

(2) The board may***[~~, in its discretion~~]*** for extenuating circumstances beyond the supervisor's or supervisee's control, grant a limited waiver from the requirement of one ***(1)*** monthly direct in person meeting to satisfy the face-to-face supervision requirements upon written request by the supervisor and supervisee. ***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.***

Section 6. Supervision Requirements. (1) Supervision shall relate specifically to the qualifying experience and shall focus on:

(a) The appropriate diagnosis of a client problem leading to proficiency in applying professionally recognized clinical nomenclature;

(b) The development and modification of the treatment plan;

(c) The development of treatment skills suitable to each phase of the therapeutic process;

(d) Ethical problems in the practice of professional counseling; and

(e) The development and use of the professional self in the therapeutic process.

(2) A supervisee shall not continue to practice professional counseling if:

(a) The conditions for supervision set forth in the supervisory agreement required by Section 4 of this administrative regulation are not followed; or

(b) The supervisory agreement is terminated for any reason.

(3) If the terms of the supervisory agreement are not being met by the supervisee, the supervisor shall immediately notify this board in writing.

(4) The supervisor and supervisee shall sign and file with the board a ***Counseling Associate*** Semi-Annual Report Form with their renewal application and by April 1st of each year.

Section 7. Evaluation by Board. The period of supervised experience required by KRS 335.525(1)(e) shall be evaluated by the board according to one (1) of the following methods:

(1) A candidate who seeks to obtain experience in the Commonwealth of Kentucky shall submit the supervisory agreement required by Section 4 of this administrative regulation for the experience prior to beginning to accrue the required experience; or

(2) A candidate who obtained the experience in another state shall submit documentation of the hours of supervision with the Application for Licensed Professional Clinical Counselor and Licensing Via Endorsement for Reciprocity required by 201 KAR 36:070. The documentation shall also:

(a) Provide information that verifies that the requirements for the license or certificate of the supervisor from the state in which the license or certificate was held are substantially equivalent to the requirements for that license or certificate in Kentucky;

(b) Provide information that verifies that the supervisor is in good standing with the certifying or licensing state; and

(c) Demonstrate that the practice and supervision requirements in the state from which the candidate is applying are substantially equivalent to the requirements established under this administrative regulation.

Section 8. Temporary Supervision. (1) In extenuating circumstances, if a licensed professional counselor associate is without supervision, the associate may continue working up to sixty (60) calendar days under the supervision of a qualified mental health provider while an appropriate board-approved supervisor is sought and a new ***supervisory agreement[~~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 ten (10) days of the occurrence, the supervisee shall notify the board of the extenuating circumstances which have caused the supervisee to require temporary supervision.

(b) The supervisee 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.

(c) The written plan shall include:

1. The name of the temporary supervisor;

2. Verification of the credential held by the temporary supervisor;

3. An email address and a postal address for the temporary supervisor and the supervisee; and

4. A telephone number for the temporary supervisor.

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

(a) "***[~~LPCA~~]***Supervisory Agreement", ***September 2014[~~March 2010~~]***; and

(b) "Counseling Associate Semi-Annual Report", October 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Professional Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARTIN WESLEY, Chair

APPROVED BY AGENCY: June 20, 2014

FILED WITH LRC: July 3, 2014 at 1 p.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.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Professional Counselors
(As Amended at ARRS, November 14, 2014)

201 KAR 36:070. *Application,* education, and examination requirements.

RELATES TO: KRS ***335.500,*** 335.525(1)(c), (d), (f), 335.527(1)(a)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 335.515(3) requires the board to promulgate administrative regulations to carry out and enforce the provisions of KRS 335.500 to 335.599.*** 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 ***application,*** 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 ***(1)*** 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 indi-

vidual 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. ***Application for Licensure. (1)(a) Each applicant for licensure as a licensed professional clinical counselor shall:***

1. Submit an Application for Licensed Professional Clinical Counselor and Licensing Via Endorsement for Reciprocity to the board;

2. Pay the fee as established in 201 KAR 36:020; and

3. Submit proof of passage of one (1) of the examinations required under Section 3 of this administrative regulation.

(b) If applying for licensure via endorsement for reciprocity, an applicant shall:

1. Meet the requirements in paragraph (a)1. and 2. of this subsection; and

2. Submit an official transcript.

(2) Each applicant for licensure as a licensed professional counselor associate shall:

(a) Submit an Application for Licensed Professional Counselor Associate to the board;

(b) Pay the fee as established in 201 KAR 36:020; and

(c) Submit an official transcript.

Section 5. 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

(b)[~~(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.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Professional Counselors
(As Amended at ARRS, November 14, 2014)

201 KAR 36:080. Inactive and retired licensure status.

RELATES TO: KRS 335.515(9)

STATUTORY AUTHORITY: KRS 335.515(3), (9)

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 335.515(3) requires the board to promulgate administrative regulations to carry out and enforce the provisions of KRS 335.500 to 335.599.*** KRS 335.515(9) ***authorizes[~~enables~~]*** the board to grant retired or inactive status to ***a credential holder[~~licensees~~]*** under the conditions set forth by administrative regulation. This administrative regulation establishes the requirements for retired and inactive licensure status.

Section 1. Inactive licensure status may be granted to a ***licensed professional clinical counselor and a licensed professional counselor associate[~~licensee~~]*** pursuant to KRS 335.515(9) upon written request to the board. (1) The licensee shall be relieved of his ***or her*** obligation to pay the renewal fee, but shall meet the requirements for continuing education as established in 201 KAR 36:030.

(2) The licensee may return to active status within three (3) years of being granted inactive licensure status upon:

(a) Written notification to the board;

(b) Payment of the current renewal fee as set forth in 201 KAR 36:020; and

(c) Demonstration of compliance with all continuing education requirements, as established in 201 KAR 36:030, for each year during the period of inactive licensure status.

(3)(a) If the licensee does not reactivate his ***or her*** license before the third anniversary date of the granting of inactive licensure status, then the license shall be forfeited.

(b) Following forfeiture of a license under the provisions of this ***subsection[~~section~~]***, any person desiring to practice professional counseling in the Commonwealth of Kentucky shall:

1. File ***with the board*** a new Application for ***Licensed Professional Clinical Counselor and Licensing Via Endorsement for Reciprocity, or Application for Licensed Professional Counselor Associate, as incorporated by reference in 201 KAR 36:070[~~licensure with the board~~]***;

2. Pay the initial fees for application and licensure ***as established in 201 KAR 36:020***; and

3. Meet current requirements for initial licensure, as established by statute and administrative regulation.

Section 2. Retired status may be granted to a ***licensed professional clinical counselor and a licensed professional counselor associate[~~licensee~~]*** pursuant to KRS 335.515(9) upon written request to the board.

(1) A licensee may be granted retired status if that individual:

(a) Is at least sixty-five (65) years old;

(b) Has requested retired status at the beginning of the license renewal period; and

(c) Has retired from practice in all jurisdictions and is not conducting an active practice in any jurisdiction.

(2) A licensee who has been granted retired status shall not be required to meet the continuing education requirements under 201 KAR 36:030.

(3) The licensee shall be relieved of the obligation to pay the

renewal fee.

(4) Following the retirement of a license under the provisions of this subsection, any person desiring to practice professional counseling in the Commonwealth of Kentucky shall:

(a)[~~1.~~] File ***with the board*** a new Application for ***Licensed Professional Clinical Counselor and Licensing Via Endorsement for Reciprocity, or Application for Licensed Professional Counselor Associate, as incorporated by reference in 201 KAR 36:070[~~licensure with the board~~]***;

(b)[~~2.~~] Pay the initial fees for application and licensure ***as established in 201 KAR 36:020***; and

(c)[~~3.~~] Meet current requirements for initial licensure, as established by statute and administrative regulation, including retaking the examination.

MARTIN WESLEY, Chair

APPROVED BY AGENCY: June 20, 2014

FILED WITH LRC: July 3, 2014 at 1 p.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.

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, November 14, 2014)

301 KAR 1:220. Reciprocal agreements regarding fishing.

RELATES TO: KRS[~~150.170,~~] 150.340, 150.440, 150.445, 150.450, 150.470[~~, 150.525~~]

STATUTORY AUTHORITY: KRS 150.025(1)(h), 150.170(8)[~~(7)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(h) authorizes the department to promulgate administrative regulations necessary to carry out the purposes of the chapter. KRS 150.170(8)[~~(7)~~] authorizes the department to enter into reciprocal agreements with other states so that a person[~~where persons~~] holding a resident or nonresident fishing license issued by the state shall be permitted to perform the acts authorized by the license upon waters adjacent to the common boundaries. This administrative regulation establishes reciprocal agreement requirements between[~~procedures for applying the administrative regulations of~~] Kentucky and[~~the states~~] bordering states[~~Kentucky who share common waters~~].

Section 1. Reciprocal Agreements. (1) Pursuant to KRS 150.170(8)[~~(7)~~], Kentucky has entered into reciprocal agreements with[~~its~~] neighboring states regarding fishing requirements[~~guidelines~~] on common bodies of water.

(2) Persons fishing in[~~the~~] Dale Hollow Lake, the Big South Fork portion of the Cumberland River, a portion of the Kentucky Lake, the Mississippi River,[~~and~~] the Ohio River, and the Big Sandy and Tug Fork rivers shall comply with[~~follow~~] the fishing requirements[~~guidelines established~~] in the reciprocal agreements ***incorporated by reference[~~established~~]*** in ***[~~Section 10 of~~]***this administrative regulation.

Section 2. Dale Hollow Lake. (1) Pursuant to the[a] reciprocal agreement ***incorporated by reference[~~established~~]*** in ***[~~Section 10(1)(a) of~~]***this administrative regulation[~~between the department and the Tennessee Wildlife Resources Agency~~], a valid sport fishing license issued by the State of Tennessee shall be valid in the Kentucky portions of the Wolf River embayment of Dale Hollow Lake:

(a) Beginning where Wolf River joins the main part of the lake at the Obey River; and

(b) Including the Illwill Creek Embayment.

(2) A person fishing within the boundaries established[~~in the waters delineated~~] in subsection (1) of this section shall observe the size and creel limits of the state in which the person[~~he or she~~] is licensed.

Section 3. Big South Fork of the Cumberland River. (1) Pursuant to the[a] reciprocal agreement ***incorporated by reference[~~established~~]*** in ***[~~Section 10(1)(b) of~~]***this administrative regulation[~~between the department and the Tennessee Wildlife Resources Agency~~], a valid sport fishing license issued by either Tennessee or Kentucky shall be valid in the portion of the Big South Fork of the Cumberland River beginning at the Leatherwood Ford bridge at Highway 297 in Tennessee and continuing to the Highway 92 Bridge at Yamacraw, Kentucky.

(2) A person fishing within the boundaries established[~~in the waters described~~] in subsection (1) of this section shall observe the size and creel limits of the state in which the person[~~he or she~~] is licensed.

Section 4.[~~The~~] Kentucky Lake. (1) Pursuant to ***the[a]*** reciprocal agreement ***incorporated by reference[~~established~~]*** in ***[~~Section 10(1)(c) of~~]*** this administrative regulation, Kentucky and Tennessee shall recognize the sport fishing licenses of the two (2) states on the portion of Kentucky Lake south of the Eggners Ferry Bridge (U.S. 68 and Hwy 80) in Kentucky and north of the Governor Ned McWhorter Bridge (U.S. 79 and Hwy 76) in Tennessee.

(2) Embayments and tributaries within this portion of Kentucky Lake, except Blood River embayment, shall be included[~~in the reciprocal agreement~~].

(3) The Blood River embayment boundary shall be delineated[~~defined~~] as a straight line between opposite points where the embayment connects to the main body of Kentucky Lake.

(4) A sport fishing license holder from either state may fish from the bank or attach legal sport fishing trot or limb lines in the reciprocal portion of Kentucky Lake.

(5) Sport fishing license holders shall abide by the administrative regulations of the state in whose waters they are fishing.

(6) Wildlife enforcement officials of either state shall have the right to inspect the licenses, permits, creel,[~~catches~~] and equipment of any person on the reciprocal portion of Kentucky Lake subject to the laws of either Kentucky or Tennessee.

Section 5. Mississippi River. (1) Pursuant to the[a] reciprocal agreement ***incorporated by reference[~~established~~]*** in ***[~~Section 10(1)(d) of~~]***this administrative regulation, Kentucky and Missouri shall recognize the sport fishing licenses and permits of Kentucky and Missouri.

(2) The main channel of the Mississippi River and the immediate side or secondary channels or chutes are included when referring to the Mississippi River.

(3) Sport fishing license or permit holders may:

(a) Fish from[~~or attach a device or equipment to~~] land along the river under the jurisdiction of the other state; or

(b) Attach a fishing device or equipment on land along the river under the jurisdiction of the other state.

(4) Landowner permission is required to fish from the banks of the Mississippi River.

(5) A person[~~(4) Sport fishing licensees and permittees~~] shall abide by the administrative regulations of the state in whose waters the person[~~he or she~~] is fishing, but should[~~. If~~] the two (2) states' administrative regulations conflict, a person[~~licensee and permittee~~] shall comply with the more[~~most~~] restrictive of the two (2) states' administrative regulations.

(6)[~~(5)~~] Wildlife enforcement officials of Kentucky and Missouri shall have the right to inspect the licenses, permits, creel,[~~catches~~] and equipment of any person on common portions of the Mississippi River subject to the laws of Kentucky and Missouri.

(7)[~~(6)~~] Exclusions to the agreement.

(a) Oxbow and floodplain lakes and tributary streams are not included in the agreement.

(b) A tributary is delineated by a straight line between opposite points where the stream or river connects with the main body of the Mississippi River.

(c)[~~(b)~~] The agreement does not include backwaters that extend onto the floodplain or tributaries when the river exceeds thirty-three (33) feet at the gauging station at Cairo, Illinois.

Section 6. Ohio River Agreement with the State of Ohio. (1) Pursuant to the[a] reciprocal agreement ***incorporated by refer-***

ence[established] in ***[~~Section 10(1)(e) of~~]***this administrative regulation, Ohio and Kentucky shall recognize the sport fishing license and appropriate stamps of Ohio and Kentucky on the main stem and from the banks of the Ohio River where the Ohio River forms the state boundary, excluding embayments and tributaries[~~where the Ohio River forms the state boundary~~].

(2) A person shall comply with the administrative regulations of the state in which the license or permit is issued[~~licensee's and permittee's issuing state's administrative regulations shall apply to the licensee and permittee~~], except that a person who is[~~the administrative regulations of the state where sport~~] fishing[~~is occurring apply if the licensee is fishing~~] from a[~~the~~] bank shall comply with the administrative regulations of the state where the bank is located.

(3) Commercial fishing and musseling are prohibited[~~not permitted~~] on the Ohio side[~~Ohio's portion~~] of the river.

(4) Wildlife enforcement officials of either state shall have the right to inspect the license,[~~harvest limits,~~] creel,[~~limits~~] and equipment of a person on the Ohio River subject to the laws of either state.

(5) An embayment and a tributary are delineated by a straight line between opposite points where the embayment or tributary connects with the main body of the Ohio River.

Section 7. Ohio River Agreement with the State of Indiana. (1) Pursuant to the reciprocal agreement ***incorporated by reference[established]*** in ***[~~Section 10(1)(f) of~~]***this administrative regulation, Indiana and Kentucky shall recognize the sport fishing license and appropriate stamps or permits of Indiana and Kentucky on the main stem and from the banks of the Ohio River where the Ohio River forms the state boundary, excluding embayments and tributaries.

(2) A person shall comply with the administrative regulations of the state in which the license or permit is issued, except that a person who is fishing from a bank shall comply with the administrative regulations of the state where the bank is located.

(3) Wildlife enforcement officials of either state shall have the right to inspect the license, creel, and equipment of a person on common portions of the Ohio River subject to the laws of either state.

Section 8. Ohio River Agreement with the State of Illinois. (1) Pursuant to the reciprocal agreement ***incorporated by reference[established]*** in ***[~~Section 10(1)(g) of~~]***this administrative regulation, Illinois and Kentucky shall recognize the sport fishing license and appropriate stamps or permits of Illinois and Kentucky on the main stem and from the banks of the Ohio River where the Ohio River forms the state boundary, excluding embayments and tributaries.

(2) A person shall comply with the administrative regulations of the state in which the license or permit is issued, except if the two (2) states' administrative regulations conflict, a person shall comply with the more restrictive of the two (2) states' administrative regulations.

(3) A person who is fishing from a bank shall comply with the administrative regulations of the state where the bank is located.

(4) Embayment and tributary boundaries are delineated by a straight line between opposite points where the tributary or embayment connects with the main body of the Ohio River.

(5) Wildlife enforcement officials of either state shall have the right to inspect the license, creel, and equipment of a person on common portions of the Ohio River subject to the laws of either state.

Section 9. Big Sandy and Tug Fork Rivers. (1) Pursuant to the reciprocal agreement ***incorporated by reference[established]*** in ***[~~Section 10(1)(h) of~~]***this administrative regulation, West Virginia and Kentucky shall recognize the sport fishing license and appropriate stamps or permits of West Virginia and Kentucky on the main stem and from the banks of the Big Sandy and Tug Fork rivers from the confluence of the Big Sandy River with the Ohio River to the Virginia state line, excluding tributaries, except that Kentucky residents shall hold any applicable Kentucky resident license.

(2) A person shall comply with the administrative regulations of the state in which the license or permit is issued, except that a person who is fishing from a bank shall comply with the administrative regulations of the state where the bank is located.

(3) A tributary boundary is delineated by a straight line between opposite points where the tributary connects with the main body of the Big Sandy or Tug Fork rivers.

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

(a) "Reciprocal Fishing Agreement Between the Department and the Tennessee Wildlife Resources Agency Regarding Dale Hollow Lake", November 1997 edition["];

(b) "Reciprocal Fishing Agreement Between the Department and the Tennessee Wildlife Resources Agency Regarding the Big South Fork of the Cumberland River", November 1997 edition["];

(c) "Reciprocal Agreement on Kentucky Lake between the Commonwealth of Kentucky and the State of Tennessee", August 2003 edition["];

(d) "Reciprocal Fishing Agreement Between the Department and the State of Missouri Regarding the Mississippi River", February 2003 edition["];[~~and~~]

(e) "Reciprocal Agreement Between the Department and the Ohio Department of Natural Resources", November 2002 edition;

(f) "Revision to Memorandum of Understanding between the Commonwealth of Kentucky, Department of Fish and Wildlife Resources and the State of Indiana Department of Natural Resources", October 2007 edition;

(g) "Amendment to the Memorandum of Understanding between the Commonwealth of Kentucky, Department of Fish and Wildlife Resources and the State of Illinois Department of Natural Resources", November 2007 edition; and

(h) "Reciprocal Agreement Between The State Of West Virginia And The Commonwealth Of Kentucky Regarding Reciprocal Hunting and Fishing Privileges", July 2014 edition["].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane[~~Game Farm Road~~], Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN WALDROP, Deputy Commissioner
For GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary
APPROVED BY AGENCY: September 7, 2014
FILED WITH LRC: September 11, 2014 at 4 p.m.
CONTACT PERSON: Rose Mac, 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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 14, 2014)

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 ***– 1544[~~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 ***– 1544[~~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 ***granting[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 ***permit applicant submit[following be submitted]*** to the cabinet after approval by the Mine Safety and Health Administration (MSHA)***, a***:

(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; ***and***

(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 ***each application for a permit[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. ***(1)*** An application shall contain the following information, except that the submission of a Social Security number ***shall be[is]*** voluntary:

(a)[(1)] A statement ***identifying if[as to whether]*** the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(b)[(2)] The name, address, telephone number and, as applicable, Social Security number***,*** and employer identification number of the:

1.[(a)] Applicant;

2.[(b)] Applicant's resident agent; and

3.[(c)] Person who will pay the abandoned mine land reclamation fee***;[.]***

(c)[(3)] For each person who owns or controls the applicant:

1.[(a)] The person's name, address, Social Security number, and employer identification number;

2.[(b)] The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

3.[(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;

4.[(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

5.[(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***;[.]***

(d)[(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:

1.[(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

2.[(b)] Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure***;[.]***

(e)[(5)] The names and addresses of:

1.[(a)] Every legal or equitable owner of record of the property to be mined;

2.[(b)] The holders of record of any leasehold interest in the property to be mined; and

3.[(c)] Any purchaser of record, under a real estate contract, of the property to be mined***;[.]***

(f)[(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***;[.]***

(g)[(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***;[.]***

(h)[(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***; and[.]***

(i)[(9)] A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands ***that[which]*** are contiguous to the area to be covered by the permit.

(2)[(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 ***subsection (1)(a) through (d)[subsections (1) through (4)]*** of this section.

(3)[(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.

(4)[(12)] The permittee shall submit updates of the ***[following]***information ***established in paragraphs (a) through (c) of this subsection*** in writing to the cabinet within thirty (30) days of the effective date of any change. ***An update[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) ***If[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. ***(1)*** Each application shall contain***[the following information]***:

(a)[(1)] A statement ***identifying if[of whether]*** the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

1.[(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

2.[(b)] Forfeited a coal mining performance bond or similar security deposited in lieu of bond***;[.]***

(b)[(2)] If any suspension, revocation, or forfeiture as ***established[described]*** in ***paragraph (a) of this*** subsection***[(1) of this section]*** has occurred, ***[the application shall contain]***a statement of the facts involved, including:

1.[(a)] Identification number and date of issuance of the permit, and date and amount of bond or similar security;

2.[(b)]) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

3.[(c)] The current status of the permit, bond, or similar security involved;

4.[(d)] The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

5.[(e)] The current status of these proceedings***; and[.]***

(c)[(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:

1.[(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;

2.[(b)] A brief description of the particular violation alleged in the notice;

3.[(c)] The final resolution of each violation notice, if any;

4.[(d)] For each violation notice that has not been finally resolved:

a.[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]***

b.[2.] The current status of the proceedings and of the violation notice; and

c.[3.] The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(2)[(4)] After an applicant has been notified that his or her application has been approved, but before the permit is issued, ***if necessary, the applicant shall update the application to indicate what change, if any,[the applicant shall, as applicable, update, correct, or indicate that no change]*** has occurred in the information previously submitted under ***subsection (1)[subsections (1) through (3)]*** of this section.

(3)[(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 ***who[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 ***if[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 ***identifying if[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 ***the applicant[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 ***a description[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 ***description[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) ***According to historical databases,*** 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 ***that[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 ***that[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) ***if[whether]*** reclamation as required by 405 KAR can be accomplished and ***if[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, ***shall[will]*** demonstrate ***if[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 ***if this information is***:

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)***(a)*** The application shall contain baseline geologic information collected from the permit area ***that[which]*** shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

1.[(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.

a.[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]***

b.[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.

c.[3.] The area and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata ***that[which]*** have a potential to produce acid drainage and to determine the area and vertical extent of aquifers ***that[which]*** may be adversely affected.

d.[4.] If the vertical extent, and the area and vertical density of sampling specified in ***clauses a. through c. of this subparagraph[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***;[.]***

2.[(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***; and[.]***

3.[(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.

(b)[(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 ***that[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***; and[.]***

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers ***that[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 ***shall[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 ***that[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 ***that[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 ***if[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 ***shall[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 ***that[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 ***that[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 ***if[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 ***if[where]*** appropriate, of all streams, lakes, impoundments, and other surface water bodies ***that[which]*** receive run-off from watersheds ***that[which]*** will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds ***that[which]*** will be disturbed by the mining operation ***and[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 ***that[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 ***that[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 ***shall[may]*** require surface water information in addition to that ***established[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) ***Upon[When requested by the]*** cabinet ***request***, 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 ***shall[may]*** request additional data ***if[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) ***If[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 ***if[~~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. ***[~~Section~~]***1531 ***– 1544[~~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 ***if[~~whether~~]*** fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis ***in consultation with Kentucky Department of Fish and Wildlife Resources and U.S. Fish and Wildlife***.

(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 ***if[~~whether~~]*** lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland ***if[~~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 ***that[~~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 ***if[~~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***; and[~~,~~]***

(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 ***if[~~whether~~]*** the proposed permit area has been previously mined, and, if so ***and[~~, the following information~~]***, if available***, the***:

(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 ***that[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; ***and***

(l) Other relevant information required by ***30 C.F.R. 779.24(l)[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; ***and***

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the ***requirements established in subparagraphs 1. through 3. of this paragraph.[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, ***if[where this is]*** impractical, at locations and in a manner ***sufficient to demonstrate that the surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24, can be feasibly accomplished in accordance with the mining and reclamation plan[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 ***that[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 ***if there is a material change***. 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 ***a narrative[, 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 ***pursuant to paragraphs (a) through (c) of this subsection.[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 ***that[~~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. ***Chapter 85[~~7401 et seq.~~]***), the Clean Water Act (33 U.S.C. ***Chapter 26[~~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 ***that describe the structure's[~~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, ***of if[~~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 ***of if[~~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 ***that[~~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 ***shall[~~will~~]*** meet with regard to***:***

(a) Ground vibration and airblast***;***

(b)[~~,~~] The bases for the ground vibration and airblast limitations***; and***

(c)[~~, 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 ***that[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 ***that[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, ***if[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***; and[.]***

(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***, pursuant to 30 C.F.R. 780.31,*** 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 ***necessary[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; ***and***

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 ***that[which]*** are not currently being used for water supply but have the potential to be developed as a water supply source***; and[.]***.

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 ***if[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 ***upon application[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 ***if[~~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 ***if[~~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 ***that[~~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 ***that[~~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***; and[~~.~~]***

(d) Consideration ***of[~~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 ***activity.[~~activities~~]*** the application shall contain an air pollution control plan ***that[~~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 ***as[~~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 im-

poundments, 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 ***if[~~whether~~]*** a protection and enhancement plan is necessary shall be made on a case-by-case basis ***in consultation with Kentucky Department of Fish and Wildlife Resources and U.S. Fish and Wildlife***.

(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 ***that[~~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 ***that[~~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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 14, 2014)

405 KAR 8:040. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151, ***350.421,*** 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 ***- 1544[~~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 ***– 1544[~~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 ***granting[~~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 ***establishes that[~~makes~~]*** underground mines and surface mines ***shall be*** 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 ***shall[~~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 ***submitted application shall include a[applicant's]*** determination of probable hydrologic consequences shall include a finding on ***if[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 ***submission[that the following be submitted]*** to the cabinet after approval by the Mine Safety and Health Administration (MSHA) ***of a***:

(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; ***and***

(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 ***shall apply to a[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 ***for:***

1.[applicable to all applications for] Permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010***; and***

2. The submission of a Technical Information for a Mining Permit, Form MPA-03, incorporated by reference 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. ***(1)*** An application shall contain the following information, except that the submission of a Social Security number ***shall be[is]*** voluntary:

(a)[(1)] A statement as to ***if[whether]*** the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(b)[(2)] The name, address, telephone number and, ***if[as]*** applicable, Social Security number and employer identification number of the:

1.[(a)] Applicant;

2.[(b)] Applicant's resident agent; and

3.[(c)] Person who will pay the abandoned mine land reclamation fee***;***

(c)[. (3)] For each person who owns or controls the applicant:

1.[(a)] The person's name, address, Social Security number, and employer identification number;

2.[(b)] The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

3.[(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;

4.[(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

5.[(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***;***

(d)[. (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:

1.[(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

2.[(b)] Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure***;[.]***

(e)[(5)] The names and addresses of:

1.[(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;

2.[(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

3.[(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***;[.]***

(f)[(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***;[.]***

(g)[(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***;[.]***

(h)[(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***; and[.]***

(i)[(9)] A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands ***that[which]*** are contiguous to the area to be covered by the permit.

(2)[(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 ***subsection (1)(a) through (d)[subsections (1) through (4)]*** of this section***.***

(3)[(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.

(4)[(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***. The update shall include***:

(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) ***If[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. ***(1)*** Each application shall contain***[the following information]***:

(a)[(1)] A statement of ***if[whether]*** the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

1.[(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

2.[(b)] Forfeited a coal mining performance bond or similar security deposited in lieu of bond***;[.]***

(b)[(2)] If any suspension, revocation, or forfeiture, as ***established[described]*** in ***paragraph (a) of this*** subsection***[(1) of this section,]*** has occurred, ***[the application shall contain]***a statement of the facts involved, including:

1.[(a)] Identification number and date of issuance of the permit, and date and amount of bond or similar security;

2.[(b)] Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

3.[(c)] The current status of the permit, bond, or similar security involved;

4.[(d)] The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

5.[(e)] The current status of these proceedings***; and[.]***

(c)[(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:

1.[(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;

2.[(b)] A brief description of the particular violation alleged in the notice;

3.[(c)] The final resolution of each violation notice, if any;

4.[(d)] For each violation notice that has not been finally resolved:

a.[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]***

b.[2.] The current status of the proceedings and of the violation notice; and

c.[3.] The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(2)[(4)] After an applicant has been notified that his or her application has been approved, but before the permit is issued, ***if necessary, the applicant shall update the application to indicate what change, if any,[the applicant shall, as applicable, update, correct, or indicate that no change]*** has occurred in the information previously submitted under ***subsection (1)[subsections (1) through (3)]*** of this section.

(3)[(5)] Upon request by a small operator**,** the cabinet shall provide to the small operator, with regard to ***a person[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 ***405 KAR Chapters 7 through 26[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 ***if[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 ***in which[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 ***if[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) ***According to historical databases,*** 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 ***that shall[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) ***if[whether]*** reclamation as required by 405 KAR can be accomplished and ***if[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 ***that[which]***, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, ***shall[will]*** demonstrate ***if[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 ***if this information is***:

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 ***established in this subsection if[listed above when]*** feasible.

Section 13. Baseline Geologic Information. (1)***(a)*** The application shall contain baseline geologic information collected from the permit area ***that[which]*** shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

1.[(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.

a.(i)[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

(ii)[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 ***that[which]*** may be impacted by the mining operation.

b. If[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 ***that[which]*** lie between the coal seam and the aquifer.

c.[4.] The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata ***that[which]*** have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers ***that[which]*** may be adversely affected.

d.[5.] If the vertical extent, and the areal and vertical density of sampling ***established[specified]*** in ***clauses a. through c. of this subparagraph[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***;[.]***

2.a.[(b)1.] To identify strata ***that[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

b.[2.] To identify strata ***that[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***;[.]***

3.[(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***; and[.]***

4.[(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.

(b)[(e)] Collection of geologic information from the permit area as required in this subsection ***shall[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 ***that[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 ***that[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 ***that[which]*** may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed***;[.]***

3. ***If[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, ***if[whether]*** located above or below the coal seam to be mined, which lie between the coal seam and the aquifers***; and[.]***

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***; and[.]***

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers ***that[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 ***shall[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 ***that[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 ***that[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 ***that[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 ***if[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 ***established[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 ***shall[may]*** require groundwater information in addition to that ***established[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 ***that[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 ***that[which]*** are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body ***that[which]*** is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal***[;]*** and ***if[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 ***if[where]*** appropriate, of all streams, lakes, impoundments, and other surface water bodies ***that[which]*** receive run-off from watersheds ***that[which]*** will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds ***that[which]*** will be disturbed by the mining operation ***that[which]*** may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging op-

erations, or other similar facilities, including the location of any discharges ***that[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 ***that[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 ***shall[may]*** require surface water information in addition to that ***established[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 ***that[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) ***If[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 ***shall[may]*** request additional data ***if[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) ***If[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) ***If[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, ***may[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 ***– 1544[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 ***if[whether]*** fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis ***in consultation with Kentucky Department of Fish and Wildlife Resources and U.S. Fish and Wildlife***.

(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 ***if[whether]*** lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland ***if[where]*** the applicant ***demonstrates[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 ***that[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 ***that[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 ***if[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 ***that[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 ***that[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 ***in considering[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 ***that[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 ***upon application[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 ***if[whether]*** the proposed permit area has been previously mined, and, if so, the following information, if available ***the***:

(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 ***that[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 ***that[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; ***and***

(l) Other relevant information required by ***30 C.F.R. 783.24(l)[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 ***that[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; ***and***

(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 ***requirements established in subparagraphs 1. through 3. of this paragraph.***[~~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, ***if***[~~where this is~~] impractical, at locations and in a manner ***sufficient to demonstrate that the surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24, can be feasibly accomplished in accordance with the mining and reclamation plan***[~~as specified by the cabinet~~].

2. ***If***[~~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 ***established***[~~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 ***if there is a material change***. 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 ***a narrative***[~~, 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 ***established***[~~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 ***established in paragraphs (a) through (c) of this subsection.***[~~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, ***based on***[~~of~~] the anticipated final surface configuration to be achieved for the affected areas;

12. Location of each water and any subsidence monitoring point; ***and***

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:

1. Schedule of revegetation;

2. Species and amounts per acre of seeds and seedlings to be used;

3. Methods to be used in planting and seeding;

4. Mulching techniques;

5. Irrigation, if appropriate***;***

6.[~~, and~~] Pest and disease control measures, if any;

7. Measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and

8. 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 ***that***[~~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. ***Chapter 85***~~[7401 et seq.]~~), the Clean Water Act (33 U.S.C. ***Chapter 26***~~[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 ***that***~~[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, ***if***~~[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 ***of if***~~[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 ***that***~~[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 ***shall***~~[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 ***established***~~[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 ***a***~~[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, ***the owner***~~[he]~~ may submit in writing to the cabinet and to the permittee, a detailed description of the specific areas of disagreement. ***If necessary,*** the cabinet ***shall***~~[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 ***shall be required***~~[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 ***other available information indicates***~~[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 ***that***~~[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 ***established***~~[described]~~ in paragraphs (d), (e), and (g) of this subsection will be taken to prevent or minimize subsidence and subsidence related damage~~[;]~~ and, ***if***~~[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, ***if***~~[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 ***in which***~~[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 min-

imization 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 ***if[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, ***if[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***; and[.]***

(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) ***If necessary,*** the cabinet ***shall[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 ***shall[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 ***established[identified]*** under subsection (1) of this section. The design shall ***include[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 ***necessary[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; ***and***

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 ***that[~~which~~]*** are not currently being used for water supply but have the potential to be developed as a water supply source***; and[~~.~~]***

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 ***if[~~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 ***upon[~~at the time the~~]*** application ***submittal[~~is submitted~~]***.

(f) An application for a major revision to a permit shall be reviewed by the cabinet to determine ***if[~~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 ***if[~~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.

(a) 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.

(b) 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.

(c) 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 ***that[~~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 ***paragraphs (a) through (d) of this subsection.[~~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 ***that[~~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 de-

scription 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 ***that[~~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, ***16 USC 1531 – 1544,*** during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved ***as[~~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 ***if[~~whether~~]*** a protection and enhancement plan is necessary shall be made on a case-by-case basis ***in consultation with Kentucky Department of Fish and Wildlife Resources and U.S. Fish and Wildlife***.

(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 ***that[~~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 ***that[~~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; ***and***

(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 ***shall[~~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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 14, 2014)

501 KAR 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS 72.020, 72.025(5), 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 department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Luther Luckett Correctional Complex.

Section 1. Incorporation by Reference. (1) "Luther Luckett Correctional Complex policies and procedures", ***November 14[~~September 15~~]***, 2014[~~July 26, 2013~~], are incorporated by reference. Luther Luckett Correctional Complex Policies and Procedures include:

LLCC 02-05-03	Inmate Canteen Committee (Amended 5/15/12)
LLCC 02-05-05	Inmate Canteen (Amended 5/15/12)
LLCC 02-06-01	Inmate Control of Personal Funds (Amended 5/15/12)
LLCC 02-06-02	Storage and Disposition of Monies Received on Weekends, Holidays and between 4 p.m. and 8 a.m. Weekdays (Amended 5/15/12)
LLCC 05-02-02	Outside Consultation and Research (Amended 5/15/12)
LLCC 06-01-01	Offender Information (Amended 9/15/14[~~Added 7/26/13~~])
LLCC 06-02-01	Open Records (Amended 5/15/12)
LLCC 08-04-01	Fire Safety (Amended 7/10/12)
LLCC 09-14-02	Guidelines for Contractors (Amended 7/10/12)
LLCC 09-18-01	Search Plan (Amended 5/15/12)
LLCC 09-18-03	Contraband Control: Collection, Preservation, Disposition of Contraband, and Identification of Physical Evidence (Amended 5/15/12)
LLCC 09-25-01	Procedure for Maintaining Current Inmate Photographs (Amended ***11/14/14[~~9/15/14~~]***[~~5/15/12~~])
LLCC 09-29-01	Inmate Death (Amended 7/10/12)
LLCC 10-01-01	Special Management Inmates (Amended ***11/14/14[~~9/15/14~~]***[~~7/10/12~~])
LLCC 11-01-01	Dining Room Guidelines (Amended 7/26/13)
LLCC 11-02-01	Food Services: Security (Amended 5/15/12)
LLCC 11-03-01	Food Services: General Guidelines (Amended 5/15/12)
LLCC 11-04-01	Food Service Meals (Amended 5/15/12)
LLCC 11-04-02	Food Service: Menu, Nutrition and Special Diets (Amended 5/15/12)
LLCC 11-05-02	Health Requirements of Food Handlers (Amended 5/15/12)
LLCC 11-06-01	Food Services: Inspections and Sanitation (Amended 7/10/12)
LLCC 11-07-01	Food Services: Purchasing, Storage and Farm Products (Amended 5/15/12)
LLCC 12-01-01	Sanitation, Living Condition Standards and Clothing Issues (Amended ***11/14/14[~~9/15/14~~]***[~~5/15/12~~])
LLCC 12-02-01	Laundry Services (Amended 7/10/12)
LLCC 12-03-01	Vermin and Insect Control (Amended 5/15/12)
LLCC 12-04-01	Personal Hygiene Items: Issuance and Replacement Schedule (Amended 5/15/12)
LLCC 13-02-01	Access to Healthcare (Amended 5/15/12)
LLCC 13-02-02	Specialized Health Services (Amended 5/15/12)
LLCC 13-02-03	Vision Care, Prostheses and Orthodontic Devices (Amended 7/10/12)
LLCC 13-02-05	Medical Services Co-pay (Amended 11/12/13)
LLCC 13-03-01	Mental Health Services (Amended 5/15/12)
LLCC 13-03-02	Use of Psychotropic Medications (Amended 5/15/12)
LLCC 13-04-01	Inmate Medical Screenings and Health Evaluations (Amended 7/26/13)
LLCC 13-04-02	Health Education and Special Health Programs (Added 7/26/13)
LLCC 13-04-06	Psychological and Psychiatric Records (Added 5/15/12)
LLCC 13-05-02	Self-Administration of Medication (Inmate) (Amended 7/26/13)
LLCC 13-06-01	Health Records (Amended 7/26/13)
LLCC 13-06-03	Notification of Inmate Family of Serious Illness, Surgery or Inmate Death (Amended 7/26/13)
LLCC 13-07-01	Serious and Infectious Diseases (Amended 7/26/13)
LLCC 13-07-02	Medical Waste Management (Amended 5/15/12)
LLCC 13-08-01	Restraint Approval (Amended 5/15/12)
LLCC 13-09-01	Substance Abuse and Chemical Dependency Program (Amended 5/15/12)
[~~LLCC 14-01-01~~	~~Inmate Rights and Responsibilities (Amended 5/15/12)~~]
LLCC 14-03-01	Inmate Legal Services (Amended ***11/14/14[~~9/15/14~~]***[~~5/15/12~~])
LLCC 15-01-02	Inmate Housing Assignment (Amended 5/15/12)
LLCC 15-01-03	Operational Procedures of the Units (Amended 5/15/12)
LLCC 15-01-04	Rules of the Unit (Amended ***11/14/14[~~9/15/14~~]***[~~7/26/13~~])
LLCC 15-01-08	Searches and Control of Excess Property (Amended 7/26/13)
LLCC 15-01-09	Laundry Unit Services (Amended 9/15/14[~~5/15/12~~])
LLCC 16-01-01	Inmate Correspondence (Amended 5/15/12)
LLCC 16-01-02	Inmate Privileged or Legal Mail (Amended 5/15/12)
LLCC 16-01-03	Inmate Packages (Amended 5/15/12)
LLCC 16-02-01	Inmate Visiting (Amended 7/26/13)
LLCC 16-02-02	Extended and Special Visits (Amended 5/15/12)
LLCC 16-02-03	Restricted Visitation Privileges (Amended 5/15/12)
LLCC 16-03-04	Parole Hearings: Media and Visitors (Amended 5/15/12)
LLCC 17-01-01	Inmate Transportation, Reception and Discharge Process (Amended 5/15/12)
LLCC 17-03-01	Assessment and Orientation (Amended ***11/14/14[~~9/15/14~~]***[~~7/26/13~~])
LLCC 17-04-01	Personal Property Control (Amended 5/15/12)
LLCC 17-04-02	Missing or Stolen Inmate Personal Property (Amended 5/15/12)
LLCC 17-05-01	Appliances to Outside Dealers for Repair (Amended 7/10/12)
LLCC 18-01-01	Meritorious Housing (Amended 7/26/13)
LLCC 18-02-01	Minimum Security Unit Operations (Amended 7/26/13)
LLCC 19-01-02	Job Assignments and Dismissals (Amended ***11/14/14[~~9/15/14~~]***[~~7/26/13~~])
LLCC 20-01-01	Educational Programs (Amended 7/26/13)
LLCC 21-01-01	Library Services (Amended 5/15/12)
LLCC 22-01-01	Recreation and Inmate Activities (Amended

9/12/14[~~5/15/12~~])
LLCC 22-02-01 Inmate Clubs and Organizations (Amended 5/15/12)
LLCC 22-02-02 Inmate Photographs Project (Amended 5/15/12)
LLCC 22-05-02 Arts and Crafts Program (Amended 5/15/12)
LLCC 23-01-01 Religious Program (Amended ***11/14/14[~~9/15/14~~]***[~~7/26/13~~])
LLCC 23-01-03 Inmate Family Emergency Notification (Amended ***11/14/14[~~9/15/14~~]***[~~5/15/12~~])
LLCC 24-01-01 Counseling and Social Services (Amended 7/26/13)
LLCC 25-01-01 Final Release (Amended 5/15/12)
LLCC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 9/15/14[~~5/15/12~~])
LLCC 26-02-01 Use of Students (Amended 5/15/12)
LLCC 26-02-02 Student and Volunteer Identification Badges (Amended 5/15/12)
LLCC 26-03-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel, Students, and Volunteers (Amended 5/15/12)

(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: September 12, 2014
FILED WITH LRC: September 15, 2014 at 11 a.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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, November 14, 2014)

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, ***158.838,*** 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 156.070(1) requires the Kentucky Board of Education to manage and control all the common schools and all programs operated in these schools.*** KRS 156.160(1)(h)[~~156.160(1)(g)~~] requires the ***board[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 ***administrative regulations[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) ***The school district shall require school district employees to undergo more extensive testing for TB if:***
1. The number of active TB cases in the county 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; and
2. The local board of health, with the approval of the Kentucky Department for Public Health, requires more extensive testing for TB of school district employees[~~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 *a minimum of* 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 *a minimum of* 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 ***2[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 ***2[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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, November 14, 2014)

702 KAR 7:140. School calendar.

RELATES TO: KRS 157.320, 157.350, 158.060, 158.070

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.060, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070, 156.160, 157.320, 158.060, and 158.070 define[~~defines~~] the school day and month and require[~~requires~~] the Kentucky Board of Education (KBE)[~~board~~] to promulgate administrative regulations governing the make-up of school days missed. KRS 158.070 defines the school term and requires the KBE[~~board~~] to promulgate administrative regulations[~~for year-round school program calendars,~~] governing the use of school days ***and the establishment of[, and establishing]*** school calendars. This administrative regulation establishes the requirements for school districts to follow regarding school calendars.

Section 1. Calendar Requirements. (1) The local board of education[~~, upon recommendation of the local school district superintendent,~~] shall adopt a school calendar[~~for the upcoming school year~~] on or before May 15 of each year. The calendar shall:

(a)[~~Establish the opening and closing dates of the school term;~~

~~(b) Establish beginning and ending dates of each school month;~~

~~(c) State the number of days of instruction;~~

~~(d)~~] Establish the[~~minimum~~] length of each student attendance [~~the instructional~~] day***, in accordance with KRS 158.060(3)***; ***and***

(b) Set[~~(e) State~~] the instructional time the local board of education requires for kindergarten per KRS 157.320(7)[~~if in excess of the minimum three (3) hours of instruction;~~

~~(f) State whether the additional instructional time, if any, is planned to be banked to make up for full days which may be missed due to an emergency; and~~

~~(g) Designate days on which schools shall be dismissed~~].

(2) Opening day[~~, for planning activities without the presence of pupils,~~] shall be scheduled to occur prior to the first student attendance[~~instructional~~] day of the student instructional year[~~school term~~].

(3) Closing day[~~, for planning activities without the presence of pupils,~~] shall be scheduled to occur following the completion of the last student attendance[~~instructional~~] day of the student instructional year[~~school term~~].

(4) Local school districts shall plan***, in accordance with this subsection,[appropriately]*** for the make-up of instructional time missed due to emergency. In addition to the minimum 1,062[~~1050~~] hour student instructional year[~~term~~], the school calendar shall include days equal to the greatest number of days missed systemwide in the local school district over the preceding five (5) school years.

(5) Graduation ceremonies may be held before the end[~~shall be scheduled to occur following completion~~] of the student instructional year[~~term~~]. Diplomas shall be distributed after completion of the student instructional year.[~~(6) An up-to-date master (bell) schedule shall be on file in a school. Up-to-date master (bell) schedules for each school in a district shall be on file in the district's central office.~~]

Section 2. Calendar Approval. (1) The local board of education shall file each adopted school calendar***, which complies with the requirements of Section 1 of this administrative regulation,*** with the department[~~of Education~~] no later than June 30 of each year. The local school district shall not be paid any installment of its Support Education Excellence in Kentucky (SEEK) program allotment until the school calendar has been approved by the department[~~of Education~~].

(2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.

(3) An amended school calendar***, which complies with the requirements of Section 1 of this administrative regulation,*** shall be submitted for approval to the department[~~of Education~~] no later than June 30 of each year.

Section 3. Instructional Time Missed. (1) The regularly scheduled student attendance[~~school~~] day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the department[~~of Education~~] except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.

(2) The local school district shall not be required to make up[~~be allowed~~] a total of five (5) hours missed each student instructional[~~school~~] year[~~that do not have to be made up, and~~] that were missed[~~occurred~~] as a result of student attendance[~~school~~] days shortened due to emergency. These hours shall be reported to the department on the amended school calendar and shall be included in the calculation of total hours of instructional time for the student instructional year.

(3) Except as provided in subsection (2) of this section, all instructional time missed on student attendance[~~school~~] days short-

ened due to emergency shall be made up and shall be reported to the department[~~of Education~~] on the amended school calendar.

Section 4. Emergency Day Waiver. (1) A school district shall not be ***granted[~~considered for~~]*** an emergency day waiver[~~disaster days~~] unless the district has missed more than twenty (20) regular student attendance[~~instructional~~] days districtwide[~~system-wide~~] ***and the district has demonstrated that an extreme hardship would result if the district is not granted an emergency day waiver***. The local school district shall make up at least the first twenty (20) regular student attendance[~~instructional~~] days missed in a school year by adding these equivalent hours back into the school calendar.

(2) A local board of education request for a district-wide emergency day waiver[~~disaster days~~] shall be submitted to the commissioner[~~of Education~~] for approval. A copy of the local board order shall accompany this request. An approved emergency day waiver shall be the length of the student attendance day established in the approved calendar.

(3)[~~Section 5.~~] A local board of education may request an emergency day waiver[~~disaster days~~] if one (1) school, or part of the district, is forced to miss school on a particular student attendance day due to an emergency. The request shall be submitted to the commissioner[~~of Education~~] for approval. A copy of the local board order shall accompany this request. An approved emergency day waiver shall be the length of the student attendance day established in the approved calendar.

Section 5. Activities of the Student Attendance Day.[~~6.~~] (1) The following shall constitute the activities to be conducted during the student attendance[~~instructional school~~] day:

(a) Courses and content included in the Kentucky Core Academic Standards[~~"Program of Studies for Kentucky Schools, Grades Primary-12"~~], pursuant to 704 KAR 3:303;

(b)[~~Courses and activities included in the local school district program of studies for which a letter of assurance of compliance has been submitted to the Department of Education pursuant to 704 KAR 3:305;~~

~~(c)~~] Cocurricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and

(c)[~~(d)~~] A maximum of five (5) minutes passing time between instructional periods, and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absence from classroom instruction.

(2) The local board of education shall adopt a policy specifying cocurricular instructional activities which may be included in the student attendance[~~instructional school~~] day, as described in subsection (1)(b)[~~(c)~~] of this section.

(3) Each school shall have available a master (bell) schedule that delineates instructional time periods and noninstructional time periods for all grade levels served and schedules provided. An up-to-date master (bell) schedule shall be on file in a school. Up-to-date master (bell) schedules for each school in a district shall be on file in the district's central office.

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 of Education
ROGER L. MARCUM, Chairperson

APPROVED BY AGENCY: August 15, 2014

FILED WITH LRC: August 15, 2014 at 11 a.m.

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

FINANCE AND ADMINISTRATION CABINET
School Facilities Construction Commission
(As Amended at ARRS, November 14, 2014)

750 KAR 1:030. Emergency and Targeted Investment Fund.

RELATES TO: KRS 157.618

STATUTORY AUTHORITY: KRS 157.617, 157.618, 157.622

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.617(1) authorizes the School Facilities Construction Commission to promulgate administrative regulations for the orderly conduct of its affairs, including assisting local school districts to meet the school construction needs of the state. KRS 157.622(4) requires the commission to promulgate***[~~an~~]*** administrative ***regulations[~~regulation~~]*** governing allocations of state funds to eligible school districts.***[~~Pursuant to~~]*** KRS 157.618(5) ***requires the commission to promulgate administrative regulations to establish the process to apply for and receive funds from the Emergency and Targeted Investment Fund.[~~,~~]*** This administrative regulation establishes the application procedure ***and requirements for the commission to determine[~~the SFCC will utilize in determining~~]*** eligibility for funding from the emergency and targeted investment fund due to an unforeseen emergency or the expectation that the facility will be rendered structurally uninhabitable.

Section 1. Definitions. (1) "Applicant" means any local public school district that has submitted an application to the authority for an offer of assistance from the emergency and targeted investment fund and meets the definition of a "common school" under KRS 158.030.

(2) "Application" means the information submitted by an applicant to obtain an offer of assistance, including the need for a specific project and financial information necessary to determine eligibility for assistance from the emergency and targeted investment fund.

(3) "Available local revenues" ***is defined by KRS 157.615(1)[~~means:~~***

[~~(a) The sum of the school building fund account balance;~~

[~~(b) The bonding potential of the capital outlay and building funds;~~

[~~(c) The capital outlay fund account balance; and~~

[~~(d) Any unexpended funds in accounts for projects that have been completed at the time an application to receive an offer of assistance from the emergency and targeted investment fund is submitted~~].

(4) "Commission" means the School Facilities Construction Commission.

(5) "Core academic facility" means a public elementary or secondary educational institution that is under the administrative control of a principal and is not a program or part of another school***, except for[~~. "Core academic facility" shall not include~~]*** district-operated schools that are exclusively:

(a) Vocational-technical, special education, or preschool programs;

(b) Instructional programs operated in institutions or schools outside of the district; or

(c) Alternative schools designed to provide services to at-risk populations with unique needs.

(6) "District facility plan" means the plan developed pursuant to the survey specified by KRS 157.420 and by ***702 KAR Chapters 3 and 4[~~administrative regulations of the Kentucky Board of Education~~]***.

(7) "Offer of assistance" means a financial commitment from the commission to pay all or a portion of the debt service on bonds issued by or on behalf of the applicant or a direct loan or grant made to the applicant from the emergency and targeted investment fund.

Section 2. Eligible Applicants. (1) A local public school district may submit a cover letter and the information requested in Section 3(2) of this administrative regulation for an offer of assistance from the emergency and targeted investment fund if any of the district's

core academic facilities fall within KRS 157.618(3).

(2) Local public school districts that submit an application under KRS 157.618(3)(c) or (d) shall have levied a ten (10) cent equivalent tax for the purposes of funding major construction and renovation projects and the project shall be identified as a priority one (1) or priority two (2) in the district facility plan.

Section 3. Submission Requirements. (1) The commission ***shall[~~may~~]*** accept applications for offers of assistance from the emergency and targeted investment fund from local public school districts throughout the commission's fiscal year.

(2) Applications for offers of assistance from the fund shall include:

(a) Information about the school facility to which the offer of assistance would be applied and an explanation of any events that contributed to the facility's physical condition;

(b) Certification from local officials, engineers, or the commissioner of education that the facility meets the criteria in KRS 157.618(3);

(c) A proposed timeline for bidding and awarding contracts***,[;]*** planning and design***,[;]*** construction***,[;]*** and equipping the facility;

(d) A copy of a motion or resolution from the local board of education approving the request for an offer of assistance from the fund;

(e) An estimate from a financial advisor hired by the applicant of the amount of funding necessary to bring the facility to the Kentucky Department of Education's current standards; and

(f) Certification from the applicant that the project ***shall[~~will~~]*** adhere to the Kentucky Department of Education's best practice guidelines.

(3)***(a)*** Offers of assistance shall be limited to the lesser of:

1.[(a)] The difference between the total cost of the project and the applicant's available local revenues; or

2.[(b)] A dollar-amount limit determined by the commission at the commission's first regular meeting held after the beginning of the commission's fiscal year that shall be applied to all projects during that fiscal year.

(b) In addition to the provisions in Section 1(3) of this administrative regulation, available local revenues shall also include any unexpected funds in accounts for projects that have been completed when an application is submitted to receive an offer of assistance from the emergency and targeted investment fund.

(4) All information submitted as application for offers of assistance from the fund shall be submitted to the School Facilities Construction Commission at 229 West Main Street, Suite 102, Frankfort, Kentucky 40601. The supporting documentation shall be accompanied with a letter from the district's superintendent to the commission requesting assistance and summarizing the district's facility needs.

Section 4. Project Execution. (1) Applicants that receive offers of assistance from the emergency and targeted investment fund shall follow the process***[~~as~~]*** established in 750 KAR 1:010, Sections 6, 7***(1), (3), and (4)***, 8, and 10, concerning allowable expenditure of funds, bond issuance procedures, and refinancing savings. ***750 KAR 1:010, Section 7(2), shall not apply to this administrative regulation. Emergency and Targeted Investment [~~Notwithstanding 750 KAR 1:010, Section 7(2),~~]*** funds available for a project shall be expended for the project that is identified in the application and any balance of funds remaining after completion of the project shall be applied toward the associated bonds. If the commission's offer of assistance takes the form of a cash grant or loan, any unexpended funds shall be returned to the emergency and targeted investment fund.

(2) ***Applicants who wish to utilize alternative bond structures shall contact the School Facilities Construction Commission for approval. The executive director shall approve or disapprove the alternative bond structure based on the proposed structure's financial and economic viability[~~Applicants may utilize alternative bond structures if the structure is approved by the executive director of the School Facilities Construction Commission~~]***.

(3) If a school district receives an offer of assistance from the emergency and targeted investment fund and subsequently, as a result of litigation or insurance, receives funds for the original facility, the district shall reimburse the emergency and targeted investment fund pursuant to KRS 157.618(4).

KRISTI CULPEPPER, Executive Director

APPROVED BY AGENCY: August 15, 2014

FILED WITH LRC: August 15, 2014 at 11 a.m.

CONTACT PERSON: Kristi Culpepper, Executive Director, School Facilities Construction Commission, 229 West Main, Suite 102, Frankfort, Kentucky 40601, phone (502) 564-5582, fax (888) 979-6152.

PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division
(As Amended at ARRS, November 14, 2014)

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

RELATES TO: KRS 304.1-050, 304.2-290, 304.3-240, ***304.6[304.06]***[~~304.6-130-304.6-180~~], 304.15-410

STATUTORY AUTHORITY: ***KRS*** 304.2-110,***[KRS]*** 304.6-140

NECESSITY, FUNCTION, AND CONFORMITY:[~~EO 2004-731, signed July 9, 2004, created the Office of Insurance.~~] KRS 304.2-110 authorizes the commissioner[~~executive director~~] to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010.[~~KRS 304.6-130 requires the executive director to annually value the reserve liabilities for all outstanding life insurance policies and annuity and pure endowment contracts, as shown in the National Association of Insurance Commissioners (NAIC) Life and Accident and Health Annual Statement Form whether or not itemized in Exhibit 5 of that statement.~~] KRS 304.6-140 authorizes the commissioner[~~executive director~~] to promulgate administrative regulations approving any mortality table "adopted by the National Association of Insurance Commissioners after 1980" for use in determining the minimum standard for valuation of policies. This administrative regulation establishes the framework for valuation standards acceptable to the department[~~office~~], and ***establishes[sets out]*** the conditions under which the department actuary[~~designated by the office~~] will verify the valuation of a company's reserves without cost to the insurer.

Section 1. Definitions.[~~As used in this administrative regulation:~~] (1) "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December, 1983 by the National Association of Insurance Commissioners[~~NAIC~~].

(2) "1983 Table 'a'" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June, 1982 by the National Association of Insurance Commissioners[~~NAIC~~].

(3) "1994 GAR Table" means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force.

(4) ***"2012 Individual Annuity Mortality Period (2012 IAM Period) Table" means the period table, developed by the Society of Actuaries Committee on Life Insurance Research, containing loaded mortality rates for calendar year 2012 and containing rates, qx^{2012}.***

(5) "2012 Individual Annuity Reserve Table (2012 IAR Table)" means the generational mortality table developed by the Society of Actuaries Committee on Life Insurance Research and containing rates, qx^{2012-n}, derived from a combination of the 2012 Individual Annuity Mortality Period (2012 IAM Period) Table and Projection Scale G2 (Scale G2), using the methodology established in Section 4(3)(i) of this administrative regulation[~~"2012 IAR Table" means that generational mortality ta-~~

~~ble developed by the Society of Actuaries Committee on Life Insurance Research and containing rates, qx^{2012-n}, derived from a combination of the 2012 IAM Period Table and Projection Scale G2, using the methodology stated in Section 4(3)(i) of this administrative regulation.~~

~~(5) "2012 Individual Annuity Mortality Period Life (2012 IAM Period) Table" means the period table, developed by the Society of Actuaries Committee on Life Insurance Research, containing loaded mortality rates for calendar year 2012 and containing rates, qx^{2012}~~].

(6) "Actuarial guidelines" mean a series of interpretive guidelines approved by the ***National Association of Insurance Commissioners[NAIC]*** for inclusion in its Handbook for Financial Examiners.

(7) "Annual statement" means the annual statement required by KRS 304.3-240.

(8)[~~(4)~~]" Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research. The Annuity 2000 Mortality Table is included in the report on pages 211-249 of Volume XLVII of the Transactions of the Society of Actuaries (1995).

(9) "Commissioner" is defined by KRS 304.1-050(1).

(10) "Department" is defined by KRS ***304.1-050[~~304.2-050~~]***(2).

(11) "Department actuary" means the actuary employed by or contracted with the department for the purpose of making or verifying a valuation.

(12) "Generational mortality table" means a mortality table containing a set of mortality rates that decrease for a given age from one (1) year to the next based on a combination of a period table and a projection scale containing rates of mortality improvement.

(13) ***"Life insurances policies, annuities, and pure endowment contracts":***

(a) Means any contracts, together with all riders or endorsements and all additional benefits related thereto, whether these additional benefits are provided by policy provision or supplementary contract; and

(b) Does not mean a provision through which the insurer accepts deposits to provide future insurance, annuity, or pure endowment benefits.

(14)[~~(5) "Executive Director" means the agency head of the Office of Insurance.~~

~~(6)~~]***["Guaranteed interest contract" means a contract or contract provision in which the insurer accepts one (1) or more deposits, and on which it agrees to pay interest at one (1) or more specified rates for one (1) or more specified periods of time, but which does not involve the contingencies of mortality or morbidity.***

(14)(a)[~~(7)~~]***["Life insurance policies, annuities, and pure endowment contracts]***[contract]***" means any contracts, together with all riders or endorsements and all additional benefits related thereto, whether these additional benefits are provided by policy provision or supplementary contract.***

(b) "Life insurance policies, annuities, and pure endowment contracts" shall not mean a provision through which][whereby]***[the insurer accepts deposits to provide future insurance, annuity, or pure endowment benefits]***[~~("funding agreement") is an additional benefit~~]***[.***

(15)] "Period table" means a table of mortality rates applicable to a given calendar year.

(15)[(16)] "Projection Scale AA (Scale AA)" means a table developed by the Society of Actuaries Group Annuity Valuation Table Task Force of annual rates, AA_x, of mortality improvement by age for projecting future mortality rates beyond calendar year 1994.

(16)[(17)] "Projection Scale G2 (Scale G2)" means a table developed by the Society of Actuaries Committee on Life Insurance Research, of annual rates, $G2_x$, of mortality improvement by age for projecting future mortality rates beyond calendar year 2012.

(17)[(18)][~~(8) "NAIC" is defined in KRS 304.7-012(59).~~

~~(9) "Office" means the Office of Insurance.~~

~~(10) "Office Actuary" means the actuary of the office or an actuary employed by the office for the purpose of making or verifying a valuation.~~

~~(11)~~] "Qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements of Section ***6[7]***[~~.~~] of this administrative regulation.

(18)[(19)][~~(12)~~] "Reserve comparison***[~~form~~]***" means a ***calculation[~~form~~]***:

(a) Setting out three (3) year tabulations of extracts from a company's valuation; and

(b) Which is completed by plan, with subtotals by mortality table, interest assumption, and valuation method which correspond[~~corresponds~~] to the line entries in Exhibit 5 of the current annual statement.

Section 2. Filing Requirements for Domestic Insurers. (1) To facilitate the commissioner's[~~executive director's~~] evaluation of the valuation of reserves for life insurance policies, annuities, and pure endowment contracts made by a domestic insurer's actuary or consulting actuary, each insurer shall furnish the department[~~office~~] actuary an affidavit, signed by the qualified actuary responsible for the valuation and setting out insurance amounts and reserves on all contracts by basis of valuation and a reserve comparison***[~~form~~]***.

(2) Each domestic insurer shall maintain in corresponding order, with the necessary documentation, lists, tabulations, and working papers for policy contract obligations to be valued which shall be in readily accessible and auditable form at its home office.

Section 3. Valuation Principles. (1) Extraterritoriality. The commissioner[~~executive director~~] may question or reject any valuation made by the insurance supervisory official of another state which does not[~~appear to~~] comply with the minimum standards as provided in KRS Chapter 304.6.

(2) Nature of liabilities.[~~Most of~~] The liabilities covered by reserves for life insurance policies, annuities, and pure endowment contracts shall be generated by recognition of obligations to provide future sums of money, which are guaranteed in these contracts, and the standards of valuation set out in KRS 304.6-140 through 304.6-180, are set out in ["]prospective["] terms. If these methods are not possible to apply directly, ["]retrospective["] methods, using accumulations at appropriate rates of interest shall be acceptable; however, a company using these methods shall be prepared to demonstrate that these methods actually result in sufficient amounts to fund any obligations set out in its contracts as guarantees of future performance. Obligations which arise from known past events shall be valued retrospectively.

Section 4. Specific Requirements. (1) Interest assumptions.[~~KRS 304.6-145(4) refers to two (2) specific bond yield averages, which underlie the referenced interest rates specified in KRS 304.6-145.~~] The Moody's Corporate Bond Yield Averages referenced in KRS 304.6-145(4) are those for the period ending July 1 for each calendar year***[shown]***.[~~These were:~~

~~Calendar Year~~	~~Average over period ending July 1 of a:~~	
	~~12-month period~~	~~36-month period~~
~~1979~~	~~9.49%~~	~~8.92%~~
~~1980~~	~~11.51~~	~~9.89~~
~~1981~~	~~13.71~~	~~11.57~~
~~1982~~	~~15.70~~	~~13.64~~
~~1983~~	~~13.39~~	~~14.26~~

~~A table of current statutory calendar year interest rates shall be required each year. Copies of the most recent table may be obtained from the office.~~]

(2) The actuarial guidelines shall be used as published unless specifically prohibited by statute.

(3) Mortality tables.

(a) Except as provided in paragraph[~~paragraphs~~] (b)[~~and (c)~~] of this subsection, the 1983 Table "a" shall be[~~is~~] recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1976.

(b) Except as provided in paragraph (c) of this subsection, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any

individual annuity or pure endowment contract issued on or after January 1, 1985.

(c) Except as provided in paragraph (d) of this subsection, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2005.

(d) Except as provided in paragraph (e) of this subsection, the 2012 ***Individual Annuity Reserve Table (2012*** IAR***[~~Mortality~~]*** Table***)*** shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2015.

(e) The 1983 Table "a" without projection shall be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 2005, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

1. Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;

2. Settlements involving similar actions[~~such as worker's compensation claims~~]; or

3. Settlements of long-term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

(f)[~~(e)~~] Except as provided in paragraph (g)[~~(f)~~] of this subsection, the 1983 GAM Table and the 1983 Table "a" shall be recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for any annuity or pure endowment purchased on or after July 1, 1976, under a group annuity or pure endowment contract.

(g) Except as provided in paragraph (h) of this subsection,[~~(f)~~] the 1983 GAM Table shall be used for determining the minimum standard of valuation for any annuity ***or[~~of~~]*** pure endowment purchased on or after January 1, 1985, under a group annuity or pure endowment contract. The commissioner[~~executive director~~] shall give consideration to the approval of other tables of mortality which produce lower reserves in any special case, if the request for approval is accompanied by an actuarial report, signed by the qualified actuary, of the reasons for the request. If ***applicable[~~possible~~]***, the report ***shall[~~should~~]*** include an estimate of the degree of protection against insolvency provided as margin in the proposed table.

(h) The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 2015 under a group annuity or pure endowment contract. The commissioner shall give consideration to the approval of other tables of mortality which produce lower reserves in any special case, if the request for approval is accompanied by an actuarial report, signed by the qualified actuary, of the reasons for the request. If applicable, the report shall include an estimate of the degree of protection against insolvency provided as margin in the proposed table.

(i)1. In using the 2012 ***Individual Annuity Reserve Table (2012*** IAR Table***)***, the mortality rate for a person age x in year (2012 + n) shall be calculated as follows:

$$q_x^{2012+n} = q_x^{2012}(1-G2_x)^n$$

2. The resulting q_x^{2012+n} shall be rounded to three (3) decimal places per 1,000.

3. The rounding shall occur according to the formula in subparagraph 1. of this paragraph, starting at the 2012 period table rate.

4. An Example***: Rounding Calculations for Mortality Table Construction for 2012 IAR Table*** page for use of this mortality table is incorporated by reference in this administrative regulation.

(j) In using the 1994 GAR Table, the mortality rate for a person age x in year (1994 + n) shall be calculated as follows where the q_x^{1994} and AA_x are as specified in the 1994 GAR Table:

$$q_x^{1994+n} = q_x^{1994}(1-AA_x)^n$$

(4) Changes of method (domestic insurers). The effects of changes in the methods of valuing life contracts shall be reported in ["]Exhibit 5A["] of the annual statement in the year in which the change first takes place. ["]Exhibit 5A["] shall show the old and the new method of valuation[,] and the increase or decrease in the actuarial reserve due to the change. If adopting a method that produces an increase in the reserve, the company shall notify the department[~~office~~]. However, if a change will produce a reserve that will be less than the amount under the old method, the company shall have the prior approval of the commissioner[~~executive director~~].

Section 5. Cost of Noncompliance. (1) If the material is not available as outlined above, the additional burden of cost for additional time required by the staff of the Department[~~Office~~] of Insurance, or its department actuary, shall be borne by the life insurance company as provided for in KRS 304.2-290. A special examination may be ordered by the commissioner[~~executive director~~], providing for a written report to him ***or her*** together with a time and expense billing to the company so examined.

(2) If a detail audit of reserves reveals that an error was made in the filed annual statement and in the certificate issued by the department[~~office~~], the commissioner[~~executive director~~] may order the withdrawal of certification and reissuance of certificates and copies, and require a refiled[~~NAIC~~] annual statement on a significant error, or request the company to file a corrective action plan prior to the next filed annual[~~NAIC~~] statement[~~form~~] when the resultant error is not significant.

Section 6.[~~Severability. If any provision of this administrative regulation or the application of any provision is held to be invalid, the remainder of this administrative regulation and the application of any other provision to other persons or circumstances shall not be affected.~~

~~Section 7.~~] Qualified Actuary Requirements. (1) In order to be considered a qualified actuary, a person shall be familiar with the valuation requirements applicable to life and health insurance companies.

(2)***(a)*** The actuary shall not meet the requirements of a qualified actuary if that person has:

1.[~~(a)~~] Violated any provision of, or any obligation imposed by, any law in the course of his or her dealings as qualified actuary;

2.[~~(b)~~] Been found guilty of fraudulent or dishonest practices;

3.[~~(c)~~] Demonstrated incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary;

4.[~~(d)~~] Submitted an actuarial opinion or memorandum that was rejected because it did not comply with the Kentucky Insurance Code, KRS Chapter 304, or standards established by the Actuarial Standards Board during the past five (5) years; or

5.[~~(e)~~] Resigned or been removed as an actuary within the past five (5) years as a result of an act or omission indicated in any adverse report on examination or as a result of the failure to adhere to generally acceptable actuarial standards; and

(b)[~~(f)~~] Failed to notify the commissioner[~~executive director~~] of any adverse action taken against the actuary pursuant to ***paragraph (a)1. through 5.[~~paragraphs (a) through (e)~~]*** of this subsection by any insurance regulatory official of any other state.

Section 7.[~~8.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "1983 Table 'a'"***, [~~(~~]***1983***[~~)"~~]***;

(b) "1983 GAM Table"***, [~~(~~]***1983***[~~)"~~]***;[~~and~~]

(c) "1994 GAR Table"***, [~~(~~]***9/2014***[~~)"~~]***;

(d) "2012 Individual Annuity Mortality Period (2012 IAM Period) Table", 9/2014;

(e) "2012 ***Individual Annuity Reserve Table (2012*** IAR Table***)***", 9/2014;

(f) " Annuity 2000 Mortality Table"***, [~~(~~]***2000***[~~)"~~]***;

(g) "Projection Scale AA (Scale AA)", 9/2014;

(h) "Projection Scale G2 (Scale G2)", 9/2014; and

(i) "Example***: Rounding Calculations for Mortality Table Construction for 2012 IAR Table[page for use of mortality table]***", 9/2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department[Office] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. This material is also available on the Web site at: http://insurance.ky.gov[http://doi.ppr.ky.gov/kentucky/].

SHARON P. CLARK, Commissioner
LARRY R. BOND, Acting Secretary
APPROVED BY AGENCY: September 5, 2014
FILED WITH LRC: September 15, 2014 at 11 a.m.
CONTACT PERSON: DJ Wasson, Administrative Coordinator, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, November 14, 2014)

810 KAR 1:017. Objections and complaints.

RELATES TO: KRS 230.210-230.360
STATUTORY AUTHORITY: KRS ***230.215(2),*** 230.260***(8)***
NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing[To regulate]*** conditions under which thoroughbred racing ***is[shall be]*** conducted in Kentucky. ***[The function of]*** This administrative regulation ***establishes[relates to]*** the requirements and procedures ***for[in]*** lodging***[of]*** objections and complaints.

Section 1. Persons Eligible to Lodge Objections or Complaints. ***(1) Except as provided by subsection (2) of this section, an objection or complaint[Objections or complaints]*** against a horse or jockey entered in a race shall be received only ***if[when duly]*** lodged***:***

(a) In accordance with Sections 2 and 3 of this administrative regulation; and

(b) By the owner or authorized agent of the owner, the trainer, or the jockey, of another horse engaged in the same race and whose horse suffered or may suffer by the alleged violation of an administrative regulation.

(2) An inquiry may also be made by a racing official.

Section 2. Form for Objections and Complaints. ***(1) An objection[Objections]*** as to interference or ***a foul[fouls]*** occurring during the running of the race shall be lodged with the stewards orally or by telephone. All other objections or complaints shall be made in writing and ***be signed by[bear the signature of]*** the complainant.

(2) An objection or complaint[Objections or complaints] lodged during a race meeting shall be addressed to the stewards. ***An objection or complaint[Objections or complaints]*** lodged after the termination of a race meeting shall be addressed to the commission[authority secretary] at the commission's[authority] general office.

(3) An objection or complaint once lodged shall not be withdrawn without permission of the stewards.

Section 3. Time for Lodging Objections or Complaints. ***(1) Except as provided by subsection (2) of this section, an objection or complaint[Objections or complaints]*** based on ***one (1) of*** the following violations of ***810 KAR Chapter 1 [administrative regulations]***[regulation] shall be lodged by ***an aggrieved person[persons aggrieved thereby]*** within the time prescribed***[; except the stewards may declare a horse ineligible or disqualified at any time]***:

(a)[(1)] At least one (1) hour before post time of the race, if ***the*** objection ***or complaint*** is based on incorrect weight allowance claimed for a horse entered to race;[.]

(b)[(2)] Before the race has been posted as official on the in-field results[result] board, if ***the*** objection ***or complaint*** is based on interference by a horse, improper course run by a horse, foul riding by a jockey, or any other matter occurring during and incident to the running of the race;[.]

(c)[(3)] Not later than one (1) year from the date[after] the race was run, if the objection or complaint is based on fraudulent or willful misstatement in an entry under which a horse has run;[.]

(d)[(4)] Not later than forty-eight (48) hours[, exclusive of Sunday,] after post time of the race, ***if the objection or complaint involves[for]***[the race was run, if]***[objections or complaints involving]*** the claim of a horse or ***a*** violation of 810 KAR 1:012, Section 4; ***and***[are based on any other violation of an administrative regulation.]

(e)[(5)] Within one (1) week after post time of the race, if ***the objection or complaint is[objections or complaints are]*** based on any other violation of ***810 KAR Chapter 1[an administrative regulation].***

(2) A steward may declare a horse ineligible or disqualified at any time.

Section 4. Final Determination of Objections to Acts in Race. ***(1)*** The stewards shall***:***

(a) Make all findings of fact as to all matters occurring during and incident to the running of a race;

(b) Determine all objections***[,]*** and inquiries based on interference by a horse, improper course run by a horse, foul riding by a jockey, and all other matters occurring during and incident to the running of a race; and

(c)[, shall] Determine the extent of disqualification, if any, of horses in a race for a foul committed during the race.

(2) Findings of fact and determination shall be final and ***shall not be subject to appeal[no appeal may be taken thereon]***.

(3) In determining the extent of disqualification, the stewards ***shall consider the seriousness and circumstances of the incident and[in their discretion]*** may:

(a)[(1)] Disqualify and place the offending horse, and any horses coupled with it as an entry, behind any horse that[as]may have suffered by reason of the foul;

(b)[(2)] Disqualify and declare the offending horse, and any horses coupled with it as an entry, unplaced;

(c)[(3)] Disqualify the offending horse, and any horses coupled with it as an entry, from participation in all or any part of the purse;

(d)[(4)] Declare void[,] a track record set or equaled by a disqualified horse, or any horses coupled with it as an entry;

(e)[(5)] Affirm the placing[place] judges' order of finish and suspend the[a] jockey, if in the stewards' opinion the foul riding had no effect[affect] on the order of finish; ***or***

(f)[(6)] Disqualify the offending horse and not suspend the jockey, if in the stewards' opinion the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of the jockey.

Section 5. Dispute of a Race after Declared Official for Pari-mutuel Payoff. If the result of a race is placed in dispute by the lodging of an objection or complaint or by discovery of an alleged violation of an administrative regulation, after the race has been declared official for pari-mutuel payoff, ***the procedures established in this section shall apply[then]*** pending final determination of the disputed race***.[:]***

(1) The purse money and trophy to which the horse objected to may have been entitled shall be withheld and placed in escrow by the association until final adjudication of the dispute; except ***the stewards may order[,]*** any portion of the purse money ***to be distributed if the[whose]*** distribution would not be affected by the determination of the dispute***[, at the discretion of the stewards, may be distributed]***.

(2) If purse money or trophy has been awarded to an owner prior to the lodging of an objection or discovery of an alleged violation of an administrative regulation which places the outcome of a race in dispute, the money or trophy shall be returned immediately to the association on order of the stewards. Upon final adjudication

of the dispute, the person deemed to be entitled to the purse money or trophy shall be entitled to an order of recovery from any person or association holding ***the*** same.

(3) The horse that[~~which~~] crossed the finish line first and any other horse that may become the winner of a disputed race shall be considered winners[~~for which the race is claimed, shall be liable for all penalties attaching to the winner~~] of that race until the matter is[~~if~~] finally adjudicated.

Section 6. Determination of a Disputed Race. The stewards shall determine ***an objection, complaint, or alleged violation of an[~~all objections, complaints, or alleged violations of~~]*** administrative regulation lodged or discovered after a race has been declared official for pari-mutuel payoff and shall issue a ruling ***[~~thereon~~]***. If the stewards find that an administrative regulation was violated, the stewards may penalize the persons responsible, disqualify any horses in the disputed race, and award the purse money and trophy in accordance with any resulting revised order of finish in the disputed race.

Section 7. Revised Order of Finish after Race Declared Official for Pari-mutuel Payoff. If a horse is disqualified after a race has been declared official for pari-mutuel payoff and ***[***~~thereby~~***]*** causes revision of the order of finish in the race:

(1) The pari-mutuel payoff shall ***not[~~in no way~~]*** be affected ***in any way; and[~~.~~]***

(2) The stewards shall ***ensure that[~~be responsible for causing~~]*** appropriate corrections ***are[~~to be~~]*** made in official records for the race and in racing statistics as may pertain to the respective horses, jockeys, trainers, owners, breeders, sires, dams, and broodmare sires, by reporting ***the[~~such~~]*** corrections to the racing secretary and to the Daily Racing Form.

Section 8. Complaints Against Officials. ***A complaint or protest by a licensee[~~All complaints or protests by any licensee~~]*** based on ***a[~~any~~]*** decision or act of a racing official other than the stewards, or concerning any matter ***that[~~as~~]*** may occur on association grounds not provided for by Sections 4 and 5 of this administrative regulation shall be made in writing, signed by the complainant, and submitted to the stewards. ***A complaint or protest by a person[~~All complaints or protests by any persons~~]*** based on ***a[~~any~~]*** decision, act, or conduct of the stewards shall be submitted to the commission[~~authority~~], as provided by 810 KAR 1:029[~~1:020~~].

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, November 14, 2014)

811 KAR 2:090. Objections and complaints.

RELATES TO: KRS 230.210-230.360[~~230.610-230.770~~]
STATUTORY AUTHORITY: KRS ***230.215(2),*** 230.260***(8)***[~~Chapter 13A~~]
NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing[~~To regulate~~]*** conditions under which Arabian, Quarter Horse, and Appaloosa racing ***is[~~shall be~~]*** conducted in Kentucky. ***[~~The function of~~]*** This administrative regulation ***establishes[~~relates to~~]*** the requirements and procedures ***for[~~in~~]*** lodging***[~~of~~]*** objections and complaints.

Section 1. Persons Eligible to Lodge Objections or Complaints. ***(1) Except as provided by subsection (2) of this section, an objection or complaint[~~Objections or complaints~~]*** against a horse or jockey entered in a race shall be received only ***if[~~when duly~~]*** lodged***:***

(a) In accordance with Sections 2 and 3 of this administrative regulation; and

(b) By the owner or authorized agent of the owner, or the trainer, or the jockey, of another horse engaged in the same race and whose horse suffered or may[~~could~~] suffer by the alleged[~~rule~~] violation of an administrative regulation.

(2) An inquiry may also[~~can~~] be made by a racing official.

Section 2. Form for Objections and Complaints. ***(1) An objection[~~Objections~~]*** as to interference or ***a foul[~~fouls~~]*** occurring during the running of the race shall[~~may~~] be lodged with the stewards orally or by the telephone. [~~by the trainer or jockey with the clerk of scales or with the stewards;~~] All other objections or complaints shall be made in writing and ***be signed by[~~bear the signature of~~]*** the complainant.

(2) An objection or complaint[~~Objections or complaints~~] lodged during a race meeting shall be addressed to the stewards. ***An objection or complaint[~~Objections or complaints~~]*** lodged after the termination of a race meeting shall be addressed to the commission[~~secretary~~] at the commission's[~~commission~~] general office.

(3) An objection or complaint once lodged shall not[~~cannot~~] be withdrawn without permission of the stewards.

Section 3. Time for Lodging Objections or Complaints. ***(1) Except as provided by subsection (2) of this section, an objection or complaint[~~Objections or complaints~~]*** based on ***one (1) of*** the following[~~rule~~] violations of ***811 KAR Chapter 2[~~administrative regulations~~]*** shall[~~must~~] be lodged by ***an aggrieved person[~~persons aggrieved thereby~~]*** within the time prescribed[~~therefor~~]***[~~; except~~]***[~~that~~]***[~~the stewards may declare a horse ineligible or disqualified at any time~~]***:

(a)[~~(1)~~] At least one (1) hour before post time of the race, if ***the*** objection ***or complaint*** is based on incorrect weight allowance claimed for a horse entered to race;[~~.~~]

(b)[~~(2)~~] Before the race has been posted as official on the infield results[~~result~~] board, if ***the*** objection ***or complaint*** is based on interference by a horse, improper course run by a horse, foul riding by a jockey, or any other matter occurring during and incident to the running of the race;[~~.~~]

(c)[~~(3)~~] Not later than one (1) year from the date[~~after~~] the race was run, if the objection or complaint is based on fraudulent or willful misstatement in an entry under which a horse has run;[~~.~~]

(d)[~~(4)~~] Not later than forty-eight (48) hours[~~, exclusive of Sunday,~~] after post time of the race***, if the objection or complaint involves[~~for~~]***[~~was run if~~]***[~~objections or complaints involving~~]*** the claim of a horse or ***a*** violation of 811 KAR 2:065, Section 3; ***and***[~~are based on any other rule violation.~~]

(e)[~~(5)~~] Within one (1) week after post time of the race, if ***the objection or complaint is[~~objections or complaints are~~]*** based on any other violation of ***811 KAR Chapter 2[~~an administrative regulation~~].***

(2) A steward may declare a horse ineligible or disqualified at any time.

Section 4. Final Determination of Objections to Acts in Race. ***(1)*** The stewards shall***:***

(a) Make all findings of fact as to all matters occurring during and incident to the running of a race;

(b)[~~shall~~] Determine all objections***[~~,~~]*** and inquiries based on interference by a horse, improper course run by a horse, foul riding by a jockey, and all other matters occurring during and incident to the running of a race; and

(c)[~~, shall~~] Determine the extent of disqualification[~~qualifications~~], if any, of horses in a race for a foul committed during the[~~such~~] race.

(2)[~~Such~~] Findings of fact and determinations shall be final and ***shall not be subject to appeal[~~no appeal may be taken there-~~***

on].

(3) In determining the extent of disqualification, the stewards ***shall consider the seriousness and circumstances of the incident and[in their discretion]*** may:

(a)[(1)] Disqualify and place the offending horse, and any horses coupled with it as an entry, behind[such] horses that[as]may have suffered by reason of the foul;

(b)[(2)] Disqualify and declare the offending horse, and any horses coupled with it as an entry, unplaced;

(c)[(3)] Disqualify the offending horse, and any horses coupled with it as an entry, from participation in all or any part of the purse;

(d)[(4)] Declare[null and] void a track record set or equaled by a disqualified horse, or any horses coupled with it as an entry;

(e)[(5)] Affirm the placing judges' order of finish and suspend the[a] jockey, if in the stewards' opinion the foul riding had no effect on[did not affect] the order of finish; ***or***

(f)[(6)] Disqualify the offending horse and not suspend the[a] jockey, if in the stewards' opinion the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of the[a] jockey.

Section 5. Dispute of a Race after Declared Official for Pari-mutuel Payoff. If[In the event] the result of a race is placed in dispute by the lodging of an objection or complaint[,] or by discovery of an alleged[rule] violation of an administrative regulation, after the[such] race has been declared official for pari-mutuel payoff[(for example, discovery of a ringer or otherwise ineligible starter, or violation of the medication rule)], ***the procedures established in this section shall apply[then]*** pending final determination of ***the[such]*** disputed race***.[:]***

(1) The purse money and trophy to which the horse objected to may have been entitled shall be withheld and placed in escrow by the association until final adjudication of the dispute; except ***the stewards may order***[provided, however]***[,]*** any portion of the purse money ***to be distributed if the[whose]*** distribution would not be affected by the determination of ***the[such]*** dispute***[, at the discretion of the stewards, may be distributed]***.

(2) If purse money or trophy has been awarded to an owner prior to the lodging of an objection or discovery of an alleged[rule] violation of an administrative regulation which places the outcome of a race in dispute, the[such] money or trophy shall be returned immediately to the association on order of the stewards. Upon final adjudication of the dispute, the person deemed to be entitled to the purse money or trophy shall be entitled to an order of recovery from any person or association holding ***the*** same.

(3) The horse that[which] crossed the finish line first and any other horse that may become the winner of a disputed race shall be considered winners[for which the race is claimed, shall be liable for all penalties attaching to the winner] of that race until the matter is[if] finally adjudicated.

Section 6. Determination of a Disputed Race. The stewards shall determine ***an objection, complaint, or alleged violation[all objections, complaints, or alleged]***[rule]***[violations]*** of an administrative regulation lodged or discovered after a race has been declared official for pari-mutuel payoff and shall issue a ruling***[thereon]***. If the stewards find that an administrative regulation[rule] was violated, the stewards may penalize the persons responsible[therefor], disqualify any horses in the disputed race, and award the purse money and trophy in accordance with any resulting revised order of finish in ***the[such]*** disputed race.

Section 7. Revised Order of Finish after Race Declared Official for Pari-mutuel Payoff. If[In the event] a horse is disqualified after a race has been declared official for pari-mutuel payoff and***[thereby]*** causes revision of the order of finish in the[such] race:

(1) The pari-mutuel payoff shall ***not[in no way]*** be affected ***in any way; and[.]***

(2) The stewards shall ***ensure that[be responsible for causing]*** appropriate corrections ***are[to be]*** made in official records for the race and in racing statistics as may pertain to the respective horses, jockeys, trainers, owners, breeders, sires, dams, and broodmare sires, by reporting ***the[such]*** corrections to the racing secretary and to the Daily Racing Form.

Section 8. Complaints against Officials. ***A complaint or protest by a[All complaints or protests by any]*** licensee based on ***a[any]*** decision or act of a racing official other than the stewards, or concerning any matter ***that[as]*** may[should] occur on association grounds not provided for by Sections 4 and 5 of this administrative regulation shall be made in writing,[shall be] signed by the complainant, and[shall be] submitted to the stewards. ***A complaint or protest by a person[All complaints or protests by any persons]*** based on ***a[any]*** decision,[or] act, or conduct of the stewards shall be submitted to the commission, as provided by 811 KAR 2:105.

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, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, November 14, 2014)

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), ***216B.050, 216B.105,*** 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. ***Parts*** 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***(4)[(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 ***a minimum of*** 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) ***in accordance with 908 KAR 2:260*** within six (6) months of employment; and

2. Have successfully completed recertification requirements approved by DBHDID ***in accordance with 908 KAR 2:260*** every three (3) years thereafter; and

(d) Be supervised by a behavioral health professional who:

1. Has completed case management training approved by DBHDID ***in accordance with 908 KAR 2:260***; and

2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual ***in person*** 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 ***in accordance with 908 KAR 2:260*** within six (6) months of employment; and

2. Have successfully completed recertification requirements approved by DBHDID ***in accordance with 908 KAR 2:260*** 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 ***in accordance with 908 KAR 2:260***; and

2. Has supervisory contact at least three (3) times per month with at least two (2) of the contacts on an individual ***in person*** 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) ***of this section***;

(c)1. Have successfully completed case management training approved by DBHDID ***in accordance with 908 KAR 2:260*** within six (6) months of employment; and

2. Have successfully completed recertification requirements approved by DBHDID ***in accordance with 908 KAR 2:260*** every three (3) years thereafter; and

(d) Be supervised by a behavioral health professional who:

1. Has completed case management training approved by DBHDID ***in accordance with 908 KAR 2:260***; and

2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual ***in person*** 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 *the[~~any~~]* prescribing and dispensing standards *in 201 KAR 9:270[~~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 ***by subsection (6) of this section***[~~*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) ***A***[~~*This administrative regulation shall not be construed to forbid the*~~] behavioral health services organization ***may establish***[~~*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** ***in addition to the client*****; 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 ***815 KAR 7:120[~~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) *Urgent[~~Emergency~~]* action to suspend a license.

(a) The cabinet shall take *urgent[~~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 *an immediate[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 *be served with notice of the hearing on the urgent suspension to be held no sooner than twenty (20) days from the delivery of the notice[~~cease operating immediately on the date the organization is served with the notice of emergency suspension~~]*.

2. Notice of the *urgent[~~emergency~~]* suspension shall set forth the particular reasons for the action.

(c) If the cabinet issues an *urgent[~~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 *a hearing on an urgent[~~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 *urgent[~~emergency~~]* suspension.**

[~~(b)[(d)]~~] **The *urgent[~~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 *urgent[~~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 *attend the expedited hearing[~~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

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CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, November 14, 2014)

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. ***Parts*** 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***(4)[(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 *a minimum of* 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 *subsections[~~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) ***Except as provided by paragraph (b) of this subsection,*** 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 di-

rect-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 ***by subsection (6) of this section[~~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) ***A[~~This administrative regulation shall not be construed to forbid the~~]*** residential crisis stabilization unit ***may establish[~~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) ***Describe*** criteria for appropriate use of **personal restraint**~~[therapeutic holds]~~;

(b) ***Describe*** 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 (***for example***~~[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 ***815 KAR 7:120[~~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) *Urgent[~~Emergency~~]* action to suspend a license.

(a) The cabinet shall take *urgent[~~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 *an immediate[a]* danger to the health, welfare, or safety of its residents.

(b)1. The residential crisis stabilization unit shall *be served with notice of the hearing on the urgent suspension to be held no sooner than twenty (20) days from the delivery of the notice[~~cease operating immediately on the date the unit is served with the notice of emergency suspension~~]*.

2. Notice of the *urgent[~~emergency~~]* suspension shall set forth the particular reasons for the action.

(6) Notice of *a hearing on an urgent[~~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 *urgent[~~emergency~~]* suspension.**

[~~(b)[(d)]~~ **The *urgent[~~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 *urgent[~~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 *attend the expedited hearing[~~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.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and Intellectual Disabilities
Division of Administration and Financial Management
(As Amended at ARRS, November 14, 2014)

908 KAR 3:060. "Means test" for determining patient liability.

RELATES TO: KRS Chapter 13B, 210.710, 210.720, and 210.730

STATUTORY AUTHORITY: KRS***[~~Chapter 13B,~~]*** 194A.050, 210.710(4), 210.720(3), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 requires the Secretary of the Cabinet for Health and

Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 210.750 authorizes the Secretary to promulgate administrative regulations to carry out the provisions of KRS 210.710 to 210.760. KRS 210.710(4) and 210.720(3) require the Secretary to adopt a "Means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance, and treatment at a facility owned by the state[~~operated or utilized by the Cabinet for Health and Family Services, for individuals with behavioral health, developmental and intellectual disabilities~~]. This administrative regulation establishes the "Means test" for making that determination.

Section 1. Definitions. (1) "Allowed deduction" means an amount disregarded or deducted from income and assets for the purpose of determining the ability to pay for services rendered by a facility.

(2) "Available assets" means resources of the patient or person responsible for the patient in accordance with KRS 210.720(3), less the applicable protections specified in Section 2(7) of this administrative regulation.

(3) "Deductible" means an amount that a patient or person responsible for the patient is expected to pay toward the patient's[~~their~~] care by a third-party payor such as Medicare or a private insurance company.

(4) "Facility" is defined in KRS 210.710(2).

(5) "Income" means funds received by the patient or person responsible for the patient and includes the following:

(a) Salaries;

(b) Wages;

(c) Self-employed gross revenues, less operating expenses;

(d) Benefit payments, except for Supplemental Security Income payments;

(e) Social Security payments;

(f) Rents;

(g) Royalties;

(h) Pensions;

(i) Retirement payments;

(j) Veteran's Administration payments;

(k) Black lung benefits;

(l) Railroad retirement benefits;

(m) Gifts;

(n) Settlements;

(o) Trust receipts;

(p) Alimony, but does not include child support payments;

(q) Interest income; and

(r) Income from investments.

(6) "Patient" means a person admitted to a facility.

(7) "Person responsible for the patient" is defined in KRS 210.710(5).

(8) "Personal Needs Allowance" means an amount of resources deducted from income for the patient's personal needs, including clothing and other miscellaneous items required by the patient.

(9) "Poverty Guidelines" means the latest federal poverty measurement guidelines issued by the United States Department of Health and Human Services and published annually in the Federal Register, under the authority of 42 U.S.C. 9902(2).

Section 2. Determination of the Ability to Pay for Services Rendered at Facilities. (1) The facility shall apply the means test to each patient who is admitted to the facility for treatment.

(2)(a) The means test shall include a determination of the responsible party or parties to pay for the patient's care, which shall be documented using the ***["]***Patient or Responsible Party Financial Record***["]*** form.

(b) This form shall be explained to the patient or person responsible for the patient and signed by all parties.

(c) If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form along with the date the form was discussed.

(d) Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(3) The amount a patient or person responsible for the patient is required to pay for services shall be the lesser of:

(a) The cost per patient day in accordance with 908 KAR 3:050, less any amount paid by Medicare, Medicaid, and other third-party payment sources; or

(b) The amount the patient is[~~deemed~~] able to pay calculated in accordance with this administrative regulation.

(4) The facility shall determine the financial resources available to the patient or person responsible for the patient including:

(a) Insurance and third-party payors;

(b) Income received or expected to be received during the period of hospitalization; and

(c) Available assets.

(5) The following shall be allowed deductions from income:

(a) Federal income taxes;

(b) State income taxes;

(c) Social security taxes;

(d) Normal retirement contributions;

(e) Unpaid medical and dental bills;

(f) Health insurance premiums;

(g) Medicare Part B insurance premiums;

(h) Long-Term Care insurance premiums;

(i) A personal needs allowance of forty (40) dollars per month;

(j) Student loan payments;

(k) Bed-hold reservation costs at another facility for up to fourteen (14) days as long as the patient's stay is expected to be shorter than the reservation period;

(l) Child support payments;

(m) Life insurance premiums if the patient's estate or a funeral home is the named beneficiary on the policy; and

(n) A basic maintenance allowance, derived from the Poverty Guidelines, as contained in the Basic Maintenance Allowance Table of Section 3(7) of this administrative regulation for the size of the patient's family, if the following conditions are met:

1. The patient was maintaining a residence immediately prior to admission;

2. The residence will continue to be maintained during the period of hospitalization and resources of the patient are needed for this effort; ***and***

3. Facility staff expects the patient's hospital stay to be three (3) months or less in duration***[;*** ~~***and***~~

~~***4.]***[Dependents used in the calculation of the basic maintenance allowance shall include]~~***[A legally-recognized spouse and each individual less than eighteen (18) years of age who is]***[and]***[in the patient's care are classified as dependents for purposes of calculating the basic maintenance allowance]***.

(6) An estimated income tax related deduction of twenty-five (25) percent of total income shall be allowed instead[~~in lieu~~] of the actual wage taxes contained in subsection (5) of this section. A patient or person responsible for the patient may request that actual tax amounts be used instead of the estimated deduction, if ***the person[they]*** can substantiate the actual tax amounts.

(7) The following shall be excluded from the calculation of available assets:

(a) Prepaid burial plans of up to $1,500 per family member;

(b) Automobiles;

(c) Housing structures;

(d) Land;

(e) Retirement accounts;

(f) Pension funds;

(g) Trust funds that cannot be accessed;

(h) The applicable amount contained in the Ability To Pay Assets Table of Section 3(7) of this administrative regulation***[for the size of the patient's family using the dependent counting guidelines contained in subsection (5)(n)4 of this section]***; and

(i)[~~(l)~~] Other assets that are exempted under state law, if any.

Section 3. Calculation of the Amount the Patient or Person Responsible for the Patient is Able to Pay. (1) The facility shall calculate the ability to pay amount utilizing either the ***["]***Ability to Pay Worksheet***["]*** or the ***["]***Deductible Ability to Pay Worksheet***["]*** as appropriate and by using the following formula:

(a) Determine the total amount of income of the patient or person responsible for the patient;

(b) Determine the amount of allowed deductions from income in accordance with Section 2(5) of this administrative regulation;

(c) Subtract the allowed deductions from income; and

(d) The remaining available income shall be divided by 365 to obtain the average daily income of the patient or person responsible for the patient.

(2) If the patient or person responsible for the patient has available assets, the facility shall:

(a) Determine the amount of available assets in accordance with Section 2(7) of this administrative regulation; and

(b) Include available assets that remain after the deduction in the patient or person responsible for the patient's ability to pay amount.

(3) Payments to be made on behalf of the patient by a third-party, such as Medicare, Medicaid, or private insurance companies, shall be subtracted from the facility's per diem rate as contained in 908 KAR 3:050. Any remaining liability shall be satisfied as follows, with the exception of ability to pay amounts arising from deductibles:

(a) The available income of the patient or person responsible for the patient shall first be applied to the patient's liability for services;

(b) Any liability that remains after application of the average available income shall be satisfied by available assets; and

(c) The applicable average income per day and available asset amount per day shall be combined to determine the ability to pay amount. The ability to pay amount shall be charged for each day the patient is in the facility.

(4) Ability to pay liabilities arising from deductibles shall first be applied to available assets of the patient or person responsible for the patient with any remaining liability being satisfied with available income.

(5) If the Department for Medicaid Services performs an income assessment for a Medicaid patient residing in a nursing facility, intermediate care facility for ***an individual with an intellectual disability,[individuals with mental health]***[retardation]***[or a developmental disability]*** or psychiatric hospital in accordance with 907 KAR ***20:035[1:655]***, that Medicaid income assessment shall be relied upon instead[in lieu] of the ability to pay provisions established in this administrative regulation.

(6)(a) After the ability to pay is determined for the patient or person responsible for the patient, a ***["]***Patient or Responsible Party Financial Agreement and Assignment***["]*** form shall be completed.

(b) This form shall be explained to the patient or person responsible for the patient and signed by all parties.

(c) If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form including the date the form was discussed.

(d) Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(7) The patient liability shall be calculated based on the United States Department of Health and Human Services poverty***[threshold]*** guidelines established in this subsection:

(a) The poverty guidelines effective July 31, 2013[2011] shall be as follows:

TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE	
Size of Family	Allowed deduction from income*
1	$11,490[$10,890]
2	$15,510[$14,710]
3	$19,530[$18,530]
4	$23,550[$22,350]
5	$27,570[$26,170]
6	$31,590[$29,990]
7	$35,610[$33,810]
8	$39,630[$37,630]

*For each additional dependent, the facility shall add $4,020[$3,820 dollars].

TABLE II. ABILITY TO PAY ASSETS TABLE	
Size of Family	Allowed Deduction from Assets*
1	$2,000
2	$4,000
3	$4,050
4	$4,100

*For each additional dependent, the facility shall add fifty (50) dollars.

(b) The poverty guidelines effective on the effective date of this administrative regulation shall be as follows:

TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE	
Size of Family	Allowed deduction from income*
1	$11,670[$11,490]
2	$15,730[$15,510]
3	$19,790[$19,530]
4	$23,850[$23,550]
5	$27,910[$27,570]
6	$31,970[$31,590]
7	$36,030[$35,610]
8	$40,090[$39,630]

*For each additional dependent, the facility shall add $4,060[$4,020 dollars].

TABLE II. ABILITY TO PAY ASSETS TABLE	
Size of Family	Allowed Deduction from Assets*
1	$2,000
2	$4,000
3	$4,050
4	$4,100

*For each additional dependent, the facility shall add fifty (50) dollars.

(8) A legally-recognized spouse and each individual less than eighteen (18) years of age who is in the patient's care shall be classified as dependents for purposes of calculating the basic maintenance allowance.

Section 4. Revisions to Ability to Pay Amounts. (1) Facility staff shall update a patient's ability to pay amount to incorporate changes that take place subsequent to the initial determination. These changes may include:

(a) Income revisions;

(b) Asset revisions, including exhaustion of available assets;

(c) Change in allowed deductions;

(d) Change in a dependent of the patient or person responsible for the patient; or

(e) Change regarding the status of the person responsible for the patient.

(2) Upon a change to the ability to pay information, a revised ***["]***Ability to Pay Worksheet***["]*** or ***["]***Deductible Ability to Pay Worksheet***["]*** shall be prepared along with a revised ***["]***Patient or Responsible Party Financial Record***["]*** form and a revised ***["]***Patient or Responsible Party Financial Agreement and Assignment***["]*** form. The revised forms shall be presented to the patient or person responsible for the patient in the same manner as the original forms.

Section 5. Failure to Provide Financial Information or to Assign Benefits. (1) If the patient or person responsible for the patient fails to or will not provide the information necessary to calculate the ability to pay amount, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

(2) If the patient or person responsible for the patient fails to sign the assignment provision contained in the ***["]***Patient or Responsible Party Financial Agreement and Assignment***["]*** form, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

Section 6. Payment Hardship, Appeal and Waiver Procedures. (1) Payment hardships.

(a) If the patient or person responsible for the patient believes

that payment of the ability to pay amount results in a financial hardship, the patient or person responsible for the patient may request to make installment payments.

(b) This request shall be made in writing to the facility's patient billing supervisor and shall include documentation to support the claimed hardship.

(c) The patient billing supervisor shall review the financial hardship request and render a payment plan decision within fifteen (15) days from the receipt of the hardship request. If there is financial hardship, the patient billing supervisor shall allow minimum monthly payments based on what the patient can reasonably afford.

(2) Appeals.

(a) If the patient or person responsible for the patient is aggrieved by the facility charges or a payment plan determined in accordance with this administrative regulation, that person may appeal the determination to the facility director or the facility director's designee for informal resolution within thirty (30) days of the ability to pay amount or payment plan being calculated.

(b) The facility director or the facility director's designee shall review the appeal and issue a determination within thirty (30) days of receipt.

(c) If the patient or person responsible for the patient is dissatisfied with the informal resolution, that person may file an appeal within thirty (30) days of the facility's response to the Director of the Division of Administration and Financial Management, Department for Behavioral Health, Developmental and Intellectual Disabilities, 100 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40621-0001. The director shall arrange for an administrative hearing in accordance with KRS Chapter 13B.

(d) The appeal request shall fully explain the patient's, or person responsible for the patient's, position and shall include all relevant documentation supporting the claim of financial hardship[~~necessary supporting documentation~~].

(3) Waivers.

(a) The director of each facility may waive payment of the[~~his or her~~] facility's charges under this administrative regulation if waiver is [~~deemed to be~~] in the best interest of all parties, based on the factors provided in paragraph (c) of this subsection.

(b) The Director of the Division of Administration and Financial Management shall have the authority to waive payment at any facility within the department if waiver is[~~deemed to be~~] in the best interest of all parties, based on the factors provided in paragraph (c) of this subsection.

(c) When making a waiver determination, the following factors shall be considered:

1. Income;
2. Overall family debt;
3. Assets; and
4. Other information relating to the current financial situation of the patient or the person responsible for the patient.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DBHDID[~~MHMR~~] 3:060-1 Ability to Pay Worksheet", June 2008;

(b) "DBHDID[~~MHMR~~] 3:060-2 Deductible Ability to Pay Worksheet", June 2008;

(c) "DBHDID[~~MHMR~~] 3:060-3 Patient or Responsible Party Financial Agreement and Assignment", August 2004; and

(d) "DBHDID[~~MHMR~~] 3:060-4 Patient or Responsible Party Financial Record", March 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Behavioral Health, Developmental and Intellectual Disabilities, ***475 East Main Street[~~100 Fair Oaks Lane~~]***, Frankfort, Kentucky 40621***[-0001]***, Monday through Friday, 8 a.m. to 4:30 p.m.

MARY REINLE BEGLEY, 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 5 W-B, Frankfort, Ky. 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Heritage Council
(Amended After Comments)

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

RELATES TO: KRS 171.396, 171.3961, 171.397, 16 U.S.C. 470a(a)(1), 36 C.F.R. Parts 60, 67

STATUTORY AUTHORITY: KRS 171.397(14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.397(14) authorizes the Kentucky Heritage Council to promulgate administrative regulations to implement the certified historic structures rehabilitation tax credit. This administrative regulation establishes the application process to determine a taxpayer's eligibility to claim a certified historic structure rehabilitation tax credit.

Section 1. Definitions. (1) "Act" means the enabling legislation for the historic rehabilitation tax credit, KRS 171.396 to 171.397.

(2) "Adjusted basis of the structure" means the purchase price of the property, minus the cost of land, plus improvements already made, minus allowable depreciation[~~already taken~~].

(3) "Certified historic structure" is defined by KRS 171.396(1).

(4) "Certified rehabilitation" is defined by KRS 171.396(2).

(5) "Certified rehabilitation credit cap" is defined by KRS 171.396(3).

(6) "Completed rehabilitation project" means any certified historic structure which has been substantially rehabilitated and, after the completion date, has been submitted by the applicant to the council for final certification of rehabilitation under the Act.

(7)[~~(6)~~] "Completion date" means:

(a) For owner-occupied residential property, the month, date, and year in which the last eligible rehabilitation expense is incurred; or

(b)[~~for owner-occupied residential property.~~] For all other property,[~~it means~~] the month, date, and year when the rehabilitation project is completed to allow[~~such that it allows~~] occupancy of the entire building or some identifiable portion of the building and, if applicable, a certificate of occupancy has been issued.

(8)[~~(7)~~] "Department" means the Kentucky Department of Revenue.

(9)[~~(8)~~] "Director" means the executive director of the Kentucky Heritage Council.

(10)[~~(9)~~] "Disqualifying work" is defined by KRS 171.396(5).

(11)[~~(10)~~] "Exempt entity" is defined by KRS 171.396(6).

(12)[~~(11)~~] "File" or "filed" means physical receipt by the council of an application for certification along with the tender of the appropriate review[~~filing~~] fee.

(13) "Final amount of credit approved" means the individual credit awarded for certified rehabilitation to an owner of a certified historic structure as determined pursuant to KRS 171.397 or KRS 171.3961, whichever is applicable, when the Certificate of Rehabilitation-Part 3 is filed and approved by the council.

(14)[~~(12)~~] "Inspection" means a visit by the director or an authorized representative of the council to a property for the purposes of reviewing and evaluating the significance of the structure and the ongoing or completed rehabilitation work.

(15)[~~(13)~~] "National Register of Historic Places" means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture that the U. S. Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, 16 U.S.C.[~~Section~~] 470a(a)(1), and implemented through 36 C.F.R. Part 60.

(16)[~~(14)~~] "Owner" means:

(a) The person, partnership, corporation, public agency, or other entity holding a fee simple interest in a property, or any other person or entity recognized by the department for purposes of the applicable tax benefit under KRS 171.397 or KRS 171.3961, whichever is applicable; or

(b) A lessee[~~. For purpose of the Act, a lessee shall be considered the owner of the property~~] if the remaining term of the lease is not less than twenty-seven and one-half (27 1/2) years for residential property or[~~and~~] thirty-nine (39) years for all other property.

(17)[~~(15)~~] "Owner-occupied residential property" is defined by KRS 171.396(8).

(18) "Preliminary tax credit allocation" means the maximum individual credit available for certified rehabilitation to an owner of a certified historic structure as determined pursuant to KRS 171.397, on June 30 of the year in which the Certificate of Rehabilitation-Parts 1 and 2 are filed and approved by the council.

(19)[~~(16)~~] "Property" means a building and its site and landscape features.

(20)[~~(17)~~] "Qualified rehabilitation expense" is defined by KRS 171.396(9).

(21)[~~(18)~~] "Rehabilitation" means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment which are significant to its historic, architectural, and cultural values as determined by the director.

(22)[~~(19)~~] "Rehabilitation plan" means a plan pursuant to which a certified historic structure will be substantially rehabilitated.

(23)[~~(20)~~] "Rehabilitation project" means any certified historic structure, submitted by the applicant to the council, for certifications of rehabilitation under the Act.

(24)[~~(21)~~] "Standards for rehabilitation" mean the Secretary of the Interior's Standards for Rehabilitation, 36 C.F.R. 67.7, as established by the U. S. Department of Interior and restated in Section 4(2) of this administrative regulation.

(25)[~~(22)~~] "Starting date" means the date upon which the applicant applies for the building permit for work proposed by the rehabilitation plan or the date upon which actual physical work contemplated by the plan of rehabilitation begins.

(26)[~~(23)~~] "Substantial rehabilitation" is defined by KRS 171.396(10).

(27)[~~(24)~~] "Taxpayer" is defined by KRS 171.396(11).

Section 2. Certifications of Rehabilitation. (1) For tax credits under KRS 171.3961, a request for certification of historic significance and of rehabilitation under the Act shall be a five (5) stage process that requires the filing of the following forms:

(a) Certification Application-Intent to Apply for Expanded Credit;

(b) Certification Application Part 1-Evaluation of National Register Status;

(c) Certification Application Part 2-Description of Rehabilitation;

(d) Certification Application Part 3-Request for Certification of Completed Work; and

(e) Certification Application-Summary of Investment and Election of Credit.

(2) For tax credits under KRS 171.397, a request for certification[~~certifications~~] of historic significance and of rehabilitation under the Act shall be[~~is~~] a four (4)[~~three (3)~~] stage process that requires the filing of the following forms:

(a) Certification Application Part 1-Evaluation of National Register Status;

(b) Certification Application Part 2-Description of Rehabilitation;[~~and~~]

(c) Certification Application Part 3-Request for Certification of Completed Work; and

(d) Certification Application-Summary of Investment and Election of Credit.

(3) Intent to Apply for Expanded Credit shall be a request for certification of an applicant's intent to claim a tax credit established by KRS 171.3961 for a proposed rehabilitation project.

(4)[~~(2)~~] Part 1 shall be[~~is~~] a request for certification of historic significance.

(5) Part 2 shall be[~~is~~] a request for certification of a proposed rehabilitation project.

(6)[(3)] Part 3 shall be[is] a request for certification of a completed rehabilitation project.

(7) Summary of Investment and Election of Credit shall be actual cost, square footage, and use attributed to the rehabilitation work and an irrevocable election by the taxpayer to receive a refundable credit or transfer the credit.

(8) Certification of applications shall be filed with the council as follows:

(a)1. Part 1 and Part 2 shall be filed with the council on or before April 29 for a preliminary determination of maximum credit eligibility for a credit under KRS 171.397.

2. Part 1, Part 2, and Intent to Apply for Expanded Credit shall be filed with the council on or before June 30, 2015, for a credit under KRS 171.3961[of the year in which the rehabilitation commences].

(b) Part 1 and[2 shall be filed with the council on or before April 29 of the year in which the rehabilitation commences.] Part 2 may be filed after rehabilitation has commenced, but an applicant who begins[applicants who begin] rehabilitation prior to receiving Part 2 certification assumes[assume] the risk that certification may be denied.

(c) Part 3 and Summary of Investment and Election of Credit shall be filed with the council after the completion date of a completed rehabilitation project for a final determination of credit[upon completion of the rehabilitation but no later than thirty (30) days following the close of the calendar year in which the completion of the rehabilitation occurred as defined in, Section 1(6) of this administrative regulation].

(9)[(4)] If at any stage an application is not approved by the council, the rehabilitation project shall not qualify as a certified rehabilitation for purposes of the Act.

Section 3. Certifications of Historic Significance-Part 1. (1) Application. The Certification Application Part 1-Evaluation of National Register Status form[forms] shall be timely filed with the council for certification of historic significance.

(a) Property individually listed in the National Register of Historic Places. Individually listed property shall be[is] considered certified a historic structure for purposes of the Act subject to confirmation by the council. The following information shall be provided by the applicant:

1. Names and mailing addresses of owners;

2. Name and address of property;

3. Photographic documentation of the building and property prior to and after alteration, showing exterior and interior features and spaces to insure that the listed property has not lost the characteristics which caused it to be listed on the National Register of Historic Places;

4. Descriptions of all the buildings within the listing if the property contains more than one (1) building for the purpose of determining which of the buildings are of historic significance to the property;

5. Brief description of appearance including alterations, distinctive features and spaces, and dates of construction;

6. Brief statement of significance summarizing how the property reflects the values that give its distinctive historical and visual character, and explaining any significance attached to the property itself;

7. A copy of a map indicating where the subject property is located. If an individually-listed property is also located in a historic district listed in the National Register of Historic Places, a copy of the map of the National Register historic district where the subject property is located and a clear delineation of the property's location within the district shall also be included; and

8. Signatures of owners requesting confirmation of listing in the National Register of Historic Places or concurring in the request if the owners are not the applicants.

(b) Property located in a historic district listed in the National Register of Historic Places. An applicant shall request that the property be certified by the council as a historic structure contributing to the significance of a historic district. The following information shall be provided:

1. Names and mailing addresses of owners;

2. Name and address of property;

3. Name of historic district;

4. Photographic documentation of the building and property prior to and after alteration, showing exterior and interior features and spaces, and photographic documentation of adjacent properties and structures on the street showing significance to the historic district;

5. Brief description of appearance including alterations, distinctive features and spaces, and dates of construction;

6. Brief statement of significance summarizing how the property reflects the values that give the district its distinctive historical and visual character, and explaining any significance attached to the property itself;

7. A copy of the map of the National Register historic district where the subject property is located and a clear delineation of the property's location within the district; and

8. Signatures of owners requesting certification or concurring in the request if the owners are not the applicants.

(2) Multiple structures. A property[Properties] containing more than one (1) building shall be treated as a single certified historic structure if the council determines that the buildings have been functionally-related historically to serve an overall purpose, whether the property is individually listed in the National Register or is located within a registered historic district. Buildings that are functionally related historically shall be[are] those which have functioned together to serve an overall purpose during the property's period of significance.

(3) Standards for evaluating significance.

(a)[Some properties listed in the National Register of Historic Places are resources whose concentration or continuity possesses greater historical significance than many of their individual component buildings and structures. These usually are documented as a group rather than individually.] In addition to the existing National Register documentation, an application for certification[applications for certifications] of historic significance shall contain documentation with information about the significance of the specific buildings and structures.

(b) A property[Properties] located within a historic district listed in the National Register of Historic Places shall be evaluated for contribution to the historic significance of the district by applying the following standards:

1. A property contributing to the historic significance of a district shall be a property[is one] which by location, design, setting, materials, workmanship, feeling, and association adds to the district's sense of time and place and historical development;

2. A property not contributing to the historic significance of a district shall be a property[is one] which does not add to the district's sense of time and place and historical development; or[one] where the location design, setting, materials, workmanship, feeling and association have been so altered or have so deteriorated that the overall integrity of the property has been irretrievably lost; and

3. If the building was[Ordinarily buildings that have been] built within the past fifty (50) years, it shall not be considered to contribute to the significance of a district, unless a strong justification concerning its[their] historical or architectural merit is given or the historical attributes of the district are considered to be less than fifty (50) years old.

(c) An evaluation[Evaluations] of historic significance shall be made based upon the appearance and condition of the property before rehabilitation was begun.

(d) The qualities of a property and its environment which qualify it as a certified historic structure shall be[are] determined taking into account all available information, including information derived from the physical and architectural attributes of the building, and shall[are] not be limited to information contained in the National Register nomination reports.

(e) If a nonhistoric surface material obscures a façade, it may be necessary to remove the surface materials prior to requesting certification so that a determination of significance can be made. After the material has been removed, if the obscured façade has retained substantial historic integrity and the property otherwise contributes to the historic district, it shall be determined to be a certified historic structure.

(4) Review of Part 1 Applications.

(a) A complete and adequately-documented Certification Application Part 1-Evaluation of National Register Status form shall be reviewed by the council to determine if the property contributes to the historic significance of the district by applying the standards established[set forth] in subsection (3) of this section[3(3) of this administrative regulation].

(b) After consideration of the information contained in the application and other available information, the council shall approve the application if:

1. The property meets the standards for evaluating for significance established[set forth] in subsection (3) of this section;[3(3) of this administrative regulation,] or

2. The director confirms that the property is individually listed in the National Register of Historic Places.

(5) If the application is not adequate to complete the review, the council shall attempt to notify the applicant by mail, telephone, or e-mail[email] using the contact information provided on the application. The applicant's failure to respond may result in denial of the application. The council's notification or failure to notify shall not constitute a waiver of a deficiency[deficiencies] or an alteration of a time limitation established[limitations set forth] under the Act.

(6) An applicant[Applicants] shall notify the council of any substantial damage, alteration, or changes to a property that occurs after issuance of a Certification of Part 1-Evaluation of National Register Status. The council may, upon thirty (30) days written notice to the applicant, withdraw a certification of historic significance and may seek to have the property removed from the National Register under 36 C.F.R. 60.15.

Section 4. Certifications of Rehabilitation-Part 2. (1) Applications.

(a) A Certificate of Application Part 2-Description of Rehabilitation form[forms] shall be timely filed with the council for certification that a rehabilitation plan is a substantial rehabilitation[as defined by KRS 171.396(10),] and meets the standards for rehabilitation established in subsection (2) of this section[in Section 4(2) of this administrative regulation].

(b) A rehabilitation project[projects] shall be done according to a rehabilitation plan.

(c) The burden shall be[is] upon the applicant to supply sufficient information to the council for a determination that the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation.

(d) An application shall include the following information:

1.[(a)] Names and mailing addresses of owners;

2.[(b)] Name and address of property;

3.[(c)] Designation of whether the application is for owner-occupied residential property or other property;

4.[(d)] Information sufficient to establish the proposed use of the structure;

5.[(e)] The adjusted basis for the property if other than owner-occupied residential or owned by an exempt entity[as defined by KRS 171.396(6)];

6.[(f)] Proposed starting date and completion date;

7.[(g)] Projected qualified rehabilitation expenses;

8.[(h)] Numbered photographs adequate to document the appearance of the structure, both on the interior and exterior, and its site and environment before rehabilitation that correspond to numbered positions on existing plans;

9.[(i)] The taxpayer identification number or Social Security number;

10.[(j)] Written detailed description of existing features and their conditions,[;] and a written description of proposed rehabilitation work and the impact on existing features;

11.[(k)] Plans for any attached, adjacent, or related new construction, if applicable; and

12.[(l)] Signatures of owners requesting certification or concurring in the request if the owners are not the applicant.

(2) Standards for rehabilitation.

(a) The standards for rehabilitation shall be[are] the criteria used to determine if the rehabilitation qualifies as a certified historic rehabilitation.[The intent of the standards is to promote the long-term preservation of a property's significance through the preservation of historic materials and features. The standards pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior of historic buildings. The standards also encompass related landscape features and the building's site and environment, as well as attached, adjacent, or related new construction.] Rehabilitation shall be consistent with the historic character of the structure or structures and, if applicable, the district in which it is located.

(b) A rehabilitation project shall meet all of the[following] standards for rehabilitation established in this paragraph.[:]

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.[;]

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.[;]

3. Each property shall be recognized as a physical record of its time, place, and use. A change that creates[Changes that create] a false sense of historical development, such as adding a conjectural feature[features] or architectural element[elements] from another building[other buildings], shall not be undertaken.[;]

4. Changes to the property[Most properties change over time; those changes] that have acquired historic significance in their own right shall be retained and preserved.[;]

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.[;]

6. Deteriorated architectural features shall be repaired rather than replaced. If the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, if possible, materials. Replacement of missing architectural features shall be substantiated by documentary, physical, or pictorial evidence.[;]

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.[;]

8. Significant archeological resources affected by a project shall be protected and preserved. If these resources shall be disturbed, mitigation measures shall be undertaken.[;]

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.[; and]

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(c) The quality of materials, craftsmanship, and related new construction in rehabilitation shall match the quality of materials, craftsmanship, and design of the historic structure in question. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings, and use of these treatments or materials shall result in denial of certification. The burden shall be[is] upon the applicant to consult with the council for a determination as to what rehabilitation measures are appropriate for the structure. Inappropriate rehabilitation measures on historic properties shall include:

1. Improper masonry repointing materials and techniques;

2. Improper exterior masonry cleaning methods;

3. Improper introduction of insulation if damage to historic fabric would result; and

4. Incompatible additions and new construction.

(d)[In certain limited cases, it may be necessary to dismantle and rebuild portions of a certified historic structure to stabilize and repair weakened structural members and systems. In these cases,] The council may consider the dismantling and rebuilding of a portion of a certified historic structure to stabilize and repair weakened structural members and systems[this extreme intervention] as[part of] a certified historic rehabilitation if:

1. The necessity for dismantling is justified in supporting documentation;

2. Significant architectural features and overall design are retained; and

3. Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.

(3) Substantial rehabilitation. A rehabilitation project shall be a substantial rehabilitation only if the requirements of KRS 171.396(9) and (10) are met. To determine whether a rehabilitation project is a substantial rehabilitation, the[~~following~~] conditions established in this subsection shall apply.[~~:~~]

(a) Increases to the adjusted basis of the structure shall include capital improvements to the structure, legal fees incurred for perfecting title, and zoning costs. Any depreciation previously claimed for the structure shall be subtracted from this figure.

(b) If a cost only partially qualifies as an eligible rehabilitation expense because some of the cost is attributable to the enlargement of the building, the expenditures shall be apportioned proportionately between the original portion of the building and the enlargement.

(c) In addition to the expenses listed in KRS 171.396(9), qualified rehabilitation expenses shall include:

1. The cost of work done to structural components of the building within the footprint of the historic structure if they are permanent;

2. Costs related to new heating, plumbing, and electrical systems, as well as expenses related to updating kitchens and bathrooms, compliance with the Americans with Disabilities Act of 1990 (42 U.S.C.[~~Section~~] 12101), and fire suppression systems and fire escapes; and

3. The cost of architectural and engineering fees, site survey fees, legal expenses, development fees, and other construction-related costs, if those[~~such~~] costs are added to the basis of the property.

(d) In addition to the exclusions listed in KRS 171.396(9), qualified rehabilitation expenses shall[~~do~~] not include the construction costs for a new building, parking lot, or sidewalk[~~buildings, parking lots, or sidewalks~~].

(4) Review of Part 2 Applications.

(a) A complete and adequately documented Certification Application Part 2- Description of Rehabilitation shall be reviewed by the council for a determination that the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation.

(b) After consideration of the information contained in the application and other available information, the council shall issue a preliminary certification of rehabilitation if the rehabilitation plan is a substantial rehabilitation[~~as defined by KRS 171.396(10),~~] and meets the standards for rehabilitation established[~~set forth~~] in subsection (2) of this section[~~4(2) of this administrative regulation~~].

(5)(a) If the application is not adequate to complete the review or if revisions to the rehabilitation project are necessary to meet the standards of rehabilitation established[~~set forth~~] in subsection (2) of this section[~~4(2) of this administrative regulation~~], the council shall attempt to notify the applicant by mail, telephone, or e-mail[~~email~~] using the contact information provided on the application.

(b) An applicant's failure to respond may result in denial of the application.

(c) The council's notification or failure to notify shall not constitute a waiver of a deficiency[~~deficiencies~~] or an alteration of a time limitation established[~~limitations set forth~~] under the Act.

(6) Changes to rehabilitation plans. Once a rehabilitation plan has been approved by the council, an applicant may[~~can~~] only make substantive changes in the work described in the application by:

(a) Filing a Certification Application-Continuation/Amendment form with the council; and

(b) Receiving notification from the council that the revised plan continues to meet the standards of rehabilitation established[~~set forth~~] in subsection (2) of this section[~~4(2) of this administrative regulation~~] and is a substantial rehabilitation[~~as defined by KRS 171.396(10) set forth in 300 KAR 6.010, Section 4(3)~~].

Section 5. Certifications of Rehabilitation-Part 3 Completed Work. (1) Application. Upon completion of a rehabilitation project, an applicant shall[~~timely~~] file a Certification Application Part 3-Request for Certification of Completed Work form with the council for final certification of rehabilitation. An application shall include the following information:

(a) Names and mailing addresses of owners;

(b) Name and address of property;

(c) Designation of whether the application is for owner-occupied residential property or other property;

(d) Actual starting date and completion date;

(e) Actual qualified rehabilitation expenses;

(f) Photographs adequate to document the appearance of the structure, both on the interior and exterior, and its site and environment during and after rehabilitation;

(g) The taxpayer identification number or Social Security number; and

(h) Signatures of owners or a representative authorized to sign on behalf of the owner requesting certification.

(2) Summary of Investment and Election of Credit. In addition to filing a Certification Application Part 3-Request for Certification of Completed Work form, the applicant shall file a Summary of Investment and Election of Credit form with the council. The Summary of Investment and Election of Credit shall include the following:

(a) Names and mailing addresses of the owners;

(b) Name and address of the property;

(c) Actual costs attributed to the rehabilitation work;

(d) Signatures of the owners or a representative authorized to sign on behalf of the owner;[~~and~~]

(e) Notarization of the signatures if the property is an owner-occupied residence or, for all other property, compilation[~~certification~~] by a certified public accountant or equivalent of the actual costs attributed to the rehabilitation of the historic structure; and

(f) An irrevocable election by the taxpayer to:

1. Use the credit, in which case, the credit shall be refundable; or

2. Transfer the credit as established in KRS 171.397(8).

(3) Scope of review.

(a)1. Rehabilitation shall encompass[~~encompasses~~] all work on the interior and exterior of the certified historic structure or structures and the site and environment, as determined by the council, as well as related demolition, new construction, or rehabilitation work which may affect the historic qualities, integrity or site, landscape features, and environment of the certified historic structure.

2. Conformance to the standards of rehabilitation established[~~set forth~~] in Section 4(2) of this administrative regulation shall be determined on the basis of application documentation and other available information by evaluating the property as it existed prior to the commencement of rehabilitation.

(b) A phased rehabilitation project shall not be[~~rehabilitations projects are not~~] permitted. Each rehabilitation project shall be self-contained[~~selfcontained~~], and completion of the rehabilitation project shall not be contingent upon a phased rehabilitation to commence after receiving final certification of rehabilitation.

(c) Portions of a completed rehabilitation project that are not in conformance with the standards for rehabilitation shall not be exempted, and may result in denial of the Certification Application Part 3-Request for Certification of Completed Work.

(4) Review of Part 3 Applications. A complete and adequately-documented Certification Application Part 3 - Request for Certification of Completed Work shall be reviewed by the council for a determination that the completed rehabilitation project is a certified rehabilitation and a determination of the final amount of credit approved. The council shall issue a final certification of rehabilitation if all the following requirements have been met:

(a) All elements of the completed rehabilitation project meet the standards for rehabilitation as established[~~defined~~] in Section 4(2) of this administrative regulation;[~~and~~]

(b) The completed rehabilitation project was a substantial rehabilitation[~~as defined by KRS 171.396(10)~~]; and

(c) Part 3 was filed with the council after the completion date[~~as defined in, Section 1(5) of this administrative regulation,~~

~~and within thirty (30) days following the close of the calendar year in which the completion of the rehabilitation occurred~~].

(5) If the application is not adequate to complete the review or if revisions to the rehabilitation project are necessary to meet the standards of rehabilitation established[~~set forth~~] in Section 4(2) of this administrative regulation, the council shall attempt to notify the applicant by mail, telephone, or e-mail[~~email~~] using the contact information provided on the application. Applicant's failure to respond may result in denial of the application. The council's notification or failure to notify shall not constitute a waiver or alteration of time limitations established[~~set forth~~] under the Act.

Section 6. Recapture of Preliminary Tax Credit Allocation For Credits Under KRS 171.397. (1) Notice of Recapture. For tax credits under KRS 171.397, if an owner fails to obtain a Certification of Completed Work within thirty-six (36) months from the date of the taxpayer's preliminary allocation of tax credit, the director shall mail to the owner written notice of recapture of the preliminary tax credit allocation.

(2) Objection.

(a) If the owner objects to the recapture of the preliminary allocation of tax credit, the owner shall file written notice of objection accompanied by a supporting statement setting forth grounds for objection within forty-five (45) days of the date of the notice of recapture.

(b) If the owner does not timely object, the preliminary tax credit allocation shall be recaptured by the council and added to the certification rehabilitation credit cap for the next calendar year as established in KRS 171.397(2)(c).

(3) Reinstatement. Within thirty (30) days of receipt of the owner's notice of objection, the council shall review the objection and determine if the owner has provided reasonable grounds as established in subsection (5) of this section to reinstate the preliminary allocation.

(a) If the council determines that the preliminary tax credit allocation shall be reinstated, the:

1. Council shall give the owner written notice that the preliminary tax credit allocation has been reinstated for an additional twenty-four (24) months;

2. Owner shall pay a review fee for a Part 2 application in the amount established in Section 10(1) or (2) of this administrative regulation, whichever is applicable; and

3. Owner shall obtain a Certification of Completed Work on or before the expiration of twenty-four (24) months. If the owner fails to obtain a Certification of Completed Work or fails to request an extension under subsection (4) of this administrative regulation, the council shall initiate recapture of the preliminary tax credit allocation under the procedures established in Section 6 of this administrative regulation.

(b) If the council determines that the preliminary tax credit allocation shall not be reinstated:

1. The council shall give the owner written notice that the preliminary tax credit allocation has not been reinstated;

2. The owner shall be given thirty (30) days from the date of the notice that the preliminary tax credit allocation has not been reinstated to file an appeal as established in Section 8 of this administrative regulation; and

3. If the owner fails to file a timely appeal as established in Section 8 of this administrative regulation:

a. The preliminary allocation shall not be reinstated;

b. The preliminary tax credit allocation shall be recaptured by the council; and

c. The preliminary tax credit allocation shall be added to the certification rehabilitation credit cap for the next calendar year as established in KRS 171.397(2)(c).

(4) Extension of Preliminary Tax Credit Allocation. (a) At any time prior to expiration of thirty-six (36) months from the date of the taxpayer's preliminary allocation of tax, an owner may request in writing that the preliminary tax credit allocation be extended for a period of twenty-four (24) months if the:

1. Owner provides written documentation of reasonable grounds established in subsection (5) of this section for an extension; and

2. Owner pays a review fee for a Part 2 application in the amount established in Section 10(1) or (2) of this administrative regulation, whichever is applicable.

(b) Prior to the expiration of the twenty-four (24) month extension, the owner may request another extension under the procedures established in this subsection. There shall not be a limit on the number of extensions that an owner may request.

(5) Grounds for Reinstatement or Extension.

(a) Reasonable grounds shall be documentation of on-going efforts to obtain financial, legal, material, or physical resources necessary to complete the rehabilitation project or documentation that the delay in completion of the rehabilitation project is necessary and unavoidable.

(b) Reasonable grounds shall not include casualty loss or demolition to the extent that the structure no longer qualifies as a certified historic structure, inability to qualify as a substantial rehabilitation, or inability or unwillingness to perform work conditioned by the council and necessary to qualify the project as a certified rehabilitation.

(c) The number of prior reinstatements or extensions shall not be a factor in determining if a reinstatement or extension shall be granted.

Section 7. Inspection. The director or an authorized representative of the council shall be permitted to conduct an inspection of the property at any time up to three (3) years after the council has issued a Certification of Completed Work to determine if the work meets the standards for rehabilitation established[~~set forth~~] in Section 4(2) of this administrative regulation.

Section 8. Appeal. A taxpayer may appeal a determination that the rehabilitation project does not qualify as a certified rehabilitation for purposes of the Act by filing an appeal in writing, in care of the council, to the director or a reviewing officer designated by the director to hear an appeal. (1) An appeal shall be made within **thirty (30)[~~five (5)~~]** days of the date of receipt of the determination being appealed.

(2) The director or the reviewing officer shall decide, based solely upon the record developed by the council, if the council:

(a) Reached incorrect conclusions of law;

(b) Made clearly erroneous factual findings;

(c) Did not consider relevant facts; or

(d) Abused the discretion available to that person.

(3) The director's or reviewing officer's decision shall:

(a) Confirm the determination;

(b) Reverse the determination on account of incorrect conclusions of law; or

(c) Remand the matter to the council for further proceedings.

(4) The director or reviewing officer shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is received.

(5) If the appeal was decided by a reviewing officer and the reviewing officer affirms the determination, the taxpayer may appeal the reviewing officer's determination in writing to the director as established in this subsection.

(a) An appeal to the director shall be filed within the time period established in subsection (1) of this section.

(b) The director shall use the same standards of review established in subsection (2) of this section.

(c) The director shall:

1. Confirm the decision of the reviewing officer;

2. Reverse the determination on account of incorrect conclusions of law; or

3. Remand the matter to the council for further proceedings.

(d) The director shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is received.

Section 9.[~~7.~~] Revocation of Owners' Certifications. (1) If, after obtaining final certification of rehabilitation, the council determines that the rehabilitation was not undertaken as represented by the owner in the applications, amendments, or supporting documentation, or the owner upon obtaining final certification undertook dis-

qualifying work, the council may revoke a certification by giving written notice to the owner.

(2) The owner may file an appeal as established in Section 8 of this administrative regulation.

(3) If the owner fails to file a timely appeal, the final certification of rehabilitation shall be revoked[~~has thirty (30) days to comment on the matter by filing written objections with the director. The council shall notify the department of its final determination, and any tax consequences of a revocation of certification shall be determined by the department~~].

Section 10.[~~8.~~] Fees for Processing Rehabilitation Certification Requests. (1) Payment of fees for review of Parts 2 and 3 shall be filed with the council when applications are filed and are nonrefundable. Certification shall not be issued until the appropriate remittance is received. Payment shall be made by check or money order payable to the Kentucky State Treasurer.

(2) For tax credits under KRS 171.397, fees for reviewing rehabilitation certification requests of owner-occupied residential property shall be[~~are~~] charged in accordance with the following schedule. If a Part 2 application is denied, there shall not be a[~~will be no~~] charge for a Part 3 review[~~fee~~].

Rehabilitation Costs for Owner-Occupied Residences	Part 2 Review Fee	Part 3 Review Fee
Less than $100,000	$60	$40
$100,000 or greater	$150	$100

(3) For tax credits under KRS 171.397, fees for reviewing rehabilitation certification requests for all property other than owner-occupied residential property shall be[~~are~~] charged in accordance with the following schedule. If a Part 2 application is denied, there shall not be a[~~will be no~~] charge for a Part 3 review[~~fee~~].

Rehabilitation Costs for Commercial and Other Buildings	Part 2 Review Fee	Part 3 Review Fee
Less than $50,000	$60	$40
$50,000- $99,999[~~$100,000~~]	$150	$100
$100,000-$499,999	$300	$200
$500,000-$999,999	$450	$300
$1 million or greater	$900	$600

(4) For tax credits under KRS 171.3961, fees for reviewing rehabilitation certification requests shall be charged in accordance with the following schedule. If a Part 2 application is denied, there shall not be a charge for a Part 3 review.

Rehabilitation Costs	Part 2 Review Fee	Part 3 Review Fee
Greater than $15 million	$3,000	$2,500

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

(a) "Certification Application Part 1-Evaluation of National Register Status", [~~(~~]KHC Form TC-1, Rev. 2014[~~2007)~~];

(b) "Certification Application Part 2-Description of Rehabilitation", [~~(~~]KHC Form TC-2, Rev. 2014[~~2007)~~];

(c) "Certification Application Part 3-Request for Certification of Completed Work", [~~(~~]KHC Form TC-3, Rev. 2014[~~2007)~~];

(d) "Certification Application-Continuation/Amendment", [~~(~~]KHC Form TC-2a, Rev. 2014[~~2007)~~];[~~and~~]

(e) "Summary of Investment and Election of Credit", [~~(~~]KHC Form TC-4, Rev. 2014; and

(f) "Certification Application-Intent to Apply for Expanded Credit", KHC Form TC-0, Rev. 2014[~~2007)~~].

(2) This[~~The~~] material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Heritage Council, 300 Washington Street, Frankfort, Kentucky 40601, Monday through Friday, 9 a.m. to 4 p.m.

CRAIG A. POTTS, Executive Director

APPROVED BY AGENCY: October 3, 2014

FILED WITH LRC: November 3, 2014 at 2 p.m.

CONTACT PERSON: Peggy D. Guier, Staff Attorney, Kentucky Heritage Council, 300 Washington Street, Frankfort, Kentucky 40601, phone (502) 564-7005, ext. 129, fax (502) 564-5280.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peggy D. Guier

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation sets forth a uniform certification process to be applied by the Kentucky Heritage Council in determining whether a taxpayer's rehabilitation project under KRS 171.397 is eligible for a certified historic structure rehabilitation tax credit against taxes imposed by KRS 141.020, 141.040, 141.0401, or 136.505.

(b) The necessity of this administrative regulation: The regulation standardizes the certification process under KRS 171.396 and KRS 171.397, and assists in achieving greater taxpayer compliance with the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.397(14) permits the Kentucky Heritage Council to promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to establish policies and procedures to implement the provisions of subsections (1) to (13) of KRS 171.397.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation adopts a uniform process for certifications of rehabilitation of certified historic structures that meets the United States Secretary of the Interior's Standards for Rehabilitation and expedites the certification process.

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

(a) How the amendment will change this existing administrative regulation: The amendment sets forth a uniform certification process to be applied by the Kentucky Heritage Council in determining whether a taxpayer's rehabilitation project under KRS 171.3961 is eligible for a certified historic structure rehabilitation tax credit against taxes imposed by KRS 141.020, 141.040, or 141.0401. The amendment sets a fee for reviewing applications filed under KRS 171.3961. The amendment sets forth a procedure for recapture of preliminary tax credit allocations under KRS 171.397. The amendment provides for a procedure for an appeal of a determination that the rehabilitation project does not qualify as a certified rehabilitation for purposes of the Act. Finally, as a housekeeping measure, it corrects formatting and drafting issues from the previously filed regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment standardizes the certification process under KRS 171.3961, and assists in achieving greater taxpayer compliance with the statute. It allows a process for recapture of preliminary tax credit allocations under KRS 171.397 if the structure has been demolished, has failed to qualify as a substantial rehabilitation, or has failed to meet the United States Secretary of the Interior's Standards for Rehabilitation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 171.397(14) permits the Kentucky Heritage Council to promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to establish policies and procedures to implement the provisions of subsections (1) to (13) of KRS 171.397. As provided under subsection (5) of KRS 171.3961, KRS 171.397(14) also applies to KRS 171.3961.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will adopt a uniform process under KRS 171.3961 for certifications of rehabilitation of certified historic structures that meets the United States Secretary of the Interior's Standards for Rehabilitation and will expedite the certification process. A procedure for recapture of preliminary tax credit allocations under KRS 171.397 will allow tax credit files to be closed in a more timely and efficient manner and allow unused preliminary tax credit allocation to be added to the certification rehabilitation credit cap for the next calendar year as established in KRS 171.397(2)(c).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any taxpayer, individual, corporation, limited liability

company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted, recognized by the Department of Revenue for purposes of the applicable tax benefit under KRS 171.397 or KRS 171.3961, and seeking a credit against taxes imposed by KRS 141.020 (Kentucky individual income taxes), KRS 141.040 (Kentucky corporation income taxes), KRS 141.0401 (Kentucky limited liability entity taxes), or KRS 136.505 (Kentucky franchise tax for financial institutions); the Department of Revenue; the Kentucky Heritage Council reviewing certifications of rehabilitation; and local governments authorized by the Kentucky Heritage Council pursuant to KRS 171.397 (13) to perform reviews of Certifications of Application Part 1 and Part 2 of the certification process and submit recommendations to the Council.

(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 regulation will impact the taxpayers listed above, because it provides a uniform process under KRS 171.3961 for certifications of rehabilitation of certified historic structures that meets the United States Secretary of the Interior's Standards for Rehabilitation.

(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: Taxpayers requesting certifications of historic significance and of rehabilitation under KRS 171.3961 will undergo a five-stage process that will require the filing of Certification of Application-Intent to Apply For Extended Credit, Certification of Application Part 1-Evaluation of National Register Status, Certificate of Application Part 2-Description of Rehabilitation, Certificate of Application Part 3-Request for Certification of Completed Work, and Certificate of Application-Investment Summary and Election of Credit forms along with all required supporting documentation. If taxpayer has failed to obtain a Certification of Application Part 3-Certification of Completed Work within thirty-six (36) months from the date or receiving a preliminary tax credit allocations under KRS 171.397, the amended regulation sets forth a process for recapture of the preliminary allocation and allows unused preliminary tax credit allocation to be added to the certification rehabilitation credit cap for the next calendar year. The amendment permits taxpayers to make an unlimited number of requests for extension for good cause for additional twenty-four (24) month periods.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Processing fees shall accompany the filing of Certificate of Application Part 2-Description of Rehabilitation, and Certificate of Application Part 3-Request for Certification of Completed Work forms. Processing fees are based upon the total rehabilitation cost of the project and are $3,000 for filing Part 2 and $2,500 for filing Part 3. Taxpayers receiving a preliminary allocation and desiring a twenty-four (24) month extension or successfully objecting to a notice to recapture shall be required to file an additional fee for a Part 2 review.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Standards for certification of historic significance are clearly established; the Council's Certifications of Part 1 and Part 2 will determine credit eligibility against taxes imposed by KRS 141.020, 141.040, and 141.0401 upon completion of the rehabilitation; and the Council's certification process for rehabilitation will better insure that rehabilitation plans comply with uniform standards and protect the historic integrity of the structures. Recaptured preliminary tax credit allocations under KRS 171.397 will be added to the certified rehabilitation credit cap for the next calendar year and be made available for preliminary allocation to future qualified rehabilitation projects. Taxpayers are provided a standard and uniform process for an appeal of a determination that the rehabilitation project does not qualify as a certified rehabilitation for purposes of the Act.

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

(a) Initially: Most certification reviews will take place at the office of the Kentucky Heritage Council. Most of the agency's work to implement this regulation would be included in our normal budgetary costs.

(b) On a continuing basis: Same as initial cost. There may be additional travel costs if it becomes necessary to review projects at the sites. Currently two (2) staff member review the Part 1 and Part 2 Certifications. Additional staff help may be necessary if the number of applications increase in the future.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding will come from the normal budget for the Kentucky Heritage Council.

(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 funding will be necessary. The fees established in the original regulation have not been increased. It is projected that the additional fees will be sufficient to cover reasonable costs associated with review of the certification applications for tax credits under KRS 171.3961.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: A processing fee is associated with this regulation for tax credit applications under KRS 171.3961, and is tiered based upon projected rehabilitation costs for Part 2 and actual rehabilitation costs for Part 3. Taxpayers receiving a preliminary allocation and desiring a twenty-four (24) month extension or successfully objecting to a notice to recapture shall be required to file an additional fee for a Part 2 review.

(9) TIERING: Is tiering applied? Processing fees were tiered based upon projected and actual rehabilitation costs. The lowest tier of expenses up to $60,000 cover the maximum available credit for owner-occupied residential property, so all residential property owners are treated equally. The remaining tiers of expenses represent increases commensurate with the cost of all other projects, mainly commercial, as increasing costs are indicative of increasing levels of complexity, higher intensity of inspection and review, and increased likelihood of changes. The additional tier for tax credits under KRS 171.3961 represents the increased expenses due to the massive scale of the projects with over $15,000,000 in qualified rehabilitation expenditures and the degree of inspection and specialized review required.

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 Heritage Council, an agency of the Tourism, Art, and Heritage Cabinet, is required to certify to the Department of Revenue the maximum historic preservation tax credit available under KRS 171.397 for taxpayers seeking a tax credit against taxes imposed by KRS 141.020, 141.040, 141.0401, or 136.505. For tax credits available under KRS 171.3961, the Council's Certifications of Part 1 and Part 2 will determine credit eligibility against taxes imposed by KRS 141.020, 141.040, and 141.0401 upon completion of the rehabilitation. It is noted that KRS 171.397(13) provides that the Council may authorize a local government to perform initial review of applications for the credit allowed under the statute and forward the applications to the Council with recommendations. The Council has not, nor does it anticipate, the authorization of any local government to perform this function and no part of this regulation relates to any current program, service, or requirement of a state or local government entity.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.396, 171.3961, and 171.397.

(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 upon

the number and amount of tax credits claimed last fiscal year and the number of credit application estimated to be filed under KRS 171.3961, the estimated revenue generated to state government will be approximately $68,000.

(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 estimated revenue generated for state government for subsequent years will be approximately the same as for the first four years and as long as the statutory cap on the total credit claimed by all taxpayers in each fiscal year remains $5,000,000. The estimated revenue generated for 2018 and beyond shall revert back to pre-2014 levels as the credit under KRS 171.3961 will no longer be applicable.

(c) How much will it cost to administer this program for the first year? Specific dollar estimates cannot be given. Currently the programs costs are being met through the normal agency budget. Expenditures include the following: (i) a percentage of four (4) staff salaries; two-thirds of two (2) salaried position of $46,000 plus benefits and one-quarter of two (2) staff positions of $30,000 plus benefits; and (ii) miscellaneous expenses for mailing, phone, and travel for inspections where necessary. Total expenses are estimated to be somewhere between $100,000 and $120,000.

(d) How much will it cost to administer this program for subsequent years? Costs shall remain roughly the same as the previous year for the first four years and as long as the statutory cap on the total credit claimed by all taxpayers in each fiscal year remains $5,000,000. The estimated revenue generated for 2018 and beyond shall revert back to pre-2014 levels as the credit under KRS 171.3961 shall no longer be applicable.

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
Office of Occupations and Professions
Board of Home Inspectors
(Amended After Comments)

815 KAR 6:010. Home inspector licensing requirements and maintenance of records.

RELATES TO: KRS 198B.700, 198B.706, 198B.712, 198B.714, 198B.716, 198B.722, 198B.724, 198B.738

STATUTORY AUTHORITY: KRS 198B.706, 198B.722

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.706(1) and (15) require the Kentucky Board of Home Inspectors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.700 to 198B.738 and to establish requirements for licensing and certification as well as prescribing forms and applications. KRS 198B.706(7) requires the board to promulgate administrative regulations to provide for the inspection of the records of a licensee. KRS 198B.706(11) requires the board to establish continuing education requirements. KRS 198B.722 requires the board to establish requirements for renewal of licenses and authorizes the board to establish an inactive license. This administrative regulation establishes the licensure and record requirements for home inspectors.

Section 1.[~~Definitions. (1) "Applicant" is defined by KRS 198B.700(1).~~

~~(2) "Board" is defined by KRS 198B.700(2).~~

~~(3) "Contact hour" means fifty (50) minutes of instruction, exclusive of breaks, recesses, or other time not spent in instruction.~~

~~(4) "Licensee" is defined by KRS 198B.700(7).~~

~~Section 2.~~] Application Requirements. (1) An applicant for a home inspector license shall submit the following:

(a) A completed Application for Licensure as a Kentucky Home Inspector, Form KBHI 1;

(b) A two (2) inch by two (2) inch passport photograph affixed to the application form;

(c) A certificate of course completion and the applicant's national examination test score;

(d) A certificate of insurance;

(e) If applicable, other state or local licensure, certification, registration, or permit;

(f) A[~~**state-wide criminal background check from the applicant's state of residence administered by a law enforcement agency capable of conducting a background check, a**~~] recent background check performed by the Kentucky State Police[~~**,**~~] and a nationwide criminal background investigation check performed by the Federal Bureau of Investigation[~~report with the results of the state-wide background check~~]; and

(g) A nonrefundable fee of $250.

(2) An applicant for a home inspector license shall:

(a) Complete and pass a board-approved, prelicensing training course administered by a provider who has been approved by the board in accordance with 815 KAR 6:040 and subsection (8) of this section; and

(b) Pass an examination conducted by a board-approved test provider.

(3) A request to sit for the examination shall be made directly to the test provider.

(4) The examination fee shall be set by the testing company and shall be paid directly to the test provider.

(5) A passing score on the examination shall be valid for a period of three (3) years.

(6) Failing the examination.

(a) An applicant who fails to pass the examination two (2) times shall wait at least fourteen (14) calendar days from the date of the second failed examination prior to retaking the examination.

(b) An applicant who fails to pass the examination three (3) or more times shall wait at least thirty (30) calendar days from the date of the third or subsequent failed examination[~~failed examination~~] prior to retaking the examination.

(c) An applicant who fails to pass the examination three (3) times shall not be eligible to retake the examination until the applicant has again completed and again passed the prelicensing training course required by subsection (2)(a) of this section before retaking the examination a fourth time, and also for each subsequent examination failure thereafter.

(7) Procedures and conduct.

(a) The applicant shall follow:

1. Procedures and appropriate conduct established by the board or testing service administering an examination if the procedures and conduct requirements are provided or made available to each applicant or orally announced before the start of the examination; and

2. Written instructions communicated prior to the examination date and instructions communicated at the testing site, either written or oral, on the date of the examination.

(b) Failure to comply with all procedures established by the board or the testing service with regard to conduct at the examination shall be grounds for denial of the application.

(8) Course requirements. To be approved by the board, a prelicensing training course shall require a minimum of:

(a) Sixty-four (64) credit hours of training in the following subject areas for at least the number of hours specified:

1. Manufactured housing: three (3) hours;

2. Standards of practice, KRS Chapter 198B and 815 KAR Chapter 6, contracts, report writing, and communications: eleven (11) hours;

3. Exterior, roofing, insulation, and ventilation: six (6) hours;

4. Structure and interior: nine (9) hours;

5. Electrical and plumbing: nine (9) hours;

6. Heating and air conditioning: six (6) hours;

7. Field training: sixteen (16) hours, including not more than eight (8) hours in a laboratory;

8. General residential construction: three (3) hours; and

9. Environmental hazards, mitigation, water quality, and indoor air quality: one (1) hour;

(b) The completion of three (3) unpaid home inspections under

the supervision of a Kentucky licensed home inspector with satisfactory written reports submitted to the course provider in addition to the sixteen (16) hours of field training required by paragraph (a)7 of this subsection; and

(c) An exit examination with a passing score.

(9) Criminal background checks and other disciplinary proceedings.

(a) Each applicant shall submit**[a state-wide criminal background check from the applicant's state of residence administered by a law enforcement agency capable of conducting a background check.]** a recent background check performed by the Kentucky State Police**[.]** and a nationwide criminal background investigation check performed by the Federal Bureau of Investigation[undergo a state-wide criminal background check administered by a law enforcement agency capable of conducting a state-wide background check and submit the results of the check along with the applicant's application].

(b) If an applicant has resided in a state for less than five (5) years prior to application, the applicant shall also obtain and submit a state-wide criminal background check by a law enforcement agency capable of conducting a state-wide background check from the state where the applicant previously resided.[(c) The board shall deny or refuse to renew a license to an applicant or licensee based on the seriousness of the offense, the length of time since the offense, and the applicant's or licensee's showing of remorse, rehabilitation, and restitution by clear and convincing evidence, who:

1. Has pleaded guilty to or has been convicted of a:

a. Felony; or

b. Misdemeanor; or

2. Has had disciplinary action taken against a professional license, certificate, registration, or permit held by the applicant or licensee in any jurisdiction or state, including Kentucky.]

Section 2.[3.] Reciprocity. An applicant seeking a license through reciprocity in accordance with KRS 198B.714 shall:

(1) Submit a completed Application for Licensure as a Kentucky Home Inspector, Form KBHI 1, and attachments established in Section 1(1)(b)[2(1)(b)] through (f) of this administrative regulation; and

(2) Pay a nonrefundable fee of $250[; and

(3) Meet the conditions of KRS 198B.714(1)].

Section 3.[4.] Nonresident Licensees. A nonresident licensee shall:

(1) Submit a completed Application for Licensure as a Kentucky Home Inspector, Form KBHI 1, and attachments established in Section 1(1)(b)[2(1)(b)] through (f) of this administrative regulation;

(2) Pay the fee established in Section 1(1)(g)[2(1)(g)] of this administrative regulation; and

(3) Comply with the provisions established in KRS 198B.716 and this administrative regulation.

Section 4.[5.] Renewal of Licenses. (1) To be eligible for renewal of license, an applicant shall hold a valid and current license issued by the board and[In addition, to the requirements established in KRS 198B.722, to renew a license, the licensee] shall:

(a)[(1)] Satisfy the continuing education requirements of Section 5[6] of this administrative regulation;

(b)[(2) Pay a nonrefundable renewal fee of $200 per year for each license that expires on or after July 1, 2012, to and including June 30, 2014; or

(3)] Pay a nonrefundable renewal fee of $250 per year for each year of licensure[license that expires on or after July 1, 2014];

(c)[(4)] Submit a fully-completed Application for Renewal Licensure as a Kentucky Home Inspector, Form KBHI 2 and attachments, including:

1.[(a)] A certificate of completion for continuing education;

2.[(b)] A certification of insurance information;

3.[(c)] If applicable, other state or local licensure, certification, registration, or permit; and

4.[(d)] A state-wide criminal background check; and

(d)[(5)] Submit a copy of a completed inspection report that has been compiled within the previous twelve (12) months immediately preceding renewal.

(2)(a) The renewal application shall be postmarked by the last day of the month in which the licensee is to renew the license.

(b) If the renewal application is postmarked within sixty (60) days after the last day of the licensee's renewal month, the licensee shall pay a nonrefundable:

1. Renewal fee of $250 per year for each year of licensure; and

2. Late fee of $250.

(3) If a licensee has not submitted a renewal application within sixty (60) days of the last day of the licensee's renewal month, the license shall be cancelled and the licensee shall cease and desist from conducting home inspections.

(4)(a) If a licensee failed to submit a renewal application more than sixty (60) days from the last day of the licensee's renewal month and wants to be licensed, the licensee shall submit a license reinstatement application within 120 days of the last day of the licensee's renewal month. The licensee shall pay a nonrefundable:

1. Renewal fee of $250 per year for each year of licensure; and

2. Late fee of $500.

(b) If a licensee failed to submit a renewal application or a license reinstatement application within 120 days of the last day of the licensee's renewal month and wants to be licensed, the licensee shall submit a new application in accordance with existing requirements for initial applicants under KRS Chapter 198B and 815 KAR Chapter 6.

Section 5.[6.] Continuing Education. (1) The continuing education requirements of this section shall apply only to those licensees who will have been licensed at least twelve (12) months at license renewal.

(2) Each licensee who renews a license in an odd year shall have at least fourteen (14) hours of continuing education per license year. Each licensee who renews a license during an even year shall have at least twenty-eight (28) hours of continuing education during the license biennial period[shall be required to have at least fourteen (14) hours of continuing education per license year].

(3) Prior to renewal, the continuing education shall include a minimum of the following:

(a) Three (3) hours in manufactured housing;

(b) Three (3) hours in KRS Chapter 198B and 815 KAR Chapter 6;[and]

(c) Three (3) hours in report writing; and

(d) Five (5)[Eight (8)] hours in technical courses, including identification and[,] determination[, and report writing], as applicable within the standards of practice.

(4) Continuing education shall be obtained from those providers approved by the board as provided in 815 KAR 6:080[040].

(5) An approved prelicensing course shall[to] satisfy the initial fourteen (14) hour continuing education requirement.

(6) A maximum of three (3) hours per license year shall be awarded for teaching part of a home inspection credit course or home inspection continuing education course as applied to the appropriate content area established in subsection (3)(a) through (d)[(c)] of this section.

(7) A maximum of three (3) hours per license year shall be awarded for appointment to the board for a board member who is licensed and who has attended not less than eighty [percent] (80) percent of the board meetings each license year as applied to the content area established in subsection (3)(b) of this section.

(8) The report writing course shall be completed face-to-face. An online report writing course shall not satisfy the continuing education requirement established in subsection (3)(c) of this section.

(9) A licensee shall not take the same continuing education course during a licensure period.

(10) A licensee may complete the required continuing education hours within the sixty (60) day grace period from the last day of the licensee's renewal month.

Section 6.[7.] Inactive License. (1) Placement of a license in inactive status.

(a)1. To place a license in inactive status, a licensee shall

submit a notarized statement indicating the desire to have the license placed in inactive status.

2. This notarized statement shall be mailed to the board and shall be accompanied by the following:

a. A check for ten (10) dollars made payable to the Kentucky State Treasurer;

b. The actual license card of the licensee; and

c. A current mailing address for the licensee.

(b) A licensee[~~Licensees~~] in inactive status shall not engage in home inspection activities within the Commonwealth of Kentucky.

(2) Renewal of license in inactive status.

(a) A licensee with an inactive license shall pay an annual inactive status fee equal to fifty (50) percent of the current renewal fee for an active license.

(b) Failure to pay this annual fee shall result in the expiration of the license on the last day of the licensee's birth month.

(3) Insurance coverage for licensees with inactive license. A licensee with an inactive status license shall not be required to maintain the insurance coverage required by KRS 198B.712(3)(d) during inactive status.

Section 7.[~~8.~~] Reactivation of Inactive License to Active Status. (1) A licensee who wishes to reactivate a license shall contact the board and submit a notarized statement requesting approval to return to active status.

(2) This request shall be accompanied by the following:

(a) The name of the licensee requesting activation;

(b) The license number of the licensee requesting reactivation;

(c) The birth date of the licensee requesting reactivation;

(d) A current mailing address for the licensee requesting reactivation;

(e) A check in the amount of ten (10) dollars made payable to the Kentucky State Treasurer;

(f) Proof of liability insurance naming the individual in the amount of $250,000 as required by KRS 198B.712(3)(d);

(g) A state-wide criminal background check administered by a law enforcement agency capable of conducting a state-wide background check; and

(h) Proof of continuing education as required by Section 8[~~9~~] of this administrative regulation.[~~; and~~]

(3) A license that has been inactive for a period of five (5) years from the date of board action shall be considered expired.

Section 8.[~~9.~~] Continuing Education Requirements for Licensees in Inactive Status Returning to Active Status. (1) Except as provided by subsection (2) of this section, a licensee with an inactive status who wishes to reactivate the license shall complete the[~~following~~] continuing education requirements established in this subsection prior to application to return to active status. The licensee shall complete[~~:~~

~~(1)~~] fourteen (14) hours per year that the license has been inactive, which[~~. This fourteen (14) hours~~] shall include:

(a) Three (3) hours in manufactured housing;

(b) Three (3) hours of KRS Chapter 198B and 815 KAR Chapter 6; and

(c) Eight (8) hours, in any combination, of:

1. Electrical;

2. Plumbing;

3. Heating, ventilation, and air conditioning;

4. Roofing; or

5. Report writing.

(2) A board approved sixty-four (64) hour prelicensing training course may be used to satisfy the requirement established in subsection (1) of this section[~~this requirement~~].

Section 9.[~~10.~~] Maintenance of Records. (1) Address.

(a) A license holder shall report a change of address to the board in writing within ten (10) days after the change.

(b) The board shall not be responsible for the license holder's failure to receive notices, communications, and correspondence caused by the license holder's failure to promptly notify the board of a change of address.

(2) Names.

(a) A license holder shall notify the board in writing of a name change within thirty (30) days of the change.

(b) The notification shall be accompanied by a copy of a marriage certificate, divorce decree, court order, or other documentation that verifies the name change.

(c) The board shall not be responsible for the license holder's failure to receive notices, communications, and correspondence caused by the license holder's failure to promptly notify the board of a name change.

(3) Inspection records.

(a) A licensed home inspector shall retain the following records for at least three (3) years from the date of the inspection:

1. The written reports;

2. The contract; and

3. Supporting documentation, if applicable.

(b) Records may be retained in retrievable, electronic format.

(c) The licensee shall provide all records requested by the board within ten (10) days of receipt of the request.

Section 10. (1) The board may deny, refuse to renew, or reactivate a license to an applicant or licensee who:

(a) Has entered a guilty plea to, pleaded guilty to, or been convicted of a:

1. Felony; or

2. Misdemeanor; or

(b) Has had disciplinary action taken against a professional license, certificate, registration, or permit held by the applicant or licensee in any jurisdiction or state, including Kentucky.

(2) The board shall base its decision on the seriousness of the offense or disciplinary action, the length of time since the offense or disciplinary action, and the applicant's or licensee's showing of remorse, rehabilitation, and restitution by clear and convincing evidence.

Section 11. The board shall deny, refuse to renew, or reactivate a license to an applicant or licensee who fails to comply with a provision of KRS Chapter 198B or this administrative regulation.

Section 12.[~~11.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as a Kentucky Home Inspector", Form KBHI 1, 7/2014[~~1-2012~~];[~~and~~]

(b) "Application for Renewal Licensure as a Kentucky Home Inspector", Form KBHI 2, 7/2014; and

(c) "License Reinstatement Application", Form KBHI 6, 7/2014[~~1-2012~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

MITCH BUCHANAN, Board Chair

APPROVED BY AGENCY: November 13, 2014

FILED WITH LRC: November 13, 2014 at 4 p.m.

CONTACT PERSON: Diana Jarboe, Board Administrator, Kentucky Board of Home Inspectors, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 227, fax (502) 696-4961.

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 governs the application and examination process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements concerning examination.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.706(1) requires administrative regulations governing the examination of applicants for registration.

(d) How this administrative regulation will assist in the effective

administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the requirements concerning examination.

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

(a) How the amendment will change the existing administrative regulation: This amendment governs the application and examination process.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the requirements concerning examination.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.706(1) requires administrative regulations governing of applicants for registration.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statues by establishing the requirements concerning examination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 360 licensed home inspectors, six (6) prelicensing providers, and five (5) continuing education 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: Applicants will be required to meet the requirements of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities: The cost of the application is $100 and the biennial renewal is $250 per year. A late fee for a renewal application submitted within the sixty (60)-day grace period is $250, a new fee. The late fee for a reinstatement application submitted outside the sixty (60)-day grace period is $500, a new fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be informed of the process for taking the examination.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

(6) The source of funding for the implementation and enforcement of this administrative regulation: The Kentucky Board of Home Inspectors is funded from fees paid by licensees and applicants as well as a quarterly stipend.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: 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 or increase any fees or directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 directly impacts the Kentucky Board of Home Inspectors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198B.706(1)(a) and 198B.712(2)(c)

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 generate approximately $500 in revenue, which is a decrease from the current amount.

(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 generate approximately $500 in revenue, which is a decrease from the current amount.

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues(+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET
Office of Occupations and Professions
Board of Home Inspectors
(Amended After Comments)

815 KAR 6:030. Home inspector standards of conduct.

RELATES TO: KRS 198B.706, 198B.728

STATUTORY AUTHORITY: KRS 198B.706

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.700 to 198B.738. KRS 198B.706(13) authorizes the board to establish standards of practice for home inspectors. This administrative regulation establishes standards of conduct for home inspectors.

Section 1. Standards of Conduct. A licensed home inspector or an entity under which the inspector conducts business[,] shall:

(1) Act as an unbiased third party to the real estate transaction;

(2) Discharge the duties of a home inspector with integrity and fidelity to the client;

(3) Express an opinion on any aspect of the inspected property only if that opinion is based upon the experience, training, education, and personal opinion of the inspector;

(4) Provide a written disclosure to the client of any interest the inspector maintains in the transaction and advise the client to obtain competitive bids before products or additional services are offered by the licensee including:

(a) Products or additional services to be purchased from or provided by the inspector, his or her agents, or employees;

(b) Products or additional services to be purchased from or provided by any entity, organization, or venture in which the inspector has an interest; or

(c) Products or additional services to be purchased which will result in any additional compensation or benefit to the inspector, financial or otherwise; and

(5) Provide the license number, following the licensee's signature, on any document signed by the home inspector pertaining to the home inspection.

Section 2. Additional Standards. In addition to the affirmative duties imposed by Section 1 of this administrative regulation, a licensed home inspector or an entity under which the licensee conducts business[,] shall not:

(1) Engage in or knowingly cooperate in the commission of fraud or material deception to obtain a license to engage in the practice of home inspection, including cheating on the licensing examination;

(2) Perform repairs or modifications for compensation, or for

other direct or indirect financial benefit, to a residential dwelling within twelve (12) months after performing a home inspection on the same residential dwelling, if the repairs or modifications are based upon the findings in the home inspection report. This subsection shall not apply if the home inspector purchases the residence after performing the inspection;

(3) Provide a home inspection to the client that does not conform to the Standards of Practice selected on the initial application for licensure or the application for renewal submitted pursuant to 815 KAR 6:010;

(4) Provide services that constitute the unauthorized practice of any profession that requires a special license if the home inspector does not hold that license;

(5) Provide any compensation, inducement, or reward, either directly or indirectly, to any person or entity other than the client for the referral of business to the inspector. The purchase or use of advertising, marketing services, or products shall not be considered compensation, inducement, or reward;

(6) Conduct a home inspection or prepare a home inspection report for which the inspector's fee is contingent upon the conclusions contained in the report;

(7) Misrepresent the financial interests, either personally or through his or her employment, of any of the parties to the transfer or sale of a residential dwelling upon which the licensee has performed a home inspection;

(8) Disclose any information concerning the results or content of the home inspection report without the [~~written~~] approval of the client for whom the home inspection was performed. However, the home inspector may disclose information if there is an imminent danger to life, health, or safety, or where the home inspector is compelled to disclose information by court order;

(9) Accept compensation, financial or otherwise, from more than one (1) interested party for the same home inspection on the same property without the written consent of all interested parties;

(10) Make a false or misleading representation regarding:

(a) The condition of a residential dwelling for which the licensee has performed or contracted to perform a home inspection;

(b) The extent of the services the licensee has performed or will perform; or

(c) The type of license held by the licensee;

(11) Be convicted of a crime in the course of the practice of home inspection or commit any act constituting a violation of state law during the course of a home inspection;

(12) Make a false or misleading representation:

(a) In a license or renewal application form; or

(b) In information provided to the board;

(13) Fail to pay any fees required by 815 KAR 6:010;

(14) Fail to continuously maintain the insurance or other evidence of financial responsibility required by KRS Chapter 198B or 815 KAR Chapter 6;

(15) Engage in any course of lewd or immoral conduct in connection with the delivery of services to clients;

(16) Fail to complete the continuing education requirements established by the board in 815 KAR 6:010;

(17) Use the term "certified" in advertising, unless the certification is current and the full name of the certifying body is clearly identified;

(18) Use the term "fully insured," unless the person or entity has business liability and worker's compensation insurance coverage in effect at the time of the advertisement; [~~or~~]

(19) Continue to practice, if the licensed home inspector has become unfit to practice due to:

(a) Professional incompetence;

(b) Failure to keep abreast of current professional theory or practice;

(c) Physical or mental disability;

(d) Addiction to, abuse of, or severe dependency on[~~,~~] alcohol or other drugs that endanger the public by impairing a licensed home inspector's ability to practice safely; or

(e) Failure to maintain a valid home inspector's license;

(20) Omit information in a home inspection report required to be disclosed to a client by the Standards of Practice selected on the initial application for licensure or the application for renewal submitted pursuant to 815 KAR 6:010; or

(21) Fail to comply with an order of the board.

Section 3. A home inspection report shall include a statement that the report does not address environmental hazards and shall list all other exclusions with specificity. The presence or evidence of the following environmental hazards shall not be addressed in the report:

(1) Air-borne hazards;

(2) The air quality or the sickness of any building, including, but not limited to, the presence of absence of all manner of biological activity, such as hazardous plants, insects, birds, pets, mammals, and other flora and fauna, and their consequent physical damage, toxicity, noxiousness, odors, waste products, and wood destroying animals and fungi;

(3) Animals, insects, or rodents;

(4) Asbestos;

(5) Carcinogens, including but not limited to radon;

(6) Contaminants in soil, water, and air;

(7) Electro-magnetic fields;

(8) Hazardous materials including, but not limited to, the presence of lead in paint;

(9) Hazardous waste conditions;

(10) Mold, mildew, or fungus;

(11) Hazardous plants or animals including, but not limited to wood destroying organisms, wood destroying insects, or diseases harmful to humans including molds or mold-like substances;

(12) Noise;

(13) Potability of any water;

(14) Toxins;

(15) Urea formaldehyde;

(16) The effectiveness of any system installed or method utilized to control or remove suspected environmental hazards; and

(17) Compliance with regulatory requirements (codes, regulations, laws, ordinances, etc.), any manufacturer's recalls, conformance with manufacturer installation or instructions, or any information for consumer protection purposes.[~~Section 3. Disciplinary Actions and Appeals. (1) Pursuant to KRS 198B.728, the board may investigate complaints related to violations of this administrative regulation and may impose the following penalties:~~

~~(a) Denial of a license;~~

~~(b) Suspension of a license; or~~

~~(c) Revocation of a license.~~

~~(2) The licensee shall be notified of the proposed penalties in writing sent to the licensee's address on file with the board.~~

~~(3) If a licensee chooses to appeal a proposed penalty, the licensee shall notify the board of his appeal in writing within ten (10) days of the notice of the proposed penalty.~~

~~(4) All appeal proceedings shall be conducted in accordance with KRS Chapter 13B.~~]

MITCH BUCHANAN, Board Chair

APPROVED BY AGENCY: November 13, 2014

FILED WITH LRC: November 13, 2014 at 4 p.m.

CONTACT PERSON: Diana Jarboe, Board Administrator, Kentucky Board of Home Inspectors, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 227, fax (502) 696-4961.

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 governs the conduct of licensed home inspectors.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the code of professional conduct for licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms

to the authorizing statutes by establishing a professional code of conduct in accordance this KRS 198B.706(1).

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administrative of the statutes by establishing the code of professional conduct that must be followed by licensees in order to protect the public.

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

(a) How the amendment will change the existing administrative regulation: The amendment clarifies the code of professional conduct.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the requirements of the code of professional conduct.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by establishing a professional code of conduct in accordance this KRS 198B.706(1).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administrative of the statutes by establishing the code of professional conduct that must be followed by licensees in order to protect the public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 360 licensed home inspectors.

(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: Licensees will be required to conform their professional activities to the requirements of this administrative regulation in order to protect the public.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities: No costs are associated with conforming to the code of professional code.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the code of professional conduct, the entities identified in question (3) will be acting in a manner that protects the public.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No initial costs will be required to implement the administrative regulation.

(b) On a continuing basis: No continuing costs will be required to implement the administrative regulation.

(6) The source of funding for the implementation and enforcement of this administrative regulation: The board is funded by fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: 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 directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 Home Inspectors.

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 198B.706.

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

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

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

(c) How much will it cost to administer this program for the first year? No costs will be required to administer this program.

(d) How much will it cost to administer this program for subsequent years? No costs will be required to administer 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:

PUBLIC PROTECTION CABINET
Office of Occupations and Professions
Board of Home Inspectors
(Amended After Comments)

815 KAR 6:090. Procedures for complaints and administrative hearings.

RELATES TO: KRS 198B.706(3), (4), 198B.712, 198B.722, 198B.728, 198B.730

STATUTORY AUTHORITY: KRS 198B.706(1), (3), (15)

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(4) requires the board to investigate complaints concerning licensees, or persons the board has reason to believe should be licensees, including complaints concerning failure to comply with KRS 198B.700 to 198B.738 or administrative regulations promulgated under KRS 198B.700 to 198B.738, and, if appropriate, take action in accordance with KRS 198B.728 and 198B.730. KRS 198B.730(1) requires the board to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B. KRS 411.272(2) provides that KRS 411.270 to 411.282 prevail over any conflicting law otherwise applicable to any action, claim, or cause of action against a home inspector, with specified exceptions. KRS 198B.728 provides that the board shall take disciplinary actions against or impose sanctions on a licensee for failing to comply with any provision of KRS 198B.700 to 198B.738 or administrative regulations promulgated under KRS 198B.700 to 198B.738. KRS 198B.706(1) requires the board to find the requirements for and prescribe the form of documents that are required by KRS 198B.700 to 198B.738. KRS 198B.706(15) requires the board to promulgate administrative regulations to carry out the requirements of KRS 198B.700 to 198B.738. This administrative regulation establishes supplemental administrative hearing procedures for matters before the commission and the required forms for a complaint or answer.

Section 1. Complaint Screening Committee. (1) The committee shall consist of three (3) board members, appointed by the chair of the board to:

(a) Review complaints and investigative reports;

(b) Participate in informal proceedings to resolve formal complaints; and

(c) Make recommendations for disposition of complaints to the full board.

(2) The committee may be assisted by the board staff and counsel to the board.

Section 2. Complaint Process and Disciplinary Action Against a Licensee. (1) The board may investigate complaints related to violations of this administrative regulation and may impose the following penalties:

(a) Deny issuance of a license;
(b) Refuse to renew a license;
(c) Refuse to reinstate a license;
(d) Probation of a license;
(e) Suspension of a license;
(f) Revocation of a license; or
(g) Issuance of a public or private written reprimand.

(2) A complaint may be initiated by the board, an individual, an entity, or any governmental agency. It shall be completed on a Complaint Form, KBHI-COMP 1, and shall:

(a) State the basis of the complaint fully and concisely, including the name of the person who the complaint is against;
(b) Include any documentation in support of the complaint; and
(c) If the complaint is initiated by the public, be notarized by a notary public.

(3) A copy of the initiating complaint shall be mailed to the licensee to his or her last known address on file with the board. The licensee shall file a written response to the initiating complaint with the board within twenty-one (21) days of the date on which the initiating complaint was mailed. The written response shall:

(a) Identify the respondent;
(b) State his or her response to the complaint;
(c) Include any documentation in dispute of the complaint;
(d) If applicable, state whether he or she proposes to inspect the residence that is the subject of the claim and to complete the inspection within twenty-one (21) days of the date on which the initiating complaint was mailed. Any proposal shall include the statement that the home inspector shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim; offer to compromise and settle the claim by monetary payment without inspection; or state that the home inspector disputes the claim; and
(e) Be notarized by a notary public.

(4) Once the written response is received, the complaint review committee shall review the case. The committee shall report its findings and recommendations to the board. The board shall:

(a) Dismiss the complaint and notify the person making the complaint and the licensee that no further action shall be taken at the present time;
(b) Find an investigation is warranted; or
(c) Find a violation of a provision of KRS 198B.700 to 198B.738 or the administrative regulations promulgated under KRS 198B.700 to 198B.738 and issue notice of disciplinary action to the licensee.

(5)(a) The board may appoint any of its members or any agent or representative of the board to conduct an investigation of the complaint.

(b) Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(c) Based on consideration of the complaint and the investigative report, if any, the board shall find if there has been a prima facie violation of a provision of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6.

(d) If the investigator is a member of the board, he or she shall not vote.

(e) If it is found that the facts alleged in the initiating complaint or investigative report do not constitute a prima facie violation of the statutes or administrative regulations, the board shall notify the person making the complaint and the licensee that no further action shall be taken at the present time.

(6) If it is found that there is a prima facie violation of a provision of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6, the board shall issue written notice of disciplinary action sent to the licensee's address on file with the board and inform the licensee:

(a) Of the specific reason for the board's action, including:
1. The statutory or regulatory violation; and
2. The factual basis on which the disciplinary action is based;
(b) Of the penalty imposed; and
(c) That the licensee may appeal the penalty to the board within twenty (20) calendar days of the date of the board's notice.

(7) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(8) If the request for an appeal is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request an appeal.

(9) A complaint initiated by the public shall be filed within one (1) year of the date the complainant knew or should have known of a violation of a provision of KRS 198B.700 to 198B.738 or a provision of 815 KAR Chapter 6 by the licensee.

Section 3. Settlement by Informal Proceedings. (1) The board, through counsel and the complaint screening committee, may, at any time during the complaint process described in Section 2 of this administrative regulation, enter into informal proceedings with the licensee who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chair.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 4. Disciplinary Action Against a Prelicensing Provider **or Continuing Educational Provider**. (1) The board may deny, suspend, probate, or revoke the registration of any prelicensing course provider for any of the following acts or omissions:

(a) Obtaining or attempting to obtain registration or approval through fraud, deceit, false statements, or misrepresentation;
(b) Failing to provide complete and accurate information in the initial registration or in any notification of change in information;
(c) Failing to timely notify the board of a change in the information required for registration of the provider;
(d) Falsifying of any records regarding the courses conducted by the provider or the persons who attended the courses offered;
(e) Failing to maintain any required records regarding course offerings conducted by the provider or the persons who attended the course;
(f) Failing to adequately train the staff responsible for taking attendance at any approved course;
(g) Failing to provide the board with copies of any document or other information required to be maintained by the provider pursuant to this administrative regulation;
(h) Advertising that a provider has been approved by the board prior to the date the approval is granted;
(i) Failing to include provider and course numbers in advertisements;
(j) Failing to maintain a record of instructors;
(k) Failing to resolve attendance reporting problems; or
(l) Failing to comply with any other duty imposed on providers in **815 KAR 6:040 or 815 KAR 6:080**[~~this administrative regulation~~].

(2) The board shall issue written notice of disciplinary action sent to the prelicensing course **or continuing educational** provider's address on file with the board and inform the provider:

(a) Of the specific reason for the board's action, including:
1. The statutory or regulatory violation; and
2. The factual basis on which the disciplinary action is based;
(b) Of the disciplinary action being taken by the board; and
(c) That the provider may appeal the disciplinary action to the board within ten (10) calendar days of the date of the board's notice.

(3) A written request for an administrative hearing shall be postmarked to the board within ten (10) calendar days of the date of the board's notice.

(4) If the request for an appeal is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request an appeal.

(5) A provider whose registration has been revoked shall not reapply for registration for two (2) years from the date of revocation.

Section 5.[~~Disciplinary Matters Against Pre-Licensing Course or Continuing Educational Providers. (1) The board may deny, suspend, probate, or revoke the approval of any pre-licensing course or continuing education provider for any of the following acts or omissions:~~

~~(a) Obtaining or attempting to obtain registration or approval through fraud, deceit, false statements, or misrepresentation;~~

~~(b) Failing to provide complete and accurate information in the initial registration or in any notification of change in information;~~

~~(c) Failing to timely notify the board of a change in the information required for registration of the provider;~~

~~(d) Falsifying of any records regarding the courses conducted by the provider or the persons who attended the courses offered;~~

~~(e) Failing to maintain any required records regarding course offerings conducted by the provider or the persons who attended the course;~~

~~(f) Failing to adequately train the staff responsible for taking attendance at any approved course;~~

~~(g) Failing to provide the board with copies of any document or other information required to be maintained by the provider pursuant to this administrative regulation;~~

~~(h) Advertising that a provider has been approved by the board prior to the date the approval is granted;~~

~~(i) Failing to include provider and course numbers in advertisements;~~

~~(j) Failing to maintain a record of instructors;~~

~~(k) Failing to resolve attendance reporting problems; or~~

~~(l) Failing to comply with any other duty imposed on providers in this administrative regulation.~~

~~(2) The board shall issue written notice of disciplinary action sent to the prelicensing course provider's address on file with the board and inform the provider:~~

~~(a) Of the specific reason for the board's action, including:~~

~~1. The statutory or regulatory violation; and~~

~~2. The factual basis on which the disciplinary action is based;~~

~~(b) Of the disciplinary action being taken by the board; and~~

~~(c) That the provider may appeal the disciplinary action to the board within ten (10) calendar days of the date of the board's notice.~~

~~(3) A written request for an administrative hearing shall be postmarked to the board within ten (10) calendar days of the date of the board's notice. A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.~~

~~(4) If the request for an appeal is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request an appeal.~~

~~Section 6.~~] Right of Appeal from a Denial of or Refusal to Renew or Reinstate a License. (1) The board shall issue written notice of the denial informing the applicant:

(a) Of the specific reason for the board's action, including:

1. The statutory or regulatory violation; and

2. The factual basis on which the denial is based; and

(b) That the applicant may appeal the pending denial to the board within twenty (20) days after receipt of this notification, excluding the day he or she receives notice.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice.[~~A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice.~~] The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(3) If the request for an appeal is not timely filed, the notice of denial shall be effective upon the expiration of the time for the certificate holder to request an appeal.

Section **6.**[~~7.~~] Revocation of Probation. (1) If the board moves to revoke probation, the board shall issue written notice of the revocation and inform the probationee:

(a) Of the factual basis on which the revocation is based;

(b) Of each probation term violated; and

(c) That the probationee may appeal the revocation to the board within twenty (20) calendar days of the date of notification of revocation. The notification shall be sent to the last known address on file with the board for the certificate holder.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice.[~~A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice.~~] The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(3) If the request for an appeal is not timely filed, the notice of revocation shall be effective upon the expiration of the time for the certificate holder to request an appeal.

Section **7.**[~~8.~~] Any request for an administrative hearing shall be sent to the Board of Home Inspectors by mail to P.O. Box 1360, Frankfort, Kentucky 40602 or by delivery to 911 Leawood Drive, Frankfort, Kentucky 40601.

Section **8.**[~~9.~~] Each appeal shall be governed in accordance with KRS Chapter 13B.

Section **9.**[~~10.~~] Each appeal shall be limited to the specific issues in dispute identified in the request for an administrative hearing.

Section **10.**[~~11.~~] Incorporation by Reference. (1) "Complaint Form", Form KBHI 7, 7/2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Home Inspectors, 911 Leawood Drive, Frankfort, Kentucky, telephone (502) 564-3296, Monday through Friday, 8:30 a.m. to 5 p.m.

MITCH BUCHANAN, Board Chair

APPROVED BY AGENCY: November 13, 2014

FILED WITH LRC: November 13, 2014 at 4 p.m.

CONTACT PERSON: Diana Jarboe, Board Administrator, Kentucky Board of Home Inspectors, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 227, fax (502) 696-4961.

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 procedural guidelines for board hearings and the processing of complaints against licensees.

(b) The necessity of this administrative regulation: The necessity of this regulation is to allow for disciplinary action to be taken against a licensee and ensure that licensees are placed on notice as to the proper guidelines and process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.706 gives the board authority to regulate the practice of home inspections and enforce the administrative regulations of the board. It also gives the board the authority to cause the prosecution of persons violating the administrative regulations.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation delineates the manner in which disciplinary action is taken against a licensee.

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

(a) How the amendment will change the existing administrative

regulation: 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: This administrative regulation directly impacts any of the Currently there are approximately 360 home inspectors, six (6) continuing education providers, and six (6) pre-licensing course providers who may have disciplinary action taken against them.

(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 regulation will require the impacted parties to request an administrative appeal and provide the basis for dispute of the action taken by the board.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities: Not applicable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit will be reduced legal costs for cases where an administrative appeal is not sought.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This regulation is merely a recodification of the procedures previously employed by the board for disciplinary actions. No new cost will be associated with the promulgation of this regulation.

(b) On a continuing basis: See above.

(6) The source of funding for the implementation and enforcement of this administrative regulation: The board is funded strictly from fees paid by applicants and licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire boards, or school districts) will be impacted by this administrative regulation? This administrative regulation directly impacts the Kentucky Board of Home Inspectors and Office of Occupations and Professions, which provides administrative services to the Kentucky Board of Home Inspectors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198B.706(1)(a), KRS 198B.706(4), KRS 198B.706(8), KRS 198B.706(12), KRS 198B.728, and KRS 198B.730.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire boards, 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 boards, or school districts) for the first year? This regulation will generate approximately $500 in revenue, which is a decrease from the current amount.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire boards, or school districts) for subsequent years? This regulation will generate approximately $500 in revenue, which is a decrease from the current amount.

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues(+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amended After Comments)

900 KAR 6:060. Timetable for submission of certificate of need applications.

RELATES TO: KRS 216B.015, 216B.040, 216B.095(3)(a)-(f) [~~216B.010, 216B.062, 216B.990~~]

STATUTORY AUTHORITY: KRS [~~194A.030, 194A.050,~~] 216B.040(2)(a)1, 216B.062(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.062(1) and (2) require the cabinet to promulgate administrative regulations to establish timetables and batching groups for applications for certificates of need. This administrative regulation establishes the timetable for submission of application requirements necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6)[~~(5)~~].

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at http://chfs.ky.gov/ohp/con.

(3) "Formal review" means the review of an application[~~applications~~] for certificate of need which is[~~are~~] reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which is[~~are~~] reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(4) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, and Alzheimer nursing home beds.

(5) "Nonsubstantive review" is defined by KRS 216B.015(18)[~~(17)~~].[~~(6) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.~~

~~(7) "Public notice" means notice given through:~~

~~(a) Public information channels; or~~

~~(b) The cabinet's Certificate of Need Newsletter.~~]

Section 2. Timetable for Submission of an Application for Formal Review[~~Applications~~]. (1) The cabinet's timetable for giving public notice for an application[~~applications~~] deemed complete for formal review[~~and for applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(f) and 900 KAR 6:075~~] shall be as established in this subsection.[:]

(a) Public notice for an application for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment, a Level I psychiatric residential treatment facility (Level 1 PRTF), a Level II psychiatric residential treatment facility (Level II PRTF), and a new technological development[~~developments~~] shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following

months:

1. January; and

2. July.

(b) Public notice for an application for a residential hospice facility[~~facilities~~], a hospice service[~~agencies~~], and a home health agency[~~agencies~~] shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. February; and

2. August.

(c) Public notice for an application for a Class I, II, III and VI ground ambulance service[~~providers~~], and a private duty nursing service[~~services, mobile services, and rehabilitation agencies~~] shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. March; and

2. September.

(d) Public notice for an application for a day health care program [~~programs, prescribed pediatric extended care facilities, and personal care beds~~] shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. April; and

2. October.

(e) Public notice for an application for long-term care beds, an acute care hospital[~~hospitals~~] including all other State Health Plan covered services to be provided within the proposed acute care hospital, acute care hospital beds, psychiatric hospital beds, special care neonatal beds, comprehensive physical rehabilitation beds, chemical dependency treatment beds, an[~~limited services clinics, ambulatory care centers, freestanding~~] ambulatory surgical center [~~centers~~], and an outpatient health care center[~~centers, and birthing centers~~] shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. May; and

2. November.

(f) Public notice for an application for an intermediate care facility[~~facilities~~] for individuals with an intellectual disability shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. June; and

2. December.

(g) A proposal not included in paragraphs (a) through (f) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate by placing it in the cycle with similar services.

(2)**[~~In order to have an application for formal review deemed complete and placed on public notice,~~]** An application **for formal review** shall be filed with the cabinet at least fifty (50) calendar days, but not more than eighty (80) calendar days, prior to the date of the desired public notice. An initial application[~~applications~~] filed more than eighty (80) days prior to the desired public notice shall be returned to the **applicant along with the fee submitted pursuant to[~~submitter with the prescribed fee set forth in~~]** 900 KAR 6:020.

Section 3. Timetable for Submission of an Application for Nonsubstantive Review. (1) The cabinet shall give public notice for an application deemed complete and granted nonsubstantive review status pursuant to KRS 216B.095(3)(a) through (f) in the Certificate of Need Newsletter published on the third Thursday of each month.

(2)**[~~In order to have an application for nonsubstantive review deemed complete and placed on public notice,~~]** An application **for nonsubstantive review** shall be filed with the cabinet at least fifty (50) calendar days prior to the date of the desired public notice[~~An application filed pursuant to KRS 216B.095(3)(a) through (e) may be filed at any time~~].

EMILY WHELAN PARENTO, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 12, 2014

FILED WITH LRC: November 13, 2014 at 2 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements necessary for the orderly submission of certificate of need applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute KRS 216B. 040(2)(a)1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the timetable for submissions of certificate of need applications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the timetable for submission of certificate of need applications. Public notice for certificate of need applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(f) shall be given monthly in the published Certificate of Need Newsletter. These applications will no longer be required to be batched semi-annually with the same or similar types of services for review purposes. Public notice for certificate of need applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (e) shall be given monthly in the published Certificate of Need Newsletter.

(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: Public notice for certificate of need applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(f) shall be given monthly in the published Certificate of Need Newsletter. These applications will no longer be required to be batched semi-annually with the same or similar types of services for review purposes. Public notice for certificate of need applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (e) shall be given monthly in the published Certificate of Need Newsletter, eliminating the need to mail separate notices for each application.

(b) The necessity of the amendment to this administrative regulation: In accordance with KRS 216B.062, applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(f) will no longer be batched semi-annually with the same or similar types of services for review purposes, but will be batched monthly. Applications requesting nonsubstantive review status under KRS 216B.095(3)(a) through (e) will be batched monthly, eliminating the need to do separate mailings for each application.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements necessary for the orderly submission of certificate of need applications.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need process, including the timetable for submission of certificate of need applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually approximately 150 certificate of need applications are submitted.

(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: Public notice for certificate of need applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(f) shall be given monthly in the pub-

lished Certificate of Need Newsletter. These applications will no longer be required to be batched semi-annually with the same or similar types of services for review purposes. Public notice for certificate of need applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (e) shall be given monthly in the published Certificate of Need Newsletter, eliminating the need to mail separate notices for each application.

(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 CON applicants to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public notice for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(f) shall be given in the monthly published Certificate of Need Newsletter. These applications will no longer be batched semi-annually with the same or similar types of services for review purposes in accordance with KRS 216B.062.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not directly 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 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? Health care facilities owned by the state, county or city shall be permitted to file nonsubstantive review applications under the provisions of KRS 216B.095(3)(f) and be batched monthly for review purposes instead of being batched semi-annually with the same or similar types of services for review purposes

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(2)(a)1

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

(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 additional revenue for state or local government during the first year.

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

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amended After Comments)

900 KAR 6:065. Certificate of need application process.

RELATES TO: KRS 216B.015, 216B.040, 216B.062(1), 216B.085, 216B.095[~~216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990~~]

STATUTORY AUTHORITY: KRS [~~194A.030, 194A.050,~~] 216B.040(2)(a)1[~~, 216B.330~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, and reconsideration process.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6)[~~(5)~~].

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at http://chfs.ky.gov/ohp/con.

(3) "Days" means calendar days, unless otherwise specified.

(4) "Formal review" means the review of an application[~~applications~~] for certificate of need which is[~~are~~] reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which is[~~are~~] reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(5) "Nonsubstantive review" is defined by KRS 216B.015(18)[~~(17)~~].

(6) "Owner" means a person as defined in KRS 216B.015(22)[~~(21)~~] who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(7) "Proposed service area" means the geographic area the applicant proposes to serve.

(8)[~~"Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.~~

~~(9) "Public notice" means notice given through:~~

~~(a) Public information channels; or~~

~~(b) The cabinet's Certificate of Need Newsletter.~~

~~(10)~~] "Secretary" is defined by KRS 216B.015(26)[~~(25)~~].

(9)[~~(11)~~] "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Letter of Intent. (1) Except for an applicant requesting nonsubstantive review under the provisions of KRS 216B.095(3)(a) through (f), OHP - Form 1, Letter of Intent, incorporated by reference in 900 KAR 6:055, shall be filed with the cabinet by an[~~each~~] applicant for a certificate of need.[~~This shall:~~

~~(a) Include those applicants requesting nonsubstantive review under the provisions of 900 KAR 6:075; and~~

~~(b)Not include those applicants requesting nonsubstantive review under the provisions of KRS 216B.095(3)(a) through (e).~~]

(2) Upon receipt of a letter of intent, the cabinet shall within three (3) days[~~one (1) day~~] provide the sender with written acknowledgment of receipt of the letter and shall publish notice of the receipt in the next published Certificate of Need Newsletter.

(3) An application for a certificate of need shall not be processed until the letter of intent has been on file with the cabinet for thirty (30) days.

Section 3. Certificate of Need Application. (1) An applicant for a certificate of need shall file an application with the cabinet on the appropriate certificate of need application form: OHP - Form 2A, OHP - Form 2B, or OHP - Form 2C, incorporated by reference in 900 KAR 6:055.

(2) To file an application for certificate of need, the applicant shall file an original and one (1) copy of the appropriate certificate of need application form together with the prescribed fee set forth in 900 KAR 6:020 on or before the deadlines established by 900 KAR 6:060.

(3) Formal or nonsubstantive review of an application for a certificate of need shall not begin until the application has been deemed complete by the cabinet.

(4) The cabinet shall deem an application complete if the applicant has:

(a) Provided the cabinet with all of the information necessary to complete the application; or

(b) Declined to submit the requested information and has requested that its application be reviewed as submitted.

(5) Once an application has been deemed complete, the applicant shall not submit additional information regarding the application unless the information is introduced at a public hearing.

(6) Once an application has been deemed complete, it shall not be amended to:

(a) Increase the scope of the project;

(b) Increase the amount of the capital expenditure;

(c) Expand the size of the proposed service area;

(d) Change the location of the health facility or health service; or

(e) Change the owner, unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.

(7) An application that has been deemed complete may be amended at a public hearing to:

(a) Decrease the scope of the project;

(b) Decrease the amount of the capital expenditure; or

(c) Decrease the proposed service area.

(8) An applicant which has had a certificate[~~Applicants who have had proposals for certificates~~] of need approved under the nonsubstantive review provisions of KRS 216B.095(3)(a) through (f)[~~900 KAR 6:075 or under the provisions of KRS 216B.095(3)(a) through (e)~~] may request that the cabinet change the specific location to be designated on the certificate of need if:

(a) The facility has not yet been licensed;

(b)The location is within the county listed on the certificate of need application; and

(c) The applicant files a written request with the cabinet within 180 days of the date of issuance of the certificate of need. A request shall include the reason why the change is necessary.

(9) If an application is not filed with the cabinet within one (1) year of the date of the filing of a letter of intent, the letter of intent shall expire, and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.

(10) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmitting an application.

(11) An application that is not deemed complete within one (1) year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 4. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, an application[~~all applications~~] for certificate of need shall be reviewed for completeness pursuant to Section 5 of this administrative regulation.

(2) Unless granted nonsubstantive review status under the criteria in 900 KAR 6:075, an application for a certificate of need shall be reviewed for approval or denial according to the formal review criteria set forth in 900 KAR 6:070.

(3) If granted nonsubstantive review status under the criteria in 900 KAR 6:075, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth in 900 KAR 6:075.

Section 5. Completeness Review. (1)[~~(a)~~] Fifteen (15) days after the deadline for filing an application in the next appropriate batching cycle, the cabinet shall conduct an initial review to determine if the application is complete for formal review or nonsubstantive review requested pursuant to KRS 216B.095(3)(a) through (f)[~~900 KAR 6:075~~].[~~(b) Applications for which nonsubstantive review status has been requested pursuant to KRS 216B.095(3)(a) through (e) shall be reviewed within fifteen (15) days of receipt.~~]

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing within one (1) day that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing within ten (10) days that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5)[~~(a)~~] The cabinet shall give public notice for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f)[~~900 KAR 6:075~~] in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that status has been granted and that review of the application for approval or denial of a certificate of need has begun.

[~~(b) Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall be mailed to affected persons.~~]

(6)**[A determination that an application is complete shall:**

~~(a) Indicate that the applicant has responded to the necessary items on the application;~~

~~(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and~~

~~(c) Not imply that the application has met the review criteria for approval of a certificate of need.~~

~~(7)~~] If the cabinet finds that the application is incomplete, the cabinet shall:

(a) Provide the applicant with written notice of the information necessary to complete the application; and

(b) Notify the applicant that the cabinet shall not deem the application complete unless within fifteen (15) days of the date of the cabinet's request for additional information:

1. The applicant submits the information necessary to complete the application by the date specified in the request; or

2. The applicant requests in writing that the cabinet review its application as submitted.

(7)[~~(8)~~] If, upon the receipt of the additional information requested, the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application for formal review has been deemed complete; and

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that review of the application for approval or denial of a certificate of need has begun.

(8)[~~(9)~~] If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application has been deemed complete;

2. Review of the application for the approval or denial of a cer-

tificate of need shall begin upon public notice being given; and

3. A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date that the application was deemed complete; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, for applications granted nonsubstantive review status under the provisions of KRS 216B.095 (3)(a) through (f)[~~900 KAR 6:075~~] that status has been granted and that review of the application for approval or denial of a certificate of need has begun.[~~Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall be mailed to affected persons.~~]

(9)[(~~10) If the application is incomplete, or~~] If the information submitted **in response to the cabinet's request for additional information** is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the application; and

(b) Inform the applicant that the application shall not be deemed complete and shall not be placed on public notice until:

1. The applicant submits the information necessary to complete the application; or

2. The applicant requests in writing that its application be reviewed as submitted.

(10)[(~~11)~~] Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:

(a) The information is introduced at a public hearing; [~~or~~]

(b) For a deferred application for formal review, the additional information is submitted at least twenty (20) days prior to the date that the deferred application is placed on public notice; or

(c) For a deferred application for nonsubstantive review, the additional information is submitted at least ten (10) days prior to the date that the deferred application is placed on public notice.

(11)[(~~12)~~] A determination that an application is complete shall:

(a) Indicate that the application is sufficiently complete to be reviewed for approval or disapproval;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval.

Section 6. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application within three (3) days.

(2) Notification of approval shall be in writing and shall include:

(a) Verification that the review criteria for approval have been met;

(b) Specification of any terms or conditions limiting a certificate of need approval, including limitations regarding certain services or patients. This specification shall be listed on the facility or service's certificate of need and license;

(c) Notice of appeal rights; and

(d) The amount of capital expenditure authorized, if applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(4) An identical application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months from the original date of filing, absent a change in circumstances.

Section 7. Deferral of an Application. (1)(a) Except as described in paragraphs (b) and (c) of this subsection, an applicant may defer review of an application a maximum of two (2) times by notifying the cabinet in writing of its intent to defer review.

(b) An applicant shall not defer review of an application filed pursuant to 900 KAR 6:080 to alleviate an emergency circumstance.

(c) If an application has been deferred prior to the effective date of this administrative regulation, an applicant may defer review of the application a maximum of one (1) additional time.

(d)[~~(a)~~]1. If the application has been granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f), the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled.

2. If a hearing has been scheduled, the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than six (6) days prior to the date of the hearing.

(e)[~~(b)~~]1. If the application is being reviewed under formal review, the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than ten (10) days prior to the date that the decision is due on the application unless a hearing has been scheduled.

2. If a hearing has been scheduled, the notice to defer shall be filed pursuant to 900 KAR 6:090, no later than eight (8) days prior to the date of the hearing.

(f)[~~(c)~~] If a hearing has been scheduled, the applicant shall also notify all parties to the proceedings in writing of the applicant's intent to defer the application.

(2) If a notice to defer an application for formal review is filed [~~deferral is requested~~], the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set forth in 900 KAR 6:060.

(3) If an application for formal review is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(4) If a notice to defer an application which has been granted nonsubstantive review is filed, the application shall be deferred and shall be placed on public notice in the Certificate of Need Newsletter published the following month.

(5) If an application for nonsubstantive review is deferred, an applicant may update its application by providing additional information to the cabinet at least ten (10) days prior to the date that the deferred application is placed on public notice.

(6) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

Section 8. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need by notifying the cabinet in writing of the decision to withdraw the application prior to the entry of a decision to deny or approve the application.

(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

(3) If an applicant withdraws a deferred application within the period from January 1, 2015 through June 30, 2015 and submits a new application for the same proposed health facility or service within five (5) years from the date of withdrawal, the cabinet shall apply the application fee which was submitted for the withdrawn application toward the fee assessed pursuant to 900 KAR 6:020 for the new application.

Section 9. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility shall be valid only for the location stated on the certificate.

Section 10. Requests for Reconsideration. (1) Requests for reconsideration shall be filed, pursuant to 900 KAR 6:090, within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;

(b) An advisory opinion entered after a public hearing;

(c) Revocation of a certificate of need; or

(d) A show cause hearing conducted in accordance with 900 KAR 6:090.

(2) A copy of the request for reconsideration shall be served by

the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) If a hearing was held pursuant to subsection (1)(a), (b), or (c) of this section, the hearing officer that presided over the hearing shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If a hearing was held pursuant to subsection (1)(d) of this section, the secretary shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(6) If reconsideration is granted, the hearing shall be held by the cabinet in accordance with the applicable provisions of 900 KAR 6:090, Section 3 or 4, within thirty (30) days of the date of the decision to grant reconsideration, and a final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(7) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation.

EMILY WHELAN PARENTO, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 12, 2014

FILED WITH LRC: November 13, 2014 at 2 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, deferral and reconsideration process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute KRS 216B. 040(2)(a)1. (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, deferral and reconsideration process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, deferral and reconsideration process. The proposed revision limits the number of times a certificate of need application can be deferred to two (2) times (or one (1) additional time for applications currently on deferred status) and prohibits the deferral of the review of certificate of need applications to alleviate an emergency circumstance. Public notice for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f) shall be given monthly in the published Certificate of Need Newsletter. This will eliminate mailing public notices for individual nonsubstantive review applications under KRS 216B.095(3)(a) through (e) and semi-annual batching of nonsubstantive review applications under KRS 216B.095 (3)(f) with similar types of services for review.

(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 revision limits the number of times a certificate of need application can be deferred to two (2) times (or one (1) additional time for applications currently on deferred status) The proposed revision also prohibits the deferral of the review of certificate of need applications to alleviate an emergency circumstance. Public notice for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f) shall be given in the monthly published Certificate of Need Newsletter.

(b) The necessity of the amendment to this administrative regulation: Currently more than fifty (50) applications are on deferral status, with some applications having been deferred for over ten (10) years. Repeated deferrals of certificate of need applications cause an administrative burden for the Office of Health Policy and the Division of Administrative Hearings, and for affected parties. Public notice for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f) shall be given monthly in the published Certificate of Need Newsletter. This will eliminate mailing public notices for individual nonsubstantive review applications under KRS 216B.095(3)(a) through (e) and batching nonsubstantive review applications under KRS 216B.095 (3)(f) with similar types of services semi-annually for review.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, including the application deferral process.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, including the deferral process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually approximately 150 certificate of need applications are submitted. Currently over fifty (50) applications have deferral status.

(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 number of times a certificate of need application can request deferral will be limited. After the maximum number of deferrals allowed, a decision will be issued or the applicant may withdraw the application. Applications for nonsubstantive review status granted under KRS 216B.095(3)(f) will no longer have to be batched semi-annually with similar services, but will instead be batched monthly.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An increase in certificate of need fees is not proposed. However, after the maximum number of deferrals allowed, a decision will be issued or the applicant may withdraw the application. The CON filing fee is not refundable, however the amendment states that if applications currently on deferred status are withdrawn between January 1 and June 30, 2015 and resubmitted within five (5) years, the certificate of need fee established in 900 KAR 6:020 for the new application shall be adjusted by the cabinet to credit the applicant for the certificate of need fee paid for the withdrawn application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed health facilities which are affected parties for certificate of need applications will avoid the cost of repeated filings of hearing requests and hearing documents. Public notice for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(f) shall be monthly, rather than being batched with the same or similar types of services semi-annually.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not directly 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 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? The number of times a certificate of need application can be deferred will be limited by this amendment. If a state, county or city owned facility is an affected party to a certificate of need application, there will be less administrative cost for requesting hearings and filing hearing documents with the limitation of times an application can be deferred. Applicants for nonsubstantive review status granted under KRS 216B.095(3)(f) will no longer have to be batched semi-annually with similar services, but will instead be batched monthly.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(2)(a)1

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

(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 additional revenue for state or local government during the first year.

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

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Commissioner's Office
(Amended After Comments)

907 KAR 15:005. Definitions for 907 KAR Chapter 15.

RELATES TO: 194A.025(3)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 15.

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

(2) "Approved behavioral health services provider" means a provider that is:

(a) A physician;

(b) A psychiatrist;

(c) An advanced practice registered nurse;

(d) A physician assistant;

(e) A licensed psychologist;

(f) A licensed psychological practitioner;

(g) A licensed clinical social worker;

(h) A licensed professional clinical counselor;

(i) A licensed marriage and family therapist;

(j) A licensed psychological associate;

(k) A marriage and family therapy associate;

(l) A certified social worker;

(m) A licensed professional counselor associate;

(n) A licensed professional art therapist; or

(o) A licensed professional art therapist associate.

(3) **"Behavioral health practitioner" means**

(a) A physician;

(b) A psychiatrist;

(c) An advanced practice registered nurse;

(d) A physician assistant;

(e) A licensed psychologist;

(f) A licensed psychological practitioner;

(g) A licensed clinical social worker;

(h) A licensed professional clinical counselor;

(i) A licensed marriage and family therapist;

(j) A licensed psychological associate;

(k) A marriage and family therapy associate;

(l) A certified social worker;

(m) A licensed professional counselor associate;

(n) A licensed professional art therapist;

(o) A licensed professional art therapist associate; or

(p) A certified alcohol and drug counselor.

(4) "Behavioral health practitioner under supervision" means an individual who is:

(a)1. A licensed psychological associate;

2. A licensed professional counselor associate;

3. A certified social worker;

4. A marriage and family therapy associate;

5. A licensed professional art therapist associate;

6. A licensed assistant behavior analyst;

7. A physician assistant; or

8. A certified alcohol and drug counselor; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(5) "Behavioral health service organization" means an entity that is licensed as a behavioral health service organization pursuant to 902 KAR 40:230.

(6)[(4)] "Billing provider" means the individual who,[or] group of individual providers that, or organization that:

(a) Is authorized to bill the department or a managed care organization for a service; and

(b) Is eligible to be reimbursed by the department or a managed care organization for a service.

(7)[(5)] "Billing supervisor" means an individual who is:

(a)1. A physician;

2. A psychiatrist;

3. An advanced practice registered nurse;

4. A licensed psychologist;

5. A licensed clinical social worker;

6. A licensed professional clinical counselor;

7. A licensed psychological practitioner;

8. A licensed marriage and family therapist;

9. A licensed professional art therapist; or

10. A licensed behavior analyst; and

(b) Employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor.

(8)[(6)] "Certified alcohol and drug counselor" means an individual who meets the requirements established in KRS 309.083.

(9)[(7)][(4)] "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(10) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(11)[(8)][(5)] "Department" means the Department for Medicaid Services or its designee.

(12)[(9)][(6)] "Electronic signature" is defined by KRS 369.102(8).

(13)[(10)][(7)] "Enrollee" means a recipient who is enrolled with a managed care organization.

(14)[(11)][(8)] "Face-to-face" means occurring:

(a) In person; or

(b) **If authorized by 907 KAR 3:170,** via a real-time, electronic communication that involves two (2) way interactive video and audio communication.

(15)[(12)][(9)] "Family peer support specialist" means an individual who meets the requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(16)[(13)][(10)] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(17)[(14)] "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(18)[(15)][(11)] "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(19)[(16)][(12)] "Licensed behavior analyst" is defined by KRS 319C.010(6).

(20)[(17)][(13)] "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(21)[(18)][(14)] "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(22)[(19)][(15)] "Licensed professional art therapist" is defined by KRS 309.130(2).

(23)[(20)][(16)] "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(24)[(21)][(17)] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(25)[(22)][(18)] "Licensed professional counselor associate" is defined by KRS 335.500(4).

(26)[(23)][(19)] "Licensed psychological associate" means an individual who:

(a)1. Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

2. Meets the licensed psychological associate requirements established in 201 KAR Chapter 26; or

(b) Is a certified psychologist.

(27)[(24)][(20)] "Licensed psychological practitioner" means an individual who:

(a) Meets the requirements established in KRS 319.053; or

(b) Is a certified psychologist with autonomous functioning.

(28)[(25)][(21)] "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(29)[(26)][(22)] "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(30)[(27)][(23)] "Marriage and family therapy associate" is defined by KRS 335.300(3).

(31)[(28)][(24)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(32)[(29)][(25)] "Peer support specialist" means an individual who meets the peer specialist qualifications established in 908 KAR 2:220.

(33)[(30)][(26)] "Person-centered service plan" means a plan of services for a recipient that meets the requirements established in 42 C.F.R. 441.540.

(34)[(31)][(27)] "Physician" is defined by KRS 205.510(11).

(35)[(32)][(28)] "Physician assistant" is defined by KRS 311.840(3).

(36)[(33)][(29)] "Provider" is defined by KRS 205.8451(7).

(37)[(34)][(30)] "Provider abuse" is defined by KRS 205.8451(8).

(38)[(35)][(31)] "Provider group" means a group of more than one (1) individually licensed practitioners who form a business entity to:

(a) Render health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(39)[(36)][(32)] "Recipient" is defined by KRS 205.8451(9).

(40)[(37)][(32)] "Recipient abuse" is defined by KRS 205.8451(10).

(41)[(38)][(33)] "Registered nurse" is defined by KRS 314.011(5).

(42) "Residential crisis stabilization unit" means an entity that is licensed as a residential crisis stabilization unit pursuant to 902 KAR 20:440.

(43) "Section 504 plan" means a plan developed to ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational institution receives accommodations to ensure the child's academic success and access to the learning environment.

(44)[(39)][(34)] "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 12, 2014

FILED WITH LRC: November 13, 2014 at 2 p.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 administrative regulation establishes the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services, including substance use disorder services, provided by independently enrolled providers (such as a licensed psychologist, licensed professional clinical counselor, licensed clinical social worker, licensed psychological practitioner, licensed marriage and family therapist) rather than agency behavioral health service providers (such as a community mental health center, federally qualified health center, or rural health clinic.)

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services, including substance use disorder services, provided by independent providers. The Department for Medicaid Services (DMS) is expanding its scope of behavioral health service coverage to include substance use disorder services as a result of an Affordable Care Act mandate for Medicaid programs to cover such services for all Medicaid recipients. Currently, DMS covers such services for pregnant women and children.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services, including substance use disorder services, provided by independent providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the definitions for administra-

tive regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services, including substance use disorder services, provided by independent providers.

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

(a) How the amendment will change this existing administrative regulation: The amendment creates/inserts a definition for "behavioral health practitioner under supervision", "billing supervisor", "certified alcohol and drug counselor", and "healthcare common procedure coding system". The amendment after comments inserts a definition for "behavioral health practitioner", "behavioral health service organization", "community support associate", "residential crisis stabilization unit", and "Section 504 plan", and clarifies the "face-to-face" definition by inserting a reference to the Medicaid administrative regulation (907 KAR 3:170) which establishes Telehealth requirements.

(b) The necessity of the amendment to this administrative regulation: Inserting the four (4) new definitions is necessary to define practitioners authorized to render services in a behavioral health services organization or BHSO. A BHSO is a new category of provider of behavioral health services of which the coverage and reimbursement provisions are established in 907 KAR 15:020 (Coverage provisions and requirements regarding behavioral health services) and 907 KAR 15:025 (Reimbursement provisions and requirements regarding behavioral health services). Coverage and reimbursement of BHSO services is necessary to comply with federal mandates. 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" for all recipients. 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." 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 (to include behavioral health services organizations) 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. The amendment after comments is necessary to clarify terms.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments after comments will conform to the content of the authorizing statutes by defining terms utilized in BHSO administrative regulations. The amendment after comments conforms to the content of the authorizing statutes by clarifying terms.

(d) How the amendment will assist in the effective administration of the statutes: The amendments after comments will assist in the effective administration of the authorizing statutes by defining terms utilized in BHSO administrative regulations. The amendment after comments will assist in the effective administration of the authorizing statutes by clarifying terms.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients of behavioral health services and BHSOs (as well as behavioral health practitioners who work for BHSOs) will be affected by the amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required by this administrative regulation is it only contains definitions.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals will benefit due to terms being defined.

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

(a) Initially: No cost is necessary to initially implement this administrative regulation.

(b) On a continuing basis: No continuing cost is necessary to implement this administrative regulation.

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

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

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

(9) Tiering: Is tiering applied? Tiering is neither applied nor necessary as the administrative regulation establishes definitions for Medicaid independent behavioral health services (including substance use disorder services) and reimbursement.

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

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate to define Medicaid terms in an administrative regulation; 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 behavioral health provider/practitioner 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.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter re-

quirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a.

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

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

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

(c) How much will it cost to administer this program for the first year? No cost is necessary to implement this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? No cost is necessary in subsequent years to implement this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amended After Comments)

907 KAR 15:020. Coverage provisions and requirements regarding services provided by behavioral health service organizations.

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 coverage provisions and requirements regarding Medicaid Program behavioral health services provided by behavioral health services organizations.

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

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a behavioral health services organization that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Direct contact between a practitioner and a recipient shall be required for each service except for**[a]** collateral **outpatient therapy[~~service~~]** for a child under the age of twenty-one (21) years if the collateral **outpatient therapy[~~service~~]** is in the child's plan of care.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in a face-to-face encounter.

(4) A service shall be:

(a) Stated in the recipient's**[~~treatment~~]** plan **of care**; and

(b) Provided in accordance with the recipient's**[~~treatment~~]** plan **of care**.

(5)(a) A behavioral health services organization shall establish a plan of care for each recipient receiving services from the behavioral health services organization.

(b) A plan of care shall meet the plan of care requirements established in 902 KAR 20:430.

Section 2. Provider Participation. (1) To be eligible to provide services under this administrative regulation, a behavioral health services 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 licensed as a behavioral health services organization in accordance with 902 KAR 20:430; 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 individuals with behavioral health disorders;

3. The administrative capacity to ensure quality of services;

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

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

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

(3) A behavioral health services organization 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 3. Covered Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for a:

(a) Mental health disorder;

(b) Substance use disorder; or

(c) Co-occurring mental health and substance use disorders.

(2) The following services shall be covered under this administrative regulation in accordance with the corresponding following requirements:

(a) A screening, crisis intervention, or intensive outpatient program **service[~~services~~]** provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;

7. A physician;

8. A psychiatrist;

9. An advanced practice registered nurse; or

10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;

(b) An assessment provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse;
10. A licensed behavior analyst; or
11. A behavioral health practitioner under supervision**[~~except for a certified alcohol and drug counselor~~]**;
(c) Psychological testing provided by:
1. A licensed psychologist;
2. A licensed psychological associate working under the supervision of a licensed psychologist; or
3. A licensed psychological practitioner;
(d) Day treatment, mobile crisis services, or residential services for substance use disorders provided by:
1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse;
10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst; or
11. A peer support specialist working under the supervision of**:**
a. An approved behavioral health services provider; **or**
b. A certified alcohol and drug counselor;
(e) Peer support provided by a peer support specialist working under the supervision of**:**
1. An approved behavioral health service provider; **or**
2. A certified alcohol and drug counselor;
(f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:
1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse;
10. A licensed behavior analyst; or
11. A behavioral health practitioner under supervision**[~~except for a certified alcohol and drug counselor~~]**;
(g) Family outpatient therapy provided by:
1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse; or
10. A behavioral health practitioner under supervision except for a**[~~:~~**
~~a.~~] licensed assistant behavior analyst**[~~; or~~**
~~b. Certified alcohol and drug counselor~~];
(h) Service planning provided by:
1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse;
10. A licensed behavior analyst; or
11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor;
(i) A screening, brief intervention, and referral to treatment for a substance use disorder provided by:
1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse; or
10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;
(j) Assertive community treatment provided by:
1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse;
10. A behavioral health practitioner under supervision except for a:
a. Licensed assistant behavior analyst; or
b. Certified alcohol and drug counselor;
11. A peer support specialist working under the supervision of an approved behavioral health service provider; or
12. A community support associate;
(k) Comprehensive community support services provided by:
1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse;
10. A licensed behavior analyst;
11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor; or
12. A community support associate; or
(l) Therapeutic rehabilitation program services provided by:
1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse;
10. A behavioral health practitioner under supervision except for a:
a. Licensed assistant behavior analyst; or
b. Certified alcohol and drug counselor; or
11. A peer support specialist working under the supervision of an approved behavioral health services provider.
(3)(a) A screening shall:
1. Be the determination of the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;
2. Not establish the presence or specific type of disorder; and
3. Establish the need for an in-depth assessment.
(b) An assessment shall:
1. Include gathering information and engaging in a process with the individual that enables the practitioner to:
a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;
b. Determine the individual's readiness for change;
c. Identify the individual's strengths or problem areas that may

affect the treatment and recovery processes; and

d. Engage the individual 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 individual to develop a treatment and service plan; and

4. Not include psychological or psychiatric evaluations or assessments.

(c) Psychological testing shall include:

1. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and

2. Interpretation and a written report of testing results.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;

3. Shall be provided:

a. On-site at the behavioral health services organization's office;

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one (1) on one (1) encounter between the provider and the recipient;

4. Shall be followed by a referral to non-crisis services if applicable; and

5. 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 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**[~~crisis response~~] in a home or community setting **that ensures**[~~to provide an immediate evaluation, triage, and~~] access to **mental health and substance use disorder**[~~behavioral health~~] services [~~including treatment~~] and supports to:

(i) Reduce symptoms or harm; or

(ii) Safely transition an individual in an acute crisis to the appropriate least restrictive level of care**;**

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; and

6. Be provided face-to-face in a home or community setting.

(f)1. Day treatment shall be a non-residential, intensive treatment program for a child under the age of twenty-one (21) years who has:

a. A mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services[~~for an individual with a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders~~];

b. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and **developmental**[~~development~~] stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c. Be provided:

(i) 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);

(ii) On school days and during scheduled school breaks;

(iii) In coordination with the recipient's individualized educational plan **or Section 504 plan** if the recipient has an individualized educational plan **or Section 504 plan**;

(iv) Under the supervision of a licensed or certified behavioral health practitioner or a behavioral health practitioner working under clinical supervision; and

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, a behavioral health services organization shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of substance use disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education plan.

(g)1. Peer support services shall:

a. Be[~~social and~~] emotional support that is provided by**:**

(i) An individual who **has been trained and certified in accordance with 908 KAR 2:220 and who** is experiencing **or has experienced** a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

(ii) A parent who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health, substance use, or co-occurring mental health and substance use disorder to a parent or family member of a child sharing a similar mental health, substance use, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change; or

(iii) A family member who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health, substance use, or co-occurring mental health and substance use disorder to a parent or family member of a child sharing a similar mental health, substance use, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d.[~~Be provided by a self-identified consumer, parent, or family member:~~

~~(i) Of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health disorder services and substance use disorder services; and~~

~~(ii) Who has been trained and certified in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;~~

~~e.~~] Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e.[~~f.~~] Be coordinated within the context of a comprehensive, individualized[~~treatment~~] plan **of care** developed through a person-centered planning process;

f.[~~g.~~] Be identified in each recipient's[~~treatment~~] plan **of care**; and

g.[~~h.~~] Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's[~~treatment~~] plan **of care**.

2. To provide peer support services, a behavioral health services organization shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 **KAR** 2:230, or 908 **KAR** 2:240;

c. Use an approved behavioral health services provider **or certified alcohol and drug counselor** to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members; and

e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists.

(h)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health disorder, substance use disorder, or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week; and

d. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education.

2. During psycho-education the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a behavioral health services organization shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, other physician, or advanced practiced registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; and

b. Recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;

2. Consist of:

a. A face-to-face, one (1) on one (1) encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified**[~~treatment~~]** plan **of care**;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; and

4. Not exceed three (3) hours per day unless additional time is medically necessary.

(j)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified**[~~treatment~~]** plan **of care**;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; and

(ii) Recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified**[~~treatment~~]** plan **of care**;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals **except for multi-family group therapy**; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's**[~~treatment~~]** plan **of care**;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

(k)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders; and

b. Not exceed three (3) hours per day per individual unless additional time is medically necessary.

(l)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's**[~~treatment~~]** plan **of care**;

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age; and

c. Not exceed three (3) hours per day per individual unless additional time is medically necessary.

2. Consent to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

(m)1. Service planning shall:

a. Involve assisting a recipient in creating an individualized plan for services needed for maximum reduction of **the effects of** a mental health **disorder[~~disability~~]**;

b. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

c. Be performed using a person-centered planning process.

2. A service plan:

a. Shall be directed by the recipient;

b. Shall include practitioners of the recipient's choosing; and

c. 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)1. Residential services for substance use disorders shall:

a. Be provided in a twenty-four (24) hour per day unit that is a live-in facility that offers a planned and structured regimen of care aimed to treat individuals with addiction or co-occurring mental health and substance use disorders;

b. Be short or long-term to provide intensive treatment and skills building in a structured and supportive environment;

c. Assist an individual in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;

d. Assist a recipient in making necessary changes in the recipient's life to enable the recipient to live drug- or alcohol-free;

e. Be provided under the medical direction of a physician;

f. Provide continuous nursing services **in which a registered nurse shall be:**

(i) On-site during traditional first shift hours, Monday through Friday;

(ii) Continuously available by phone after hours; and

(iii) On-site as needed in follow-up to telephone consultation after hours;

g. Be based on individual need and may include:

(i) A screening;

(ii) An assessment;

(iii) Service planning;

(iv) Individual outpatient therapy;

(v) Group outpatient therapy;

(vi) Family outpatient therapy; or

(vii) Peer support; and

h. Be provided in accordance with 908 KAR 1:370.

2.**a. Except as established in clause b of this subparagraph,** the physical structure in which residential services for substance use disorders is provided shall:

(i)[a.] Have more than eight (8) but **sixteen (16) or fewer[~~less than seventeen (17)~~]** beds; and

(ii)[~~b.~~] Not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate.

b. If every recipient receiving services in the physical structure is under the age of twenty-one (21) years or over the age of sixty-five (65) years, the limit of sixteen (16) beds established in clause a of this subparagraph shall not apply.

3. A short-term length-of-stay for residential services for substance use disorders:

a. Shall be less than thirty (30) days in duration;

b. Shall include planned clinical program activities constituting at least fifteen (15) hours per week of structured professionally-directed treatment activities to:

(i) Stabilize a recipient's substance use disorder; and

(ii) Help the recipient develop and apply recovery skills; and

c. May include the services listed in subparagraph 1.gh. of this paragraph.

4. A long-term length-of-stay for residential services for substance use disorders:

a. Shall be between thirty (30) days and ninety (90) days in duration;

b. Shall include planned clinical program activities constituting at least forty (40) hours per week of structured professionally-directed treatment activities to:

(i) Stabilize a recipient's substance use disorder; and

(ii) Help the recipient develop and apply recovery skills; and

c. May include the services listed in subparagraph 1.g. of this paragraph.

5. Residential services for substance use disorders shall not include:

a. Room and board;

b. Educational services;

c. Vocational services;

d. Job training services;

e. Habilitation services;

f. Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;

g. Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;

h. Recreational activities;

i. Social activities; or

j. Services required to be covered elsewhere in the Medicaid state plan.

6. To provide residential services for substance use disorders, a behavioral health services organization shall:

a. Have the capacity to employ staff authorized to provide services in accordance with this section and to coordinate the provision of services among team members; and

b. Be licensed as a non-medical and non-hospital based alcohol and other drug abuse treatment program in accordance with 908 KAR 1:370.

(o) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

2. Consist of:

a. Using a standardized screening tool to assess an individual for risky substance use behavior;

b. Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice; and

c. Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need additional services to address substance use.

(p)1. Assertive community treatment shall:

a. Be an evidence-based psychiatric rehabilitation practice which provides a comprehensive approach to service delivery for individuals with a serious mental illness; and

b. Include:

(i) Assessment;

(ii) Treatment planning;

(iii) Case management;

(iv) Psychiatric services;

(v) Medication prescribing and monitoring;

(vi) Individual outpatient therapy;

(vii) Family outpatient therapy;

(viii) Group outpatient therapy;

(ix) Mobile crisis services;

(x) Crisis intervention;

(xi) Mental health consultation; or

(xii) Family support and basic living skills.

2.a. Mental health consultation shall involve brief, collateral interactions with other treating professionals who may have information for the purpose of treatment planning and service delivery.

b. Family support shall involve the assertive community treatment team's working with the recipient's natural support systems to improve family relations in order to:

(i) Reduce conflict; and

(ii) Increase the recipient's autonomy and independent functioning.

c. Basic living skills shall be rehabilitative services focused on teaching activities of daily living necessary to maintain independent functioning and community living.

3. To provide assertive community treatment services, a behavioral health services organization shall:

a. Employ at least one (1) team of multidisciplinary professionals:

(i) Led by **an approved behavioral health services provider[~~a qualified mental health professional~~]**; and

(ii) Comprised of at least four (4) full-time equivalents including a prescriber, a nurse, an approved behavioral health services provider, a case manager, or a co-occurring disorder specialist;

b. Have adequate staffing to ensure that no team's caseload

size exceeds ten (10) participants per team member (for example, if the team includes five (5) individuals, the caseload for the team shall not exceed fifty (50) recipients);

c. Have the capacity to:

(i) Employ staff authorized to provide assertive community treatment services in accordance with this paragraph;

(ii) Coordinate the provision of services among team members;

(iii) Provide the full range of assertive community treatment services as stated in this paragraph; and

(iv) Document and maintain individual case records; and

d. Demonstrate experience in serving individuals with persistent and serious mental illness who have difficulty living independently in the community.

(q)1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in the community;

b. Be intended to ensure successful community living through the utilization of skills training as identified in the recipient's**[~~treatment~~]** plan **of care**; and

c. Consist of using a variety of psychiatric rehabilitation techniques to:

(i) Improve daily living skills;

(ii) Improve self-monitoring of symptoms and side effects;

(iii) Improve emotional regulation skills;

(iv) Improve crisis coping skills; and

(v) Develop and enhance interpersonal skills.

2. To provide comprehensive community support services, a behavioral health services organization shall:

a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services in accordance with subsection (2)(k) of this section and to coordinate the provision of services among team members; and

b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

(r)1. Therapeutic rehabilitation program services shall be:

a. A rehabilitative service for an:

(i) Adult with a serious mental illness; or

(ii) Individual under the age of twenty-one (21) years who has a serious emotional disability; and

b. Designed to maximize the reduction of **the effects of** a mental health **disorder[~~disability~~]** and the restoration of the individual's functional level to the individual's best possible functional level.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.

3. A therapeutic rehabilitation program shall:

a. Be delivered using a variety of psychiatric rehabilitation techniques;

b. Focus on:

(i) Improving daily living skills;

(ii) Self-monitoring of symptoms and side effects;

(iii) Emotional regulation skills;

(iv) Crisis coping skill; and

(v) Interpersonal skills; and

c. Be delivered individually or in a group.

(4)**[~~(a) The requirements established in 908 KAR 1:370 shall apply to any provider of a service to a recipient for a substance use disorder or co-occurring mental health disorder and substance use disorder.~~**

~~(b) The detoxification program requirements established in 908 KAR 1:370 shall apply to a provider of a detoxification service.~~

~~(5)~~] The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.

(5)[~~(6)~~] A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(6)[~~(7)~~] The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

Section 4. Additional Limits and Non-covered Services or Activities. (1)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Mobile crisis services;

2. Crisis intervention;

3. A screening; or

4. An assessment.

(2) For a recipient who is receiving residential services for substance use disorders, the following shall not be billed or reimbursed for the same date of service for the recipient:

(a) A screening;

(b) An assessment;

(c) Service planning;

(d) A psychiatric service;

(e) Individual outpatient therapy;

(f) Group outpatient therapy;

(g) Family outpatient therapy; or

(h) Peer support services.

(3) For a recipient who is receiving assertive community treatment, the following shall not be billed or reimbursed for the same date of service for the recipient:

(a) An assessment;

(b) Case management;

(c) Individual outpatient therapy;

(d) Group outpatient therapy;

(e) Peer support services; or

(f) Mobile crisis services.

(4) The department shall not reimburse for both a screening and a screening, brief intervention, and referral to treatment for a substance use disorder provided to a recipient on the same date of service.

(5) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the behavioral health services organization;

(c) A consultation or educational service provided to a recipient or to others;

(d) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face";

(e) Travel time;

(f) A field trip;

(g) A recreational activity;

(h) A social activity; or

(i) A physical exercise activity group.

(6)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation **except as established in Section 3(3)(l)1 of this administrative regulation**.

(b) A third party contract shall not be covered under this administrative regulation.

(7) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not violate the supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision.

Section 5. 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 a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A behavioral health services organization shall maintain a current health record for each recipient.

(2)(a) A health 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 health record on the date that the individual provided the service **except as established in subsection (5)(a) of this section**.

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;

e. Health insurance or Medicaid information;

f. Referral source and address of referral source;

g. Primary care physician and address;

h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider; and

j. The name of the informant and any other information deemed necessary by the behavioral health services organization to comply with the requirements of:

(i) This administrative regulation;

(ii) The behavioral health services organization's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

a. Screening;

b. Assessment if an assessment was performed; **and**

c. Disposition if a disposition was performed;**[~~and~~**

~~d. Six (6) month review of a recipient's treatment plan each time a six (6) month review occurs;~~]

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;

2. Furnished to the:

a. Cabinet for Health and Family Services upon request; or

b. Managed care organization in which the recipient is enrolled upon request if the recipient is enrolled with a managed care organization;

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 the recipient is enrolled with a managed care organization;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A behavioral health services organization's notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit; and

2. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Therapist's intervention;

c. Changes in the**[~~treatment~~]** plan **of care** if changes are made; and

d. Need for continued treatment if continued treatment is needed.

(b)1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional **within thirty (30) days**.

2. If services are provided by a practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the practitioner working under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7)**[~~(a) The treatment plan of a recipient who continues to receive services shall be reviewed at least once every six (6) months.~~**

~~(b)~~] Any change to a recipient's**[~~treatment~~]** plan **of care** shall be documented, signed, and dated by the rendering practitioner **and by the recipient or recipient's representative**.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(9)(a) A termination 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 individual toward reaching goals and objectives established in the individual's**[~~treatment~~]** plan **of care**;

b. Final diagnosis of clinical impression; and

c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) 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.

(11)**(a) Except as established in paragraph (b) of this subsection,** if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring behavioral health services organization 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:

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

b.[~~2.~~] 42 U.S.C. 1320d-2 to 1320d-8; and

c.[~~3.~~] 45 C.F.R. Parts 160 and 164; or

2.a.[~~(b)1.~~] 42 U.S.C. 290 ee-3; and

b.[~~2.~~] 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring behavioral health services organization shall, within forty-eight (48) hours 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:

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

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

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

2.a. 42 U.S.C. 290 ee-3; and

b. 42 C.F.R Part 2.

(12)(a) If a behavioral health services organization'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 health records of the behavioral health services organization shall:

1. Remain the property of the behavioral health services organization; and

2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A behavioral health services organization shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, a **behavioral health**[~~targeted case management~~] service **organization** 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 section, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) A behavioral health services organization shall comply with 45 C.F.R. Chapter 164.

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

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and

3. Be disclosed to an authorized representative of:

a. The department; or

b. Federal government.

(c)1. Upon request, a behavioral health services organization 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 7. Medicaid Program Participation Compliance. (1) A behavioral health services organization 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 behavioral health services organization receives any duplicate payment or overpayment from the department, regardless of reason, the behavioral health services organization shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this section 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 behavioral health services organization 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 behavioral health services organization.

(b)1. A behavioral health services organization 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. Behavioral health services organization 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. Behavioral health services organization 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 behavioral health services organization regarding the service.

(4)(a) A behavioral health services organization shall attest by the behavioral health services organization's staff's or representative's 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 behavioral health services organization receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the behavioral health services organization 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 behavioral health services organization shall result in the suspension or termination of the behavioral health services organization from Medicaid Program participation.

Section 8. Third Party Liability. A behavioral health services organization shall comply with KRS 205.622.

Section 9. 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 behavioral health services organization 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 behavioral health services organization'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 behavioral health services organization's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 10. 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 11. 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 12. 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: November 12, 2014

FILED WITH LRC: November 13, 2014 at 2 p.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 behavioral health services provided by behavioral health services organizations (BHSOs). This administrative regulation is being promulgated in conjunction with 907 KAR 15:025, Reimbursement for behavioral health services provided by behavioral health services organizations. To qualify as a provider, a behavioral health services organization must be licensed in accordance with 902 KAR 20:430. BHSOs are authorized to provide, to Medicaid recipients, behavioral health services related to a mental health disorder, substance use disorder, or co-occurring disorders. The array of services includes a screening; an assessment; psychological testing; crisis intervention; mobile crisis services; day treatment; peer support; intensive outpatient program services; individual outpatient therapy; group outpatient therapy; family outpatient therapy; collateral outpatient therapy; service planning; residential services for a substance use disorder; a screening, brief intervention, and referral to treatment for a substance use disorder; assertive community treatment; comprehensive community support services; and therapeutic rehabilitation program services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary - to comply with federal mandates. 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" for all recipients. 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." 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 (to include behavioral health services organizations) 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.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

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

(a) How the amendment will change this existing administrative regulation: The amendments in this "amended after comments" administrative regulation include adding certified alcohol and drug counselors (CADCs) to the practitioners who can provide individual outpatient therapy, group outpatient therapy, family outpatient therapy, collateral outpatient therapy, and assessments; adding CADCs to the practitioners who can supervise peer support specialists; clarifying that multi-family group outpatient therapy groups (in contrast to other group outpatient therapy groups) includes related individuals (family members); clarifying that consultations between professionals is covered as part of collateral outpatient therapy; clarifying that notes regarding behavioral health services rendered to a recipient must be recorded within forty-eight (48) hours of the service visit rather than on the same day; clarifying that notes regarding services rendered by a behavioral health practitioner under supervision must be signed by the supervising professional within thirty (30) days; clarifying the mobile crisis services' requirements; clarifying what constitutes continuous nursing; replacing the term "mental health disability" with "mental health disorder"; replacing the term "treatment plan" in various places in which the appropriate term is "plan of care"; reducing the time frame for transferring a recipients' health record to a residential crisis stabilization unit, psychiatric hospital, psychiatric distinct part unit in an acute care hospital, or an acute care hospital (for when a recipient transfers to any of these settings) from ten (10) days to forty-eight (48) hours; deleting a reference to a Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) administrative regulation (908 KAR 1:370) which establishes licensure standards and procedures for alcohol and other drug abuse treatment programs; and clarifying the plan of care requirements (including reviews of the plan of care and documenting

the reviews in a health record).

(b) The necessity of the amendment to this administrative regulation: The amendments regarding CADCs are necessary as the department has learned that these practitioners are qualified to provide the corresponding services and supervision; the multi-family group outpatient therapy amendment is necessary as this therapy must include multiple individuals from a family; thus, is not subject to the restriction – applied to other group outpatient therapy – of not including related individuals; the collateral outpatient therapy clarification is similarly necessary as the service does indeed encompass consultation between professionals; the amendment regarding notes is necessary to remove a discrepancy between two (2) provisions; the amendments regarding mobile crisis and continuous nursing are necessary for clarity; replacing the term "mental health disability" with "mental health disorder" is necessary as mental health disorder is the correct term; reducing the health record transfer timeframe for transfers to certain settings is necessary to protect the recipient's health, safety, and welfare; and clarifying the plan of care requirements is necessary for clarity. Deleting the reference to the DBHDID administrative regulation establishing licensure standards and procedures for alcohol and other drug abuse treatment programs is necessary as the administrative regulation already imposes such standards rendering a reference in this administrative regulation redundant.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by enabling qualified practitioners to provider services, eliminating discrepancies, and clarifying policies.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by enabling qualified practitioners to provider services, eliminating discrepancies, and clarifying policies.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities licensed as behavioral health services organizations will be affected by this administrative regulation. Currently, there are forty-six (46) entities that provide behavioral health services via DMS's "Impact Plus" program. These entities provide such services as subcontractors of the Department for Behavioral Health, Intellectual and Developmental Disabilities (DBHDID) or the Department for Community Based Services (DCBS.) DMS anticipates that each of the entities will enroll as in the Medicaid Program as BHSOs. Additionally, the following behavioral health professionals who are authorized to provide services in a behavioral health services organization will be affected: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, licensed psychological associates, certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed behavior analysts, licensed assistant behavior analysts, licensed professional art therapists, licensed professional art therapist associates, certified alcohol and drug counselors, peer support specialists, and community support associates. Medicaid recipients who qualify for behavioral health services will also be affected by this administrative regulation. Certified alcohol and drug counselors will be affected by the amendment as they are being authorized to provide more services as well as supervision of peer support specialists.

(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 as behavioral health services organizations and who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete an 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. Behavioral health professionals authorized to provide services in a behavioral health services organization will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in BHSOs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under 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. 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 substance use disorder 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 as available to other individuals (non-Medicaid.) 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.

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).

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 is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in BHSOs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amended After Comments)

907 KAR 15:025. Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health service organizations.

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 behavioral health services provided by behavioral health service organizations to Medicaid recipients 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 behavioral health service organization that meets the provider participation requirements established in 907 KAR 15:020; and

(c) In accordance with the requirements established in 907 KAR 15:020; and

(3) Covered in accordance with 907 KAR 15:020.

Section 2. Reimbursement. (1) One (1) unit of service shall be:

(a) Fifteen (15) minutes in length; or

(b) The unit amount identified in the corresponding:

1. Current procedural terminology code; or

2. Healthcare common procedure coding system code.

(2) The rate per unit for a screening or for crisis intervention shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Licensed marriage and family therapist; or

5. Licensed professional art therapist; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;

2. Licensed professional counselor associate working under the supervision of a billing supervisor;

3. Licensed psychological associate working under the supervision of a billing supervisor;

4. Certified social worker working under the supervision of a billing supervisor;

5. Physician assistant working under the supervision of a billing

supervisor;

6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or

7. Certified alcohol and drug counselor working under the supervision of a billing supervisor.

(3) The rate per unit for an assessment shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Licensed marriage and family therapist;

5. Licensed professional art therapist; or

6. Licensed behavior analyst; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;

2. Licensed professional counselor associate working under the supervision of a billing supervisor;

3. Licensed psychological associate working under the supervision of a billing supervisor;

4. Certified social worker working under the supervision of a billing supervisor;

5. Physician assistant working under the supervision of a billing supervisor;

6. Licensed professional art therapist associate working under the supervision of a billing supervisor;**[~~or~~]**

7. Licensed assistant behavior analyst working under the supervision of a billing supervisor**; or**

8. Certified alcohol and drug counselor working under the supervision of a billing supervisor.

(4) The rate per unit for psychological testing shall be:

(a) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychologist;

(b) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychological practitioner; or

(c) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychological associate working under the supervision of a licensed psychologist.

(5) The rate per unit for individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Licensed marriage and family therapist;

5. Licensed professional art therapist; or

6. Licensed behavior analyst; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;

2. Licensed professional counselor associate working under the supervision of a billing supervisor;

3. Licensed psychological associate working under the supervision of a billing supervisor;

4. Certified social worker working under the supervision of a billing supervisor;

5. Physician assistant working under the supervision of a billing supervisor;

6. Licensed professional art therapist associate working under the supervision of a billing supervisor;**[~~or~~]**

7. Licensed assistant behavior analyst working under the supervision of a billing supervisor**; or**

8. Certified alcohol and drug counselor working under the supervision of a billing supervisor.

(6) The rate per unit for family outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Licensed marriage and family therapist; or

5. Licensed professional art therapist; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;

2. Licensed professional counselor associate working under the supervision of a billing supervisor;

3. Licensed psychological associate working under the supervision of a billing supervisor;

4. Certified social worker working under the supervision of a billing supervisor;

5. Physician assistant working under the supervision of a billing supervisor;**[~~or~~]**

6. Licensed professional art therapist associate working under the supervision of a billing supervisor**; or**

7. Certified alcohol and drug counselor working under the supervision of a billing supervisor.

(7) Reimbursement for the following services shall be as established on the BHSO Non-Medicare Services Fee Schedule:

(a) Mobile crisis services;

(b) Day treatment;

(c) Peer support services;

(d) Parent or family peer support services;

(e) Intensive outpatient program services;

(f) Service planning;

(g) Residential services for substance use disorders;

(h) Screening, brief intervention, and referral to treatment;

(i) Assertive community treatment;

(j) Comprehensive community support services; or

(k) Therapeutic rehabilitation services.

(8)(a) The department shall use the current version of the Kentucky-specific Medicare Physician Fee Schedule for reimbursement purposes.

(b) For example, if the Kentucky-specific Medicare Physician Fee Schedule currently published and used by the Centers for Medicare and Medicaid Services for the Medicare Program is:

1. An interim version, the department shall use the interim version until the final version has been published; or

2. A final version, the department shall use the final version.

(9) The department shall not reimburse for a service billed by or on behalf of an entity or individual that is not a billing provider.

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 a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service 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 15:020; 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.

Section 6. Incorporation by Reference. (1) "BHSO Non-Medicare Services Fee Schedule", July 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at http://www.chfs.ky.gov/dms/incorporated.htm.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 12, 2014

FILED WITH LRC: November 13, 2014 at 2 p.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 reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by behavioral health services organizations (BHSOs). This administrative regulation is being promulgated in conjunction with 907 KAR 15:020 (Coverage provisions and requirements regarding services provided by behavioral health services organizations) and the Cabinet for Health and Family Services, Office of Inspector General's BHSO licensure administrative regulation (902 KAR 20:430). To qualify as a provider, a behavioral health services organization must be licensed in accordance with 902 KAR 20:430. BHSOs are authorized to provide, to Medicaid recipients, behavioral health services related to a mental health disorder, substance use disorder, or co-occurring disorders. The array of services includes a screening; an assessment; psychological testing; crisis intervention; mobile crisis services; day treatment; peer support; parent or family peer support; intensive outpatient program services; individual outpatient therapy; group outpatient therapy; family outpatient therapy; collateral outpatient therapy; service planning; residential services for a substance use disorder; a screening, brief intervention, and referral to treatment for a substance use disorder; assertive community treatment; comprehensive community support services; and therapeutic rehabilitation program services. The Department for Medicaid Services (DMS) will reimburse a percent of Medicare (tiered based on practitioner qualifications) for services that are covered by Medicare and per a fee schedule, incorporated by reference, for services not covered by Medicare.

(b) The necessity of this administrative regulation: This administrative regulation is necessary - to comply with federal mandates. 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" for all recipients. 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." 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 (to include behavioral health services organizations) 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.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

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

(a) How the amendment will change this existing administrative regulation: The amendment after comments adds certified alcohol and drug counselors to the behavioral health practitioners authorized to provide individual outpatient therapy, group outpatient therapy, collateral outpatient therapy, family outpatient therapy, and assessments. Services rendered by CADCs will be paid at fifty-two and five tenths (52.5) percent of the rate for the service on the Kentucky-specific Medicare Physician Fee Schedule.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to add a type of behavioral health professional who is qualified to provide services to the behavioral health professional pool in behavioral health service organizations to enhance recipient access to services.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by enhancing recipient access to services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the authorizing statutes by enhancing recipient access to services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The following behavioral health professionals who are authorized to provide services in a behavioral health services organization will be affected: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, licensed psychological associates, certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed behavior analysts, licensed assistant behavior analysts, licensed professional art therapists, licensed professional art therapist associates, certified alcohol and drug counselors, peer support specialists, and community support associates. Medicaid re-

cipients who qualify for behavioral health services will also be affected by this administrative regulation. The amendment after comments affects certified alcohol and drug counselors as it expands the services these professionals are authorized to provide in a behavioral health service organization.

(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 as behavioral health services organizations and who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete an 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. Behavioral health professionals authorized to provide services in a behavioral health services organization will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in BHSOs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers.) However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under 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 substance use disorder 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 as available to other individuals (non-Medicaid.) 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 regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(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? 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 is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in BHSOs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:360. Private child care placement, levels of care, and payment.

RELATES TO: KRS Chapter 13B, 199.011, 199.640-199.680, 199.801, 600.020(24)[~~(23)~~], 605.090(1)(b), (d), 610.110, 2014 Ky. Acts ch. 117 Part 1, G. 9(7)[~~2008 Acts ch. 127 Part 1, H.10(3)~~], 42 U.S.C. 622, 672

STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

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. KRS 199.641(4) requires the cabinet to establish the rate setting methodology and the rate of payment for nonprofit child-caring facilities, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to place a child committed to the Department of Juvenile Justice, or the cabinet, in a child-caring facility operated by a local governmental unit or private organization willing to receive the child, upon such conditions as the cabinet may prescribe. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) five (5) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(2).

(2) "Child-caring facility" or "facility" is defined by KRS 199.641(1)(b).

(3) "Department" means the Department for Community Based Services or the department's agent.

(4) "District placement coordinator" means an individual whose responsibilities are described in KRS 199.801.

(5) "Emergency shelter" is defined by KRS 600.020(24)[~~(23)~~].

(6) "Gatekeeper" means the department or agent responsible for:

(a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and

(b) Other administrative duties in the areas of:

1. Assessment;

2. Placement;

3. Performance measurement; and

4. Consultation regarding children and their needs.

(7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.

(8) "Initial level of care" means a level of care:

(a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and

(b) That is time-limited and effective for the first six (6) months of a child's placement.

(9) "Level of care" means one (1) of five (5) standards representing the treatment and service needs of a child placed by the cabinet in out-of-home care.

(10) "Level of care packet" means an assessment conducted by designated cabinet staff, and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care in accordance with Section 2(2) of this administrative regulation[~~, which includes the following:~~

~~(a) DPP-886, Private Child Care Client Inter-agency Referral Form;~~

~~(b) DPP-886A, Application for Referral and Needs Assessment; and~~

~~(c) If a child has an IQ of seventy (70) or above:~~

~~1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach); or~~

~~2. Child Behavior Checklist For Ages 6-18; (Achenbach)~~].

(11) "Model program cost analysis" is defined by KRS 199.641(1)(d).

(12) "Reassigned level of care" means a level of care that is:

(a) Determined by the gatekeeper after a child's level of care expires; and

(b) Authorized for a specific period of time.

(13) "Time study" is defined by KRS 199.641(1)(e).

(14) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

(a) Identifying the child's current level of functioning; and

(b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement. (1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age at the time that:

(a) The child enters the level of care system;

(b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age; or

(c) A child's level of care expires and assignment of a new level is necessary.

(2) A level of care packet shall include the DPP-886, Private Child Care Client Inter-agency Referral Form, and the following child-specific information:

(a) Identifying data;

(b) Individual strengths and limitations;

(c) Daily living skills;

(d) Physical health needs;

(e) Mental health needs including:

1. Behavioral health; and

2. Diagnosis and treatment;

(f) Medications;

(g) History of substance abuse, high risk, or other significant behavior including:

1. Sexual acting out;

2. Legal history, status, or delinquency behavior patterns;

(h) Out of home care placement information including:

1. Reason for entering out of home care;

2. History of abuse, neglect, or dependency;

3. Current custody status;

4. Current and previous placements; and

5. Permanency goal;

(i) Social supports;

(j) **Educational functioning, grade level, and any special educational need[~~Education~~]**;

(k) Religious background and practices; and

(l) If a child has an IQ of seventy (70) or above:

1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach);

2. Child Behavior Checklist For Ages 6-18 (Achenbach); or

3. Another tool identified and piloted pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)(A).

(3)(a) **If a child needs placement within the level of care system[~~Upon assignment of an initial level of care by the gatekeeper~~]**, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the district placement coordinator.

(b) The district placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(4)[~~(3)~~] If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement, a cabinet staff person shall:

(a) Complete the DPP-114, Level of Care Schedule, with the level of care payment rate:

1. As assigned by the gatekeeper within the previous six (6) months; or

2. In the event of an emergency placement, within two (2) business days of the placement **or receipt of the assigned level of care**;**[~~and~~]**

(b) Arrange transportation for the child to the placement**; and**

(c) Notify the district placement coordinator of the selected placement.

(5) If a child-caring facility or child-placing agency accepts an emergency placement requested by the cabinet outside of the gatekeeper's regular working hours, a cabinet staff person shall:

(a) Submit a level of care packet to the gatekeeper for a child who does not have a current level of care assignment; and

(b) Inform the district placement coordinator of the location and date of placement.

(6) The district placement coordinator shall notify a child-caring facility or child-placing agency that was not chosen for placement upon provision of notification in accordance with subsection (4)(c) of this section.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

(1) Evaluate a child forty-eight (48) months of age or older:

(a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency; and

(b) For an initial or reassigned level of care;

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to a needs assessment consistent with one (1) of the five (5) levels of care; and

(b) Return the completed**:**

1. DPP-886, Private Child Care Client Inter-agency Referral Form, to the department; **or**

2. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment, to the department and the child-caring facility or the child-placing agency;

(3) **Conduct a utilization review for a child[~~Reassess a child utilization review~~]**:

(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and

(b)1. Every three (3) months thereafter if the child is in a private child care residential placement; or

2. Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(4) Reassign a child's level of care after the previous level has expired;

(5) Monitor each child-caring facility and child-placing agency; **[~~and~~]**

(6) Maintain a confidential information system for each child served that shall include:

(a) Placement history;

(b) Level of care assignments;

(c) Length of treatment; and

(d) Discharge outcomes**; and**

(7) For a utilization review, return the completed CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, to the private child-caring facility or private child-placing agency and the cabinet after a level is conducted or reassigned.

Section 4. Levels of Care. A level of care shall be assigned in accordance with the following standards:

(1) A Level I child requires a routine home environment that:

(a) Provides maintenance;

(b) Provides guidance;

(c) Provides supervision to meet the needs of the child; and

(d) Ensures the emotional and physical well-being of the child.

(2) A Level II child:

(a) May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and

(b) Requires supervision in a structured supportive setting with:

1. Counseling available from professional or paraprofessional staff;

2. Educational support; and

3. Services designed to improve development of normalized social skills.

(3) A Level III child:

(a) May engage in an occasional violent act;

(b) May have superficial or fragile interpersonal relationships;

(c) Requires supervision in a structured, supportive environment where the level of supervision and support may vary from low to moderate, proportional to the child's ability to handle reduced structure;

(d) May occasionally require intense levels of intervention to maintain the least restrictive environment; and

(e) Requires a program flexible enough to allow:

1. Extended trials of independence when the child is capable;

2. A period of corrective and protective structure during relapse; and

3. Counseling available from professional or paraprofessional staff.

(4) A Level IV child:

(a) Has behavioral and physical, mental, or social needs that may present a moderate risk of causing harm to himself or others; and

(b) Requires a structured supportive setting with:

1. Therapeutic counseling available by professional staff; and

2. A physical, environmental, and treatment program designed to improve social, emotional, and educational adaptive behavior.

(5) A Level V child:

(a) Has a severe impairment, disability, or need;

(b) Is consistently unable or unwilling to cooperate in his own care;

(c) Presents a severe risk of causing harm to himself or others; and

(d) Requires Level IV services and a:

1. Highly structured program with twenty-four (24) hour supervision; or

2. Specialized setting that provides safe and effective care for a severe, chronic medical condition, behavioral disorder, or emotional disturbance.

Section 5. Payment Methodology and Rates. (1) Payment Methodology.

(a) The cabinet shall base a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, upon the model program cost analysis defined at KRS 199.641(1)(d).

(b) Each private, nonprofit child caring facility shall report to the cabinet annually, on the[~~Form~~] DPP-888, Cost Report and Time

Study and Instructions.

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined.

(a) The factor shall be determined as follows:

1. Based on the amount of treatment provided at each level of care; and

2. By determining the median of:

a. Number of daily treatment hours, derived from time study data, provided to children served by private, nonprofit child-caring facilities; and

b. Level of care of children served by private, nonprofit child-caring facilities that contract with the cabinet;

(b)1. For children whose level is determined, the median level of care shall be represented by an index factor of one[.] (1).

2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Statewide median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

a. Board;

b. Care; and

c. Treatment components; or

2. For an emergency shelter without a treatment license:

a. Board; and

b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes shall include:

1. Child safety while in the care of a private child-caring facility or child-placing agency;

2. Child safety after reunification with the child's family;

3. Adequate educational support;

4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;

5. Increased placement stability during the service period;

6. Increased achievement of permanency goals; and

7. Increased stability in permanency placement following planned discharge.

(b) The cabinet's contract with a private child-caring facility shall specify the:

1. Indicators used to measure the performance outcomes described in paragraph (a) of this subsection of this section; and

2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) At the time the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services:

(a) Shall be geared toward improved performance outcomes; and

(b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.

(8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:

(a) Reduced length of stay in out-of-home placement;

(b) Increased safety from child abuse or neglect;

(c) Increased number of children moving into and remaining in permanent placement;

(d) Increased number of children and their families cared for in close proximity to their home communities;

(e) Increased number of children reunified with their families;

(f) Increased accountability for success in after care; or

(g) Decreased reentry into state custody.

Section 6. Residential Care. (1) A child-caring facility in the levels of care **system**[~~reimbursement plan~~] shall be licensed under 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The facility shall comply with 922 KAR 1:390, Section 4, Residential Treatment Program, if providing treatment oriented services.

(3) The daily rate for residential care to a child-caring facility shall be:

(a) Level I - fifty-one (51) dollars and nineteen (19) cents;

(b) Level II - sixty-one (61) dollars and fifty-two (52) cents;

(c) Level III - $109.71;

(d) Level IV:

1.[-] $151.03; or

2. $175.87 on or after August 4, 2014; and

(e) Level V:

1.[–] $210.64; or

2. $218.99 on or after August 4, 2014.

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

(a) $115.31 per day for a child-caring facility with a treatment license; or

(b) $101.41 per day for a child-caring facility without a treatment license.

(2) If a child's treatment placement is disrupted and the child enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:

(a) Receive a rate consistent with the child's assigned level of care for residential care during the previous placement, pending results of the next-scheduled utilization review;[~~or~~]

(b) If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

(c) Adhere to the child's individual treatment plan.

(3)(a) If the department determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.

(b) If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:

1. Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day;

2. If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection

(1) of this section per day; and

3. Adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency. (1) The basic daily rate for foster care shall be:

(a) Forty-three (43) dollars; or

(b) Forty-four (44) dollars and eighty-two (82) cents on or after August 4, 2014.

(2) The daily rates for therapeutic foster care shall be as follows:

(a) Levels I and II, if the child is stepped down from Level III or higher:

1.[-] Seventy-three (73) dollars; or

2. Seventy-six (76) dollars and ten (10) cents on or after August 4, 2014.

(b) Level III:[-]

1. Seventy nine (79) dollars and seventy-eight (78) cents; or

2. Eighty-three (83) dollars and sixteen (16) cents on or after August 4, 2014.

(c) Level IV:[-]

1. Ninety-seven (97) dollars and eleven (11) cents; or

2. $101.23 on or after August 4, 2014.

(d) Level V:

1.[-] $134.26; or

2. $139.96 on or after August 4, 2014.

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Inclusive of child care cost, the amount specified in Section 8(1) of this administrative regulation[forty-three (43) dollars per day,] for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Provider Requirements. (1) A child-caring facility or child-placing agency shall:

(a) Inform the department of the levels of care the facility or agency has the ability to serve;

(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;

2. Clinical services including:

a. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and

b. Identification and alleviation of related disability or distress, experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

3. Support services that:

a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

b. Allow a child to cope with the disability or distress;

c. Provide access to improving the educational or vocational status of the child; and

d. Provide essential elements of daily living;

(c) Submit the following reports to the gatekeeper in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

1. For a child who has an IQ[above] seventy (70) or above, a behavior inventory appropriate to the child's developmental level consisting of completed forms specified in Section 2(2)(l) of this administrative regulation[:

a. Child Behavior Checklist for Ages one and one-half (1 1/2) - five (5) (Achenbach); or

b. Child Behavior Checklist for Ages six (6) - eighteen (18) (Achenbach), every six (6) months]; and

2. For a child who has an IQ below seventy (70), a behavioral inventory appropriate to the child's development level:

a. Consisting of:

(i) A completed Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology); or

(ii) Another completed tool identified and piloted pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)(A); and

b. By the first utilization review due date and every twelve (12) months thereafter; and

3. To the gatekeeper and designated cabinet staff, a copy of the CRP-7, Children's Review Program Application for Level of Care Payment (ALP)[following completed forms]:

a. On a quarterly basis, for a private child care residential placement[, CRP-001, Children's Review Program Residential Application for Level of Care Payment]; or

b. On a semiannual basis for a foster care placement[, CRP-003, Children's Review Program Foster Care Application for Level of Care Payment];

(d) Provide outcomes data and information as requested by the gatekeeper; and

(e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or

2. The Joint Commission on Accreditation for Healthcare Organizations.

(2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

Section 11. Utilization Review and Authorization of Payment. (1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports specified in Section 10(1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as specified in Section 10(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:

(a) Suspend payments until the necessary information has been submitted to the gatekeeper;

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged;

(b) Level of care is reduced, and the:

1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If a child-caring facility, child-placing agency, or the department determines it to be in the best interest of a child to be transitioned from a residential program to another program and the required reports specified in Section 10(1)(c) of this administrative regulation have been submitted on time, and if:

(a) The program is not therapeutic foster care, the rate for the level resulting from the utilization review shall remain in effect until the next scheduled utilization review; or

(b) The new program is therapeutic foster care, the residential rate for the level resulting from the utilization review shall remain in effect for thirty (30) days after the change in placement. On the

31st day the therapeutic foster care rate for the assigned level shall apply.

(5) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as specified in Section 12 of this administrative regulation.

Section 12. Redetermination. (1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

(a) New information which supports the request for a new level; and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. DPP-886, Private Child Care Client Inter-agency Referral Form, for an initial or reassigned level;

2. CRP-2[~~CRP-002~~], Children's Review Program**[~~Private Child Care~~]** Notice of Level of Care Payment Authorization, [~~form~~] for a utilization review;

3. **CRP-4, Children's Review Program Notice of Level of Care Redetermination;**

4. CRP-5[~~CRP-005~~], Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment,[~~form~~] for a utilization review; or

5.[~~4.~~] CRP-6[~~CRP-006~~], Children's Review Program**[~~Private Child Care~~]** Notice of Level of Care Payment Authorization Reassignment,[~~form~~] for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review or admission, and if the gatekeeper assigns a higher level with a CRP-4[~~CRP-004~~], Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:

(a) The date of the most recent utilization review due date; or

(b) The date of admission.

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-4[~~CRP-004~~], the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-4[~~CRP-004~~], the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-4[~~CRP-004~~], an appeal may be requested in accordance with Section 14 or 15 of this administrative regulation.

Section 13. Reassignment. (1) If the level of care expires and the child is moved to a different **child-caring facility or child-placing agency** placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;

2. An assessment of the child;

3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary; and

4. Material as specified in Section 2(2)(l) of this administrative regulation[~~If the child has an IQ of seventy (70) or above:~~

~~a. Child Behavior Checklist For Ages one and one-half (1 1/2) - five (5) (Achenbach); or~~

~~b. Child Behavior Checklist for Ages six (6) - eighteen (18)~~].

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as specified in Section 12 of this administrative regulation.

Section 14. Informal Dispute Resolution. (1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised **within thirty (30) calendar days unless an extension is granted by the secretary or designee:**

1. Due to extenuating circumstances that prolong the review; and

2. With notice provided to the contract agent.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section 15 of this administrative regulation.

Section 15. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

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

(a) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach)",[~~edition~~] 7/00;

(b) "Child Behavior Checklist for Ages 6-18 (Achenbach)",[~~edition~~] 6/01;

(c) "CRP-2[~~"CRP-001, Children's Review Program Residential Application for Level of Care Payment", edition 11/04;~~

~~(d) "CRP-002~~], Children's Review Program**[~~Private Child Care~~]** Notice of Level of Care Payment Authorization", **11/14**[~~**8/14**~~][~~edition 11/04~~];

(d) "CRP-4[~~(e) "CRP-003, Children's Review Program Foster Care Application for Level of Care Payment", edition 7/07;~~

~~(f) "CRP-004~~], Children's Review Program Notice of Level of Care Redetermination", **11/14**[~~**8/14**~~][~~edition 11/04~~];

(e)[~~(g)~~] "CRP-5[~~CRP-005~~], Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", **11/14**[~~**8/14**~~][~~edition 11/04~~];

(f)[~~(h)~~] "CRP-6[~~CRP-006~~], Children's Review Program**[~~Private Child Care~~]** Notice of Level of Care Payment Authorization Reassignment", **11/14**[~~**8/14**~~][~~edition 7/07~~];

(g) "CRP-7, Children's Review Program Application of Level of Care Payment (ALP)", **11/14**[~~**8/14**~~];

(h)[~~(i)~~] "DPP-114, Level of Care Schedule", 8/14[~~edition 6/08~~];

(i)[~~(j)~~] "DPP-886, Private Child Care Client Inter-agency Referral Form",[~~edition~~] 10/04;

(j)[~~(k) "DPP-886A, Application for Referral and Needs Assessment", edition 07/07;~~

~~(l)~~] "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child-Caring and Child-Placing Programs and Facilities",[~~edition~~] 10/04; and

(k)[~~(m)~~] "Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)",[~~edition~~] 1990.

(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: November 12, 2014

FILED WITH LRC: November 13, 2014 at 2 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes five levels of care based upon the needs of a child for whom the Cabinet for Health and Family Services has legal responsibility; a payment rate for each level; gatekeeper responsibilities; provider requirements; procedures for classification at the appropriate level of care; and procedures for determination of components of the model program costs analysis.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policy and procedures for placement of a child committed to the cabinet with a private child care provider, levels of care and related payments, responsibilities and requirements of the gatekeeper and private provider, and rate setting methodology.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the levels of care and associated payments for a private child care placement.

(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 through its incorporation of the methodology regarding the placement of a child committed to the cabinet with a private child care provider, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of 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: The amendment to this administrative regulation increases the private residential child-caring facilities' and private child-placing agencies' foster care per diems in accordance with the state/executive branch budget bill enacted during the 2014 Regular Session (a.k.a. House Bill 235 or Ky. Acts ch.117), updates and streamlines incorporated materials, and makes technical clarifications to comply with KRS Chapter 13A and best practice. Public comments resulted in additional amendment to incorporated materials and regulatory language to clarify level of care assignments and packet processes, gatekeeper responsibilities, provider requirements, dispute resolution, and technical suggestions.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to increase private provider per diems in accordance with the state/executive branch budget bill enacted during the 2014 Regular Session (a.k.a. House Bill 235 or Ky. Acts ch.117) and to make updates and clarifications to incorporated materials with reviews and inputs solicited from the Children's Alliance and the Children's Review Program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its increase to the private provider per diems to comply with House Bill 235 from the 2014 General Assembly (Ky. Acts ch. 117). In addition, it makes updates and clarifies incorporated materials necessitated to actualize these placement processes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its inclusion of enhanced private provider per diems in accordance with appropriations, improvements to incorporated materials, and other technical corrections.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of June 2014, there were 7,778 children in the custody of the cabinet of which 930 are placed with private residential child-caring facilities with levels of care IV and V. There are an additional 2,971 children placed with private child placing agencies in either basic foster care or levels I through V. There are presently forty-seven (47) private residential child caring and ninety-four (94) private child-placing licensed locations that have an existing agreement with the cabinet for out-of-home 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: Required incorporated materials have been updated to reflect best practice and aid in the determination of an appropriate level of care reimbursement rate for children.

(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 costs to the regulated entities as a result of this administrative regulation amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In accordance with House Bill 235 from the 2014 General Assembly (Ky. Acts ch. 117), private residential child-caring facilities will realize a twenty-four (24) dollar and eighty-four (84) cents reimbursement increase for children with a level of care IV and an eight (8) dollar and thirty-five (35) cents increase for children with a level of care V. Private child-placing agencies will realize per diem increases ranging from one (1) dollar and eighty-two (82) cents to five (5) dollars and seventy (70) cents for foster care services.

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

(a) Initially: The administrative body has conducted extensive analysis of its budgetary context and service demands to ensure the per diem increases are within appropriations. State funds appropriated will be used as match for other fund sources. DCBS estimates an overall cost increase of $9.5 million in state general, federal, and restricted funds for the first year.

(b) On a continuing basis: The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain services and a comprehensive service array within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-E, restricted funds derived from Medicaid, federal Temporary Assistance for Needy Families Block Grant, and state funds are the sources of funding for this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in funding was provided to the cabinet through House Bill 235 of the 2014 General Assembly (Ky. Acts ch. 117).

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 622, 672

2. State compliance standards. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.090(1)(d), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 622, 672

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 a stricter standard, or additional

or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, specifically the Department for Community Based Services (DCBS), is impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 622, 672, KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

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

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

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

(c) How much will it cost to administer this program for the first year? The administrative body has conducted extensive analysis of its budgetary context and service demands to ensure the per diem increases are within appropriations. State funds appropriated will be match for other fund sources. DCBS estimates an overall cost increase of $9.5 million in state general, federal, and restricted funds for the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain services and a comprehensive service array 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 5:070. Adult protective services.

RELATES TO: KRS Chapter 13B, 61.872, 194A.010, Chapter 209[~~209.005 -209.200~~], 202A.051, 202B.100, 387.540(1), 42.U.S.C. 1397

STATUTORY AUTHORITY: KRS 194A.050(1), 209.030(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.030(1) authorizes the secretary to promulgate administrative regulations necessary for the implementation of adult protective services. This administrative regulation establishes the procedures for investigation and protection of adults who are suffering or at risk of abuse, neglect, or exploitation.

Section 1. Definitions. (1) "Abuse" is defined by KRS 209.020(8).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Authorized agency" is defined by KRS 209.020(17).

(4) "Caretaker" is defined by KRS 209.020(6).

(5) "Emergency" is defined by KRS 209.020(11).

(6) "Employee" is defined by KRS 209.032(1)(a).

(7) "Exploitation" is defined by KRS 209.020(9).

(8)[~~(7)~~] "Investigation" is defined by KRS 209.020(10).

(9)[~~(8)~~] "Neglect" is defined by KRS 209.020(16).

(10)[~~(9)~~] "Protective services" is defined by KRS 209.020(5).

(11)[~~(10)~~] "Records" is defined by KRS 209.020(15).

(12) "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).

(13) "Vulnerable adult services provider" is defined by KRS 209.032(1)(c).

Section 2. Receiving a Report of Adult Abuse, Neglect, or Exploitation. (1) An individual suspecting that an adult has suffered abuse, neglect, or exploitation shall:

(a) Report to the cabinet in accordance with KRS 209.030(2) and (3); and

(b) Provide the information specified in KRS 209.030(4).

(2) The identity of the reporting individual shall remain confidential in accordance with KRS 209.140.

(3) The cabinet shall make available a twenty-four (24) hour on-call response system for emergency reporting after normal office hours.

(4) The cabinet shall investigate an anonymous report that provides sufficient information regarding the alleged abuse, neglect, or exploitation of an adult.

(5) If a report does not meet criteria for investigation, the cabinet may refer the reporting source to:

(a) Community resources;

(b) General adult services in accordance with 922 KAR 5:090; or

(c) Domestic violence protective services in accordance with 922 KAR 5:102.

(6) Upon accepting a report for investigation of alleged adult abuse, neglect, or exploitation, the cabinet shall:

(a) Conduct an initial assessment and initiate an investigation in accordance with KRS 209.030(5); and

(b) Take into consideration the safety of the adult when proceeding with the actions necessary to initiate an investigation.

(7) The cabinet shall initiate an investigation upon acceptance of a report of:

(a) Abuse, as defined in KRS 209.020(8), if the report alleges:

1. Marks that are or have been observed on an adult that another individual allegedly inflicted;

2. Physical abuse inflicted upon the adult resulting in pain or injury, including a mental injury;

3. An adult being hit in a critical area of the body, such as the head, face, neck, genitals, abdomen, and kidney areas; or

4. An act of sexual abuse;

(b) Neglect, as defined in KRS 209.020(16), of an adult that may result in harm to the health and safety of the adult in the following areas:

1. Hygiene neglect, if the adult has physical symptoms that require treatment due to poor care as a result of:

a. An act or omission by a caretaker; or

b. The absence of a caretaker;

2. Supervision neglect, if the reporting source has observed a physical health and safety risk to an adult resulting from a lack of necessary and appropriate supervision;

3. Food neglect, if an adult shows symptoms of:

a. Malnutrition;

b. Dehydration;

c. Food poisoning; or

d. Lack of adequate food for a period of time that:

(i) Results in physical symptoms; or

(ii) Requires treatment;

4. Environmental neglect, if a serious health and safety hazard is present, and the adult or the adult's caretaker is not taking appropriate action to eliminate the problem; or

5. Medical neglect, if the adult is not receiving treatment for an injury, illness, or disability that:

a. Results in an observable decline in the adult's health and welfare;

b. May be life threatening; or

c. May result in permanent impairment;

(c) Exploitation of an adult, as defined in KRS 209.020(9), if the report alleges:

1. Isolation from friends, relatives, or important information, such as:

a. Screening telephone calls;

b. Denying visitors; or

c. Intercepting mail;

2. Physical or emotional dependency;

3. Manipulation;

4. Acquiescence; and

5. Loss of resources; or

(d) An adult in need of protective services as defined in KRS 209.020(5).

(8) If a report alleging the exploitation of an adult does not meet criteria established in subsection (7)(c) of this section, the report may be referred to an appropriate authorized agency or community resource.

(9) The following criteria shall be used in identifying a report of adult abuse, neglect, or exploitation not requiring an adult protective service investigation:

(a) The report does not meet the statutory definitions of:

1. Adult; and

2.a. Abuse;

b. Neglect; or

c. Exploitation; or

(b) There is insufficient information to:

1. Identify or locate the adult; or

2. Explore leads to identify or locate the adult.

(10) For a report accepted for investigation of alleged adult abuse, neglect, or exploitation, designated regional cabinet staff shall provide the information specified in KRS 209.030(4):

(a)[~~Prepare an intake report on the "DPP-115, Confidential Suspected Abuse/Neglect, Dependency or Exploitation Reporting Form"; and~~

~~(b) Submit the DPP-115:~~

~~1.~~] For a determination of investigation assignment by cabinet supervisory staff;

(b)[~~2.~~] To the local guardianship office, if the adult is a state guardianship client; and

(c)[~~3.~~] To appropriate authorized agencies, as specified in KRS 209.030(5).

Section 3. Adult Protective Service Investigations. (1) The cabinet shall coordinate its investigation in accordance with KRS 209.030(6).

(2) An adult protective service investigation may include contact with the alleged perpetrator and collaterals, if the contact does not pose a safety concern for the adult or cabinet staff.

(3) Information obtained as a result of a protective service investigation shall be kept confidential in accordance with KRS 209.140.

(4) Requests for written information of the protective service investigation, except for court ordered releases, shall be handled through the open records process in accordance with KRS 61.872 and 922 KAR 1:510.

(5) Designated regional cabinet staff shall initiate the investigation of a report of adult abuse, neglect, or exploitation. If the accepted report of adult abuse, neglect, or exploitation with the expressed permission of the adult indicates:

(a) An emergency[~~, as defined in KRS 209.020(11)~~], the investigation shall be initiated within one (1) hour; or

(b) A nonemergency, the investigation shall be initiated within forty-eight (48) hours.

(6) If permission is granted by the adult, designated regional cabinet staff may take photographs, audio, or video recordings.

(7)(a) The cabinet shall obtain a written voluntary statement of adult abuse, neglect, or exploitation if the adult, witness, or alleged perpetrator is willing to provide the written statement; and

(b) The cabinet shall inform the adult, witness, or alleged perpetrator that the:

1. Statement may be shared with appropriate authorized agencies; and

2. Individual may be required to testify in a court of law.

(8) If investigating reports of alleged abuse or neglect of an adult resulting in death, designated regional cabinet staff shall:

(a) Examine the coroner's or doctor's report;

(b) Obtain a copy of the death certificate for the case record, if possible;

(c) Notify the commissioner or designee;

(d) Consult with appropriate law enforcement, in accordance with KRS 209.030(6)(a) in completing the investigation, if an adult died allegedly as a result of abuse or neglect; and

(e) Determine if another resident in an alternate care facility is at risk of abuse or neglect, if the findings of an investigation suggest that an adult in the alternate care facility died allegedly as a result of abuse or neglect.

(9) Unless the legal representative is alleged to have abused, neglected, or exploited the adult, a legal representative may act on behalf of an adult for purposes of this administrative regulation.

Section 4. Results of the Investigation. (1) Designated regional cabinet staff shall address the following when evaluating the results of the investigation:

(a) The adult's account of the situation, if possible;

(b) The alleged perpetrator's account of the situation, if available;

(c) The information supplied by collateral contact;

(d) Records and documents;

(e) The assessment information;

(f) Previous reports involving the adult or alleged perpetrator; and

(g) Other information relevant to the protection of an adult.

(2) The findings of the adult protective service investigation shall be:

(a) Shared with appropriate authorized agencies in accordance with KRS 209.030(5); and

(b) Documented on the cabinet's database.

(3) Designated regional cabinet staff shall maintain a written record, as specified in KRS 209.030(5), to include:

(a) Information reported in accordance with KRS 209.030(4)[~~The DPP-115~~]; and

(b) A narrative documenting:

1. The investigation; and

2. Findings of the investigation.

(4) If an issue or concern identified by the cabinet does not require a protective service case being opened, the cabinet may work with the adult to develop an aftercare plan:

(a) At the consent of the adult; and

(b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

Section 5. Substantiation Criteria and Submission of Findings.

(1) In determining if an allegation is substantiated, the cabinet shall use the statutory definitions of:

(a) Adult; and

(b)1. Abuse;

2. Neglect; or

3. Exploitation.

(2) If preponderance of evidence exists, designated regional cabinet staff may make a finding of and substantiate abuse, neglect, or exploitation.

(3) A finding made by cabinet staff shall not be a judicial finding.

(4) Cabinet supervisory staff shall review and approve a finding of an investigation prior to its finalization.

Section 6. Reports of Adult Abuse, Neglect, or Exploitation Involving an Employee or Compensated Person. If the cabinet receives a report involving an employee or a person acting with the expectation of compensation, cabinet staff shall provide the alleged perpetrator during the investigative interview:

(1) Notice of the basic allegations, which shall be void of any

specifics that may compromise the investigation;

(2) Notice that the alleged perpetrator will be provided notification of the findings upon completion of the investigation;

(3) Due process requirements in accordance with KRS Chapter 13B and KRS 209.032; and

(4) A statement that a validated substantiated finding shall be reported on the caregiver misconduct registry governed by 922 KAR 5:120.

Section 7. Opening a Case. (1) A case may be opened:

(a) As a result of a protective service investigation; or

(b) Upon identification of an adult through a general adult services assessment as being at risk of abuse, neglect, or exploitation.

(2) The decision to open a case shall be based on the:

(a) Voluntary request for, or acceptance of, services by an adult who needs adult protection or general adult services; or

(b) Need for involuntary emergency protective services.

(3) If it has been determined that an adult is incapable of giving consent to receive protective services, the court may assume jurisdiction and issue an ex parte order in accordance with KRS 209.130.

(4) Emergency protective services shall be provided in accordance with KRS 209.110.

(5) The cabinet shall develop an adult's case plan with the adult and, upon consent of the adult, may include consideration of the following:

(a) Designated regional cabinet staff;

(b) Family members;

(c) Family friends;

(d) Community partners; or

(e) Other individuals requested by the adult.

(6) Within thirty (30) calendar days of opening a case, designated regional cabinet staff shall:

(a) Initiate a case plan with the adult; and

(b) Submit the plan to supervisory staff for approval.

Section 8.[~~7.~~] Referrals for Criminal Prosecution. The cabinet shall refer substantiated reports of adult abuse, neglect, or exploitation to Commonwealth attorneys and county attorneys for consideration of criminal prosecution in accordance with KRS 209.180.

Section 9.[~~8.~~] Restraining Order or Injunctive Relief. If necessary, designated regional cabinet staff shall contact the cabinet's Office of Legal Services for advice and assistance in obtaining restraining orders or other forms of injunctive relief that may be issued for protection of an adult, in accordance with KRS 209.040.

Section 10.[~~9.~~] Guardianship or Conservatorship of Disabled Persons. (1) In an attempt to provide appropriate protective services, designated regional cabinet staff shall assess the need for guardianship if an individual appears unable to make an informed choice to:

(a) Manage personal affairs;

(b) Manage financial affairs; or

(c) Carry out the activities of daily living.

(2) Designated regional cabinet staff may assist in protective service situations in seeking out family, friends, or other interested and qualified individuals who are willing and capable to become guardians.

(3) Upon an order of the court, the cabinet shall file an interdisciplinary evaluation report in accordance with KRS 387.540(1).

Section 11.[~~10.~~] Involuntary Hospitalization. (1) Designated regional cabinet staff shall encourage the voluntary hospitalization of an adult who needs to secure mental health treatment to avoid serious physical injury or death.

(2) Designated regional cabinet staff may file a petition for involuntary hospitalization in accordance with KRS 202A.051 and 202B.100 if:

(a) The adult lacks the capacity to consent or refuses mental health treatment;

(b) Other resources are not available;

(c) Another petitioner is absent or unavailable; and

(d) Prior cabinet supervisory approval is obtained.

Section 12.[~~11.~~].Reporting. (1) Reports of adult abuse, neglect, or exploitation shall be maintained in the cabinet's database for:

(a) Use in future investigations; and

(b) Annual reporting requirements as specified in KRS 209.030(12).

(2) The cabinet shall submit a report annually to the Governor and Legislative Research Commission in accordance with KRS 209.030(12)(b).

(a) In addition to the information required by KRS 209.030(12)(b), the summary of reports received by the cabinet shall include for each individual who is the subject of a report:

1. Age;

2. Demographics;

3. Type of abuse;

4. The number of:

a. Accepted reports; and

b. Substantiated reports; and

5. Other information relevant to the protection of an adult.

(b) The information required in paragraph (a) of this subsection shall only be provided if it does not identify an individual.

Section 13.[~~12.~~] Case Closure and Aftercare Planning. (1) The cabinet's decision to close an adult protective service case shall be based upon:

(a) Evidence that the factors resulting in adult abuse, neglect, or exploitation are resolved to the extent that the adult's needs have been met;

(b) The request of the adult; or

(c) A lack of legal authority to obtain court ordered cooperation from the adult.

(2) An adult shall be:

(a) Notified in writing of the decision to close the protective service case; and

(b) Advised of the right to request a service appeal in accordance with Section 14[~~13~~] of this administrative regulation.

(3) If an adult protective service case is appropriate for closure, the cabinet may work with the adult to develop an aftercare plan:

(a) At the consent of the adult; and

(b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

(4) If the cabinet closes the protective service case in accordance with this section, aftercare planning may link the adult to community resources for the purpose of continuing preventive measures.

Section 14.[~~13.~~] Appeal Rights. (1) A victim of adult abuse, neglect, or exploitation may request a service appeal in accordance with 922 KAR 1:320, Section 2.

(2) If the cabinet makes a finding that an individual providing care to an adult as an employee or with the expectation of compensation has committed adult abuse, neglect, or exploitation, the **individual[~~employee~~]** shall receive appeals in accordance with 922 KAR 5:120[~~Section 14. Incorporation by Reference. (1) "DPP-115, Confidential Suspected Abuse/Neglect, Dependency, or Exploitation Reporting Form", edition 9/05, 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: November 12, 2014

FILED WITH LRC: November 13, 2014 at 2 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cabinet procedures for investigation and protection of adults who are suffering or at risk of abuse, neglect, or exploitation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for adult protective services.

(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 cabinet procedures for intake and acceptance of reports alleging adult abuse, neglect, and exploitation and related services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures for the protection of adults.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation aligns adult protective services with the caregiver misconduct registry established by Senate Bill 98 from the 2014 Regular Session and associated administrative regulation. In addition, the amendment removes the DPP-115, Confidential Suspected Abuse/Neglect, Dependency or Exploitation Reporting Form, through exclusive reference to KRS 209.030, which establishes the information to be obtained from a reporting source. Other technical corrections were made in accordance with KRS Chapter 13A. Public comments resulted in a minor change to enhance clarity.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary for congruency with the caregiver misconduct registry newly authorized by KRS 209.032 and governed by 922 KAR 5:120. The amendment is also necessary for conformity with applicable statutes and the requirements of KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its update of adult protective services policy and procedures in accordance with the registry newly authorized by KRS 209.032 (from the 2014 Regular Session).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist with the effective administration of the statutes through its alignment with recently enacted legislation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Based on the limited data available May 2013 through April 2014, there are less than 300 substantiated investigative findings per year in which the perpetrator was acting as an employee, volunteer, or compensated caregiver for an adult. These are the findings that would qualify the perpetrator for addition to the registry if other requirements of KRS 209.032, specifically due process, are met.

(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 an alleged perpetrator may qualify for addition to the caregiver misconduct registry contingent upon other criteria established by KRS 209.032, this administrative regulation, and 922 KAR 5:120, this administrative regulation outlines notification rights to the alleged perpetrator.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulated entities will not incur a new or additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An individual who is an employee or is acting with the expectation of compensation will be provided notification of the investigation and requirements of KRS 209.032 prior to the individual being added to the caregiver misconduct registry. The registry affords additional protections to adults, while protecting the due process rights of the alleged perpetrators.

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

(a) Initially: The administrative body projects any costs associated with the implementation of this administrative regulation will be within existing appropriations.

(b) On a continuing basis: The administrative body anticipates any ongoing costs associated with this regulatory amendment will be within future appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation are supported through state general funds and federal funds available through the Social Services Block Grant.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1397

2. State compliance standards. KRS 194A.050(1), 209.030(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1397

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 standard, 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 Department for Community Based Services is impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 209.030(1)

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

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

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

(c) How much will it cost to administer this program for the first year? The administrative body projects costs associated with the implementation of this administrative regulation will be within existing appropriations for the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects costs associated with the implementation of this administrative regulation will be within existing appropriations for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 5:120. Caregiver misconduct registry and appeals.

RELATES TO: KRS Chapter 13B, 209

STATUTORY AUTHORITY: KRS 194A.050(1), 209.032(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.032(5) requires the cabinet to promulgate administrative regulations necessary to implement a central registry of substantiated findings. This administrative regulation establishes the caregiver misconduct registry, due process prior to the addition of an individual to the registry, and error resolution for correction of the cabinet's records.

Section 1. Definitions. (1) "Abuse" is defined by KRS 209.020(8).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Employee" is defined by KRS 209.032(1)(a).

(5) "Exploitation" is defined by KRS 209.020(9).

(6) "Investigation" is defined by KRS 209.020(10).

(7) "Near fatality" means an injury or condition, as certified by a physician, that places an adult in serious or critical condition.

(8) "Neglect" is defined by KRS 209.020(16).

(9) "Records" is defined by KRS 209.020(15).

(10) "Secure methodology" means the deployment of technology to protect the application's authenticity and to keep user communications, browsing, and identity private in accordance with KRS 209.032.

(11) "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).

(12) "Vulnerable adult services provider" is defined by KRS 209.032(1)(c).

Section 2. Caregiver Misconduct Registry. (1) The cabinet shall establish a caregiver misconduct registry that contains an individual**[~~who was~~]**:

(a) **Who was** providing care to an adult as an employee or **a person acting[~~otherwise~~]** with the expectation of compensation;

(b) **Who was** the perpetrator of adult abuse, neglect, or exploitation:

1. Pursuant to 922 KAR 5:070; and

2. Substantiated on or after July 15, 2014; and

(c) **With[~~Subject to~~]** a validated substantiated finding of adult abuse, neglect, or exploitation.

(2) An individual **with[~~subject to~~]** a validated substantiated finding of adult abuse, neglect, or exploitation shall:

(a) Remain on the caregiver misconduct registry for a period of at least seven (7) years; and

(b) Be removed from the caregiver misconduct registry:

1. In accordance with the error resolution process described in Section 5 of this administrative regulation if an error is confirmed; or

2. After a period of seven (7) years if:

a. No additional validated substantiated finding of adult abuse, neglect, or exploitation has occurred since the last finding for which the individual's name was placed on the caregiver misconduct registry; and

b. Cabinet records indicate that the incident for which the individual's name was placed on the caregiver misconduct registry did not relate to:

(i) An adult fatality or near fatality related to adult abuse or neglect;

(ii) A criminal conviction related to the incident for which the individual's name was placed on the caregiver misconduct registry; or

(iii) A civil judicial determination related to adult abuse, neglect, or exploitation.

(3) The caregiver misconduct registry shall be available for a web-based query using a secure methodology by:

(a) A vulnerable adult services provider in accordance with KRS 209.032(2); and

(b) An individual in accordance with KRS 209.032(3).

(4) The caregiver misconduct registry shall be accessible through:

(a) The department's main webpage; or

(b) Another cabinet system, such as the Kentucky Applicant Registry and Employment Screening (KARES) Program established in accordance with 906 KAR 1:190.

(5) If an individual or a vulnerable adult service provider described in KRS 209.032(1)(c)11 does not have access to the internet, the individual or provider shall submit a signed and completed DPP-246, Caregiver Misconduct Registry Self-Query, to conduct a self-query in accordance with KRS 209.032(2) or (3).

Section 3. Notification of Finding. (1) If the cabinet finds that an employee or a person acting with the expectation of compensation has committed adult abuse, neglect, or exploitation in accordance with 922 KAR 5:070, the cabinet shall:

(a) Send notice of the finding to the perpetrator by **certified[~~regular~~]** mail; or

(b) Give**[~~the~~]** notice of the finding to the perpetrator, in person, with a witness signature to document that the perpetrator received the notice.

(2) The cabinet's notice of a finding of adult abuse, neglect, or exploitation to an employee or a person acting with the expectation of compensation shall include:

(a) The factual basis for the finding of adult abuse, neglect, or exploitation;

(b) The results of the investigation;

(c) Due process requirements in accordance with KRS Chapter 13B and KRS 209.032;

(d) A statement that a finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation in accordance with KRS 209.032; and

(e) A statement that the individual subject to a validated substantiated finding of adult abuse, neglect, or exploitation shall be added to the caregiver misconduct registry.

Section 4. Appeals. (1) In accordance with KRS 209.032, if the cabinet makes a finding that an individual providing care to an adult as an employee or with the expectation of compensation has committed adult abuse, neglect, or exploitation, the individual shall be afforded an opportunity for an administrative hearing.

(2) An administrative hearing conducted by the cabinet or its designee shall be in accordance with KRS Chapter 13B and 209.032.

(3) The secretary or designee shall issue the final order in accordance with KRS 13B.120 and 209.032.

(4) A party aggrieved by the secretary's decision shall have the

right to pursue judicial review in accordance with KRS 13B.140, 13B.150, and 209.032(1)(b).

(5) The proceedings of the administrative hearing shall be disclosed only by the authority of state or federal law.

(6) If the matter is not subject to the requirements of this section, the cabinet shall inform the person that the matter may be pursued through:

(a) A service complaint process described in 920 KAR 1:030 or 922 KAR 1:320; or

(b) The error resolution process in accordance with Section 5 of this administrative regulation.

Section 5. Error Resolution. (1) In accordance with KRS 209.032(5)(a), an individual seeking error resolution shall:

(a) Submit a written request for record correction to the Commissioner of the Department for Community Based Services, 275 East Main Street (3W-A), Frankfort, Kentucky 40621;

(b) Specify the:

1. Date of the caregiver misconduct registry query which resulted in the error being identified; and

2. Error contained in the caregiver misconduct registry query results; and

(c) Provide documentation that verifies the error, if available.

(2) Within thirty (30) days of receipt of a request in accordance with subsection (1) of this section, the commissioner or designee shall:

(a) Determine whether an error exists; and

(b)1. If the cabinet confirms an error:

a. Correct the records; and

b. Notify the requesting individual that the records have been corrected; or

2. If the cabinet cannot confirm an error:

a. Notify the individual that an error cannot be confirmed based upon the information and documentation submitted with the request; and

b. Outline information or documentation that may verify an error pursuant to the individual's request, if any.

Section 6. Incorporation by Reference. (1) The "DPP-246, Caregiver Misconduct Registry Self-Query", **11/14**[~~7/14~~], 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: November 12, 2014

FILED WITH LRC: November 13, 2014 at 2 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the caregiver misconduct registry, due process prior to the addition of a person to the registry, and error resolution for correction of the cabinet's records.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish processes for the caregiver misconduct registry, appeals, and error resolution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing a caregiver misconduct registry, including due process and error resolution.

(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 setting forth procedures for the state's caregiver misconduct registry.

(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. Public comments were received and resulted in revisions to material incorporated and regulatory language to clearly delineate the agency's policy regarding caregiver misconduct criteria, notification of findings, and appeals.

(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: Based on the limited data available May 2013 through April 2014, there are less than 300 substantiated investigative findings per year in which the perpetrator was acting as an employee, volunteer, or compensated caregiver for a vulnerable adult. These are the findings that would qualify the perpetrator for addition to the registry if other requirements of KRS 209.032, specifically due process, are met. In accordance with the authorizing statute, vulnerable adult services providers are required to query the registry to determine if a prospective employee is subject to a validated substantiated finding of adult abuse, neglect, or exploitation. Methods have also been provided for an individual to conduct a self-query of the registry or request error resolution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals subject to a qualifying substantiated finding of adult abuse, neglect, or exploitation will be afforded due process in accordance the KRS Chapter 13B and KRS 209.032 prior to the individuals' names appearing on the caregiver misconduct registry. Providers and individuals will be directed to a website to conduct queries of the caregiver misconduct registry. Individuals who do not have access to the internet may also submit a paper-based self-query to the cabinet. Procedures have also been outlined for individuals who identify an error in a cabinet record.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Due process in accordance with KRS Chapter 13B and KRS 209.032, queries of the registry, and error resolution requests will be conducted by the cabinet without charge to the affected entities. Affected entities may exercise their rights to counsel, which may entail a related cost outside the cabinet's control.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will benefit the overall protection of vulnerable adults.

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

(a) Initially: The administrative body projects that funds appropriated by the Kentucky General Assembly for the purpose of a registry protecting vulnerable adults will cover the costs of implementing this administrative regulation.

(b) On a continuing basis: The administrative body anticipates ongoing costs associated with this administrative regulation will be within appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation are funded through 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 fees or funding is not 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? Tiering is not applied, as this administrative regulation is applied in a like manner statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, specifically the Office of the Ombudsman, Department for Community Based Services, Office of Administrative and Technology Services, Office of Legal Services, and Division of Administrative Hearings, will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 209.032

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues for 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 administrative body projects that funds appropriated by the Kentucky General Assembly for the purpose of a registry protecting vulnerable adults will cover the costs of implementing this administrative regulation. This administrative regulation will generate no new revenues for subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative body projects that funds appropriated by the Kentucky General Assembly for the purpose of a registry protecting vulnerable adults will cover the costs of implementing this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The administrative body anticipates ongoing costs associated with this administrative regulation will be within appropriations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:220. Nursing continuing education provider approval.

RELATES TO: KRS 314.011(12), 314.073, 314.131(1), (2)
STATUTORY AUTHORITY: KRS 314.131(1), (2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(2) and 314.073(3) require the board to establish continuing competency requirements and approve providers of continuing education. This administrative regulation establishes requirements for providers of continuing education.

Section 1. Definitions. (1) "Continuing education activity" means an offering given by a provider of continuing education who has been approved by the board and that relates to the practice of nursing or contributes to the competency of a nurse extending knowledge beyond that obtained in initial nursing preparation or pertinent to specific work requirements.
(2) "Refresher course" means an organized learning experience, designed, planned, and evaluated to meet behavioral outcomes designed to update knowledge of nursing theory and practice competencies by licensure category.

Section 2. (1) A provider applicant who wants to offer a continuing education activity or a refresher course shall submit an:
(a) Application for Provider Approval; and
(b) Application fee as established in 201 KAR 20:240.
(2) If an application is approved, the board shall issue a provider number to the applicant.
(3)[~~Provider approval shall initially expire on December 31 of the second year following initial approval.~~
~~(4)~~] On or before September 30 of the year in which an approval period expires, an approved provider shall submit the:
(a) Application for Provider Renewal; and
(b) Fee as established in 201 KAR 20:240.
(4)[~~(5)~~] Renewal shall be for two (2)[~~five (5)~~] years.
(5)[~~(6)~~](a) A provider applicant may establish compliance by submitting evidence of approval by one (1) of the following organizations:
1. American Association[~~Academy~~] of Nurse Practitioners;
2. American Association of Critical Care Nurses;
3. American Association of Nurse Anesthetists;
4. American College of Nurse Midwives;
5. American Nurses Credentialing Center;
6. Association of Women's Health, Obstetrical and Neonatal Nurses;
7. National Association of Nursing Practitioners in Women's Health;
8. National Association Pediatric Nurses Associates and Practitioners;
9. National Association for Practical Nurses Education and Service;
10. National Federation of Licensed Practical Nurses;
11. National League for Nursing; or[~~and~~]
12. State Boards of Nursing.
(b) Paragraph (a) of this subsection shall include a provider that offers a continuing education activity related to the pharmacology requirement established in 201 KAR 20:215, Section 5(2).
(6)[~~(7)~~](a) An organization that approves nursing continuing education may request that it be added to this administrative regulation.
(b) An organization shall be included in this administrative regulation if its standards are comparable to the standards established by the provisions of this administrative regulation.

Section 3. (1) The board may review a provider's continuing education activities, refresher courses, or approval status at any time.
(2) Except as provided in subsection (3) of this section, if after a review of a provider it is determined that the provider does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny or limit the provider's approval status.
(3) If after a review of a continuing education activity or refresher course it is determined that the activity does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny approval status for subsequent offerings of that specific continuing education activity.
(4)(a) A request for a hearing before the board shall be filed within ten (10) days of receipt of the board's notice.
(b) If a provider fails to submit a request for a hearing within the time established in paragraph (a) of this subsection, the board shall implement the action proposed in its notice.

Section 4. Providers shall comply with the following standards:
(1)(a) A registered nurse who meets the qualifications established in paragraph (b) of this subsection shall be administratively responsible for continuing education activities, including:
1. Planning;
2. Development;
3. Implementation; and
4. Evaluation.
(b) A nurse administrator shall:
1. Hold a current[~~active~~] license or privilege to practice;
2. Have experience in adult and continuing education; and
3. Hold a baccalaureate or higher degree, in nursing.
(c) The provider shall designate an alternate nurse administrator who shall meet the requirements established in paragraph (b) of this subsection.
(2) Organized learning activities shall be based upon a reasonable justification supporting the need for the continuing education that:
(a) Enhances the quality, safety and effectiveness of care provided by nurses; and
(b) Contributes directly to the competence of a nurse.
(3) The content of nursing continuing education shall be designed to:
(a) Present current theoretical knowledge to enhance and expand nursing skills; and
(b) Promote competence in decision making[~~the development, or change in attitudes, necessary to make competent judgments and decisions in nursing~~].
(4) Outcomes for continuing education activities shall be:
(a) Related to nursing practice and interventions;
(b) Stated in clearly defined expected learner outcomes; and
(c) Consistent with evidence of a need for the continuing education activity or refresher course.
(5) The continuing education activity shall reflect cooperative planning between the nurse administrator, faculty, and content experts.
(6) The content for each educational activity shall include and be documented in provider files:
(a) An agenda indicating a presentation schedule, presenters, topics, meals, breaks; and
(b) An outline format with corresponding time frames and teaching methods indicated for each content area.
1. The content shall be related to and consistent with the outcome.
2. The outcomes shall provide statements of observable behaviors that present a clear description of the competencies to be achieved by the learner.
(7) Teaching methods shall be consistent with the content and learning objectives, and shall reflect the use of adult learning principles. Activities of both the teacher and the learner shall be specified in relation to the content outline.
(8) Faculty for continuing education activities and refresher courses shall have:
(a) Documented expertise in the subject matter; and
(b) Experience in presenting to adult learners and facilitating

adult learning.

(9) The name, title and credentials identifying the educational and professional qualifications for each faculty member shall be retained in the provider offering files.

(10) Resources allocated for the continuing education activity or refresher course shall be adequate in terms of education unit organization, with fiscal support for adequate staff, facilities, equipment, and supplies to ensure quality teaching-learning in a comfortable environment that is accessible to the target audience.

(11) Participants shall be provided with essential information for review prior to registration. This information shall include:

(a) Learner outcomes;

(b) Content overview;

(c) Date, time, and presentation schedule;

(d) Presenter;

(e) Number of contact hours;

(f) Fee and refund policy;

(g) Target audience and any prerequisites; and

(h) Requirements for successful completion that shall be clearly specified and shall include a statement of policy regarding candidates who fail to successfully complete the continuing education activity.

(12) Published information about continuing education activities offered by providers approved by the board shall include the provider number.

(13)(a) A provider shall notify the board in writing within one (1) month of any changes in its administration, such as nurse administrator, mailing address, or telephone number.

(b) Information relevant to the qualifications of the new nurse administrator as established in subsection (1)(b) of this section shall be sent to the board.

(c) If a qualified nurse is not available to serve in the capacity of the administrator, the provider shall not offer any continuing education activity or refresher course until a qualified nurse administrator is appointed.

(14) A provider shall designate and publish the number of hours of any portion of an offering dedicated to pharmacology.

(15) Records of continuing education activities shall be maintained for a period of five (5) years, except for HIV/AIDS education, which shall be maintained for at least twelve (12) years, including the following:

(a) Title, date, and site of the activity;

(b) Name of the person responsible for coordinating and implementing the activity;

(c) Purpose, documentation of planning committee activities, learner outcomes, content outline, faculty, teaching, and evaluation methods;

(d) Participant roster, with a minimum of:

1. Name; and

2. Social Security number or license number;

(e) Summary of participant evaluations;

(f) Number of continuing education contact hours awarded:

1. Contact hours shall be calculated by taking the total number of minutes that the participants will be engaged in the learning activities, excluding breaks, and divide by fifty (50); and

2. Partial hours shall be permissible after one (1) contact hour is earned;

(g) Master copy of certificate awarded; and

(h) All required instructional materials and references shall be identified.

(16) Participants shall receive a certificate of completion that documents participation with the following:

(a) Name of participant;

(b) Offering title, date, and location;

(c) The provider's name, address, telephone number, approval number, and expiration date of the providership;

(d) Name and signature of authorized provider representative;

(e) Number of continuing education contact hours awarded.

(17) There shall be a clearly defined method for evaluating the continuing education activity, which shall include:

(a) An evaluation tool that includes participant appraisal of achievement of each outcome, teaching effectiveness of each presenter, relevance of content to stated outcomes, effectiveness of teaching methods, and appropriateness of physical facilities; and

(b) A mechanism for periodic, systematic evaluation of the provider's total program of educational activities.

(18) There shall be a summary of the participants' evaluations for each continuing education activity or refresher course with an action plan with time lines for resolution of identified deficiencies.

(19) The provider shall have current policies and procedures for the management of the providership that demonstrate compliance with the required standards.

(20) For an offering that includes clinical practice, the instructor-student ratio for the clinical experience shall not exceed one (1) to ten (10).

(21) The following constitute in-service education and shall not be considered as a continuing education activity for purposes of this administrative regulation:

(a) An activity that is part of an employing agency's staff development program designed to provide information related to the work setting;

(b) On the job training;

(c) Orientation;

(d) Basic cardiopulmonary resuscitation; and

(e) Equipment demonstration.

Section 5. (1) The following forms are incorporated by reference:

(a) "Application for Provider Approval", 10/2012, Kentucky Board of Nursing; and

(b) "Application for Provider Renewal", 10/2012, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SALLY BAXTER, President

APPROVED BY AGENCY: October 1, 2014

FILED WITH LRC: October 20, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2014 at 9:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 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 December 31, 2014 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 4022, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets the procedures for approval of continuing education providers.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting procedures.

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

(a) How the amendment will change this existing administrative regulation: It changes the renewal period from five (5) years to two (2) years.

(b) The necessity of the amendment to this administrative regulation: The five (5) year renewal period caused administrative problems. It was decided to go back to the previous two (2) year renewal period.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set these matters.

(d) How the amendment will assist in the effective administration of the statutes: By changing the renewal period back to two (2) years, the problems caused by the five (5) year period will be eliminated.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Continuing education providers. Presently, there are approximately 250.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to follow the new renewal period.

(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 new cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:240. Fees for applications and for services.

RELATES TO: KRS 61.874(3), 314.027(2), 314.041(8), (10)(c), 314.042(3), (6), 314.051(2), (10)(c), 314.071(1), (2), 314.073(8), 314.075(1), 314.101(4), 314.142(1)(b), 314.161, 314.171(4)

STATUTORY AUTHORITY: KRS 314.041(8), (10)(c), 314.042(3), (6), 314.051(2), (10)(c), 314.071(1), (2), 314.073(8), 314.131(1), 314.142(1)(b), 314.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the board to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 314. KRS 314.142(1)(b) requires the board to establish an application fee for a registered nurse who applies to the board to be credentialed as a "sexual assault nurse examiner". KRS 314.161 authorizes the board to establish fees necessary to implement KRS Chapter 314. KRS 314.041(8), (10)(c), 314.042(3), (6), 314.051(2), (10)(c), 314.071(1), (2), and 314.073(8) require the board to establish fees for licensure, examination, renewal, reinstatement, and continuing education. This administrative regulation establishes those fees.

Section 1. Fees for Licensure Applications. (1) The board shall collect a fee for:

(a) An application for licensure; and

(b) Licensure renewal or reinstatement.

(2) The fee for an application shall be:

(a) Licensure by endorsement as a registered nurse – $165[~~$150~~];

(b) Licensure by endorsement as a licensed practical nurse - $165[~~$150~~];

(c) Licensure by examination as a registered nurse - $125[~~$110~~];

(d) Licensure by examination as a licensed practical nurse - $125[~~$110~~];

(e) Renewal of license – fifty-five (55)[~~forty (40)~~] dollars;

(f) Retired status - twenty-five (25) dollars;

(g) Reinstatement of license - $135[~~$120~~];

(h) Paper copy of an application - forty (40) dollars;

(i) Full verification of licensure, credential or registration history - fifty (50) dollars;

(j)[~~Duplicate license or registration card or letter - thirty-five (35) dollars;~~

~~(k)~~] Licensure as an advanced practice registered nurse - $165[~~$150~~];

(k)[~~(l)~~] Renewal of licensure as an advanced practice registered nurse – fifty-five (55)[~~forty (40)~~] dollars;

(l)[~~(m)~~] Reinstatement of licensure as an advanced practice registered nurse - $135[~~$120~~];

(m)[~~(n)~~] Name change - twenty-five (25) dollars;

(n)[~~(o)~~] Application to establish a registered nurse or licensed practical nurse prelicensure program of nursing pursuant to 201 KAR 20:280 or 201 KAR 20:290 - $2,000;

(o)[~~(p)~~] Information submitted to establish a doctor of nursing practice program pursuant to 201 KAR 20:061, Section 1 - $250;

(p)[~~(q)~~] Information submitted to establish a doctor of nursing practice program pursuant to 201 KAR 20:061, Section 2 - $2,000; or

(q)[~~(r)~~] Information submitted to establish an advanced practice registered nurse program pursuant to 201 KAR 20:062, Section 3 - $2,000.

(3) An application or information submitted under this section shall not be evaluated by the board unless the current fee is sub-

mitted.

Section 2. Fees for Applications for Continuing Education Approvals. The fee for an application for approval of a provider of continuing education or for a renewal or reinstatement of the approval shall be:

(1) Initial provider approval - $400;

(2) Reinstatement of provider approval - $400;

(3) Renewal of approval - $100[~~200~~]; or

(4) Individual review of continuing education offerings - ten (10) dollars.

Section 3. Fees for Services. (1) The fee for a service shall be:

(a) Validation of the current status of a temporary work permit, provisional license, license, or credential:

1. If requested in writing in individual nurse format - fifty (50) dollars; or

2. If requested in writing in list format - fifty (50) dollars for the first name and twenty (20) dollars for each additional name;

(b) Copy of an examination result or transcript - twenty-five (25) dollars;

(c) Nursing certificate - thirty (30) dollars; or

(d) Release of NCLEX results to another state board of nursing - seventy-five (75) dollars.

(2) An applicant for licensure who takes or retakes the licensure examination shall pay:

(a) The current examination fee required by the national council of state boards of nursing; and

(b) Application for licensure fee pursuant to Section 1 of this administrative regulation.

(3) A graduate of a foreign school of nursing shall be responsible for:

(a) Costs incurred to submit credentials translated into English;

(b) Immigration documents; and

(c) Other documents needed to verify that the graduate has met Kentucky licensure requirements.

(4) A program[~~programs~~] of nursing that requires a site visit pursuant to 201 KAR 20:270, Section 2(4), shall pay the cost of the site visit to the board.

Section 4. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office; or

(3) For all other applications, except for renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section 5. An applicant who meets all requirements for approval, licensure, or credential shall be issued the appropriate approval, license, or credential without additional fee.

Section 6. Fees for Sexual Assault Nurse Examiners. (1) The application fee shall be $120.

(2) The credential renewal fee shall be fifty (50)[~~thirty-five (35)~~] dollars.

(3) The credential reinstatement fee shall be $120.

Section 7. A payment for an application fee that is in an incorrect amount shall be returned and the application shall not be posted until the correct fee is received.

Section 8. Bad Transaction Fee. Any transaction, including paper or electronic, submitted to the board for payment of a fee which is returned for nonpayment shall be assessed a bad transaction fee of thirty-five (35) dollars.

SALLY BAXTER, President

APPROVED BY AGENCY: October 1, 2014

FILED WITH LRC: October 20, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2014 at 9:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 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 December 31, 2014 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, Email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets fees for applications and services.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting fees.

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

(a) How the amendment will change this existing administrative regulation: It increases certain fees by fifteen (15) dollars per year. It decreases the fee CE providers pay.

(b) The necessity of the amendment to this administrative regulation: The board has not increased the renewal fee since 2000 or the application fees since 2005. During that time, operating expenses have increased. Revenues have been negatively impacted by fund transfers. It has become necessary to seek an increase in fees to provide sufficient revenue to operate the agency for the next several years.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set fees.

(d) How the amendment will assist in the effective administration of the statutes: By increasing fees to provide necessary revenue to operate the agency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: LPNs, RNs, and APRNs. There are approximately 80,000 nurses.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to pay the new fees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The increase is fifteen (15) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, KRS 314.161.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Occupational Therapy
(Amendment)

201 KAR 28:010. Definitions and abbreviations.

RELATES TO: KRS 319A.010-319A.210

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 319A and pertinent parts of KRS 319A.070(3) require the Kentucky Board of Licensure for Occupational Therapy to promulgate administrative regulations pertaining to the practice and licensure of occupational therapists and occupational therapy assistants. This administrative regulation sets forth the definition of terms and phrases which will be used by the board in enforcing and interpreting the provisions of KRS Chapter 319A and the administrative regulations.

Section 1. Definitions. (1) "ACOTE" means the Accreditation Council for Occupational Therapy Education.

(2) "Act" means the Kentucky Occupational Therapy Act as established in KRS 319A.010 to 319A.990.

(3) "Adjunct" means preparatory methods and tasks that prepare the client for occupational performance used as part of a treatment session in preparation for or concurrently with occupation as and activities or provided to a client as a home based engagement to support daily occupational performance[~~, strategies, or interventions that support and advance a client's occupational therapy performance used as a precursor to enable purposeful activities or occupations~~].

(4) "AOTA" means the American Occupational Therapy Association.

(5) "Assistive technology" means identification and use of assistive technologies (high and low tech), application of universal design principles, and recommended changes to the environment of activity to support the client's ability to engage in occupations[~~any item, piece of equipment, or product system, whether commercially available, modified, or custom designed, that is used to increase, maintain, or enhance the occupational performance of an individual~~].

(6) "Basic activities of daily living" means tasks or activities that are oriented toward taking care of one's own body; those tasks that are performed daily by an individual that pertain to and support one's self-care, mobility, and communication; and includes the following activities:

(a) Bathing and showering;

(b) Bowel and bladder management;

(c) Dressing;

(d) Swallowing, eating, and feeding;

(e) Functional mobility;

(f) Personal device care;

(g) Personal hygiene and grooming;

(h) Sexual activity;

(i) Sleep and rest; and

(j) Toileting and toilet hygiene.

(7) "Certified hand therapist" or "CHT" [~~(CHT)~~] means a person who is certified by the Hand Therapy Certification Commission.

(8) "Board" is defined by KRS 319A.010(1).

(9) "Cognitive components" means the skill and performance of the mental processes necessary to know or comprehend by understanding with such skills including: orientation, conceptualization, and comprehension, including concentration, attention span, memory, and cognitive integration including generalization, and problem-solving.

(10) "Components of performance" means activity and occupational demands, client factors, performance skills, context, and environment[~~the demands of an activity which include human, object and contextual factors including objects, space, social demands, sequencing or timing, required actions for performance and required underlying body functions and structures needed to carry out activities~~].

(11) "COTA" means a certified occupational therapy assistant.

(12) "COTA/L means a certified occupational therapy assistant/licensed.

(13) "Ergonomic principles" means:

(a) The study of:

1. Relationships between components of performance;

2. People as it relates to their occupations, the equipment they use and their environment; and

3. The application of that knowledge and skill as it focuses upon maximizing efficiency in the areas of production, quality and safety; and

(b) Principles that are utilized by occupational therapists to optimize an individual's occupational performance in the areas of self-care, productivity, work, and leisure and may include job analysis, consultation, and educational activities.

(14) "Functional mobility" means moving from one (1) position or place to another including in-bed mobility, wheelchair mobility, transportation of objects through space, and functional ambulating[~~and~~] transfers, driving, and community mobility.

(15) "Gait training" means the instruction of proper walking patterns.

(16) "General supervision" means an interactive process for collaboration on the practice of occupational therapy which includes the review and oversight of all aspects of the services being provided by the individual under supervision.

(17) "Instrumental activities of daily living" means complex tasks or activities that are oriented toward interacting with the environment and are essential to self-maintenance matters which extend beyond personal care, including:

(a) Care of others;
(b) Care of pets;
(c) Child rearing;
(d) Communication management[~~device use~~];
(e) Financial management;
(f) Health management and maintenance;
(g) Home establishment, management, and maintenance;
(h) Meal preparation and cleanup;
(i) Safety[~~procedures~~] and emergency maintenance[~~responses~~];
(j) Shopping;[~~and~~]
(k) Spiritual activities; and
(l) Selection and supervision of caregivers.

(18) "Occupations" means activities, tasks or roles that individuals engage in which provide intrinsic value and meaning for the individual, society, and culture.

(19) "OTA/L" means an occupational therapy assistant/licensed.

(20) "OT/L" means an occupational therapist/licensed.

(21) "OT" means occupational therapy.

(22) "OTR/L" means an occupational therapist registered/licensed.

(23) "OTR" means an occupational therapist registered.

(24) "Performance abilities" means the utilization of performance skills in the participation of active daily life.

(25) "Performance skills" means the observable actions of a person that have implicit functional purposes, including motor skills, processing skills, interaction skills, and communication skills.

(26) "Prevention" means an intervention approach designed to address the needs of clients with or without a disability who are at risk for occupational performance problems. This approach is designed to prevent the occurrence or evolution of barriers to performance in context. Interventions may be directed at client, context, or activity variables[~~the skill and the performance of the person to minimize debilitation with the treatment focusing on energy conservation, including activity restriction, work simplification, and time management, joint protection and body mechanics, including proper posture, body mechanics, and avoidance of excessive weight bearing, positioning, and coordination of daily living activities~~].

(27) "Psychosocial component" means the skill and performance in self-management and interaction skills with such skills including: self-expression, self-control, interaction with another person, and interaction with groups of three (3) or more people.

(28) "Remediation" means an intervention approach designed to change client variables to create, promote, establish, and restore[~~establish~~] a performance skill or ability[~~that has not yet developed~~].

(29) "Restoration" means to restore a performance skill or ability that has been impaired.

(30) "Sensorimotor components" means[~~the~~] skill and performance[~~of~~] patterns including client factors, sensory processing, neuromusculoskeletal, muscle, and movement related functions[~~of sensory and motor behavior of a person undergoing treatment with skills including neuromuscular activity, including reflex integration, range of motion, gross and fine motor coordination, strength and endurance, and sensory integration, including sensory awareness, visual-spatial awareness, and body integration~~].

SCOTT DEBURGER, OTR/L

APPROVED BY AGENCY: November 13, 2014

FILED WITH LRC: November 14, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 31, 2014 at 10 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing 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 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 11:59 pm on December 31, 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 Hutcherson, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296, ext. 226, fax 502-564-4818, email Jennifer.Hutcherson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeremy Reed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the definition of terms and phrases used by the Kentucky Board of Licensure for Occupational Therapy in enforcing and interpreting the provisions of Chapter 319A and the administrative regulations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements related to abbreviations used in the KRS and to further define the terms.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A by establishing the explicit operational definitions for terms that meet occupational therapy practice standards outlined within the Kentucky Revised Statute. This administrative regulation is consistent with the policy mandate of KRS 319A.070(3)(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by interpreting abbreviations and terms used within the Kentucky Revised Statute KRS 319A.

(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 terms "adjunct," "assistive technology," "components of performance," "prevention," "remediation," and "sensorimotor components" as well as adding one or two word clarifications for other components of occupational therapy practice outlined within the regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clean up language and further clarify abbreviations and terms in order for the Kentucky Board for Licensure in Occupational Therapy to effectively carry out its duties and powers.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by operationally defining terms and abbreviations listed in KRS 319A.010, KRS 319A.080, KRS 319A.090, in order for the Kentucky Board of Licensure Occupational Therapy Board to protect consumers of occupational therapy services in the Commonwealth.

(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 clarifying language and explicitly stating scope of practice parameters as outlined within KAR 319A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts every occupational therapy practitioner and consumer receiving occupational therapy services in 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 take to comply with this administrative regulation or amendment: occupational therapy practitioners will need to read the clarifying language which should minimize questions and that come before the Kentucky Board for Licensure in Occupational Therapy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by practitioners in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this amendment enhances the effectiveness of occupational therapy services and clarifying scope of practice concerns.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees as outlined in KRS 319A.150, KRS 319A.170, and License renewal fees as outlined in KRS 319A160.

(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 amended administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The amendment will not create any new revenue for the board.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Occupational Therapy
(Amendment)

201 KAR 28:020. General provisions.

RELATES TO: KRS 319A.080, 319A.110, 319A.120, 319A.130, 319A.140

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3) authorizes the board to promulgate such administrative regulations as are needed to enforce the provisions of KRS Chapter 319A. This administrative regulation sets forth the minimum requirements of information to be provided in applying for a license.

Section 1. An applicant for licensure shall submit to the board the information requested, which at a minimum shall provide for:

(1) The name, business address, if any, permanent address, email address, and telephone number of the applicant;

(2) A statement as to whether the applicant has been convicted of any felony offense in any state or has been convicted[~~during the past five (5) years~~] of a misdemeanor or civil violation involving an offense of moral turpitude in any state;

(3) A statement as to whether the applicant has been adjudged guilty in a civil suit in a court of competent jurisdiction in any state of malpractice or negligence in the practice of occupational therapy; and

(4) A statement as to whether the applicant has had a license, registration, or certification as an OT/L or OTA/L, as issued by another state, revoked, suspended or probated[~~during the past five (5) years~~] or if there are any complaints currently pending.

SCOTT DEBURGER, OTR/L

APPROVED BY AGENCY: November 13, 2014

FILED WITH LRC: November 14, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 31, 2014 at 10 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing 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 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 11:59 pm on December 31, 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 Hutcherson, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296, ext. 226, fax 502-564-4818 Jennifer.Hutcherson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeremy Reed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the minimum requirements of information to be provided in applying for a license by the Kentucky Board of Licensure for Occupational Therapy.

(b) The necessity of this administrative regulation: This administrative regulation is needed to enforce the provisions of KRS Chapter 319A. and relates to: KRS 319A.080, 319A.110, 319A.120, 319A.130, 319A.140.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A by establishing the minimum required information a licensee shall provide to the Kentucky Board of Licensure for Occupational Therapy for issuance of a license.

(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 Kentucky Revised Statute KRS 319A to assure correct licensee contact information and information concerning any felony convictions or

misdemeanor convictions or civil violations involving an offense of moral turpitude in any state are declared.

(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 requires a licensee to provide an email address and it eliminates the five year limitation on declaring misdemeanor convictions or civil violations involving an offense of moral turpitude.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to assure the Kentucky Board for Licensure in Occupational Therapy has relevant timely access to licensee contact information by requiring an email address and in order to effectively carry out its duties to protect consumers of occupational therapy services within the Commonwealth by eliminating the five (5) year limit for reporting misdemeanor convictions or civil violations involving an offense of moral turpitude.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by KRS 319A.080, 319A.110, 319A.120, 319A.130, 319A.140.in order for the Kentucky Board of Licensure Occupational Therapy Board to carry out its duties for protecting consumers of occupational therapy services in the Commonwealth.

(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 assuring regulated licensees under KAR 319A. by providing relevant contact information that includes an email address and provides information about all convictions and/or civil violations involving an offense of moral turpitude.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts every licensed occupational therapy practitioner and consumer receiving occupational therapy services in 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 take to comply with this administrative regulation or amendment: occupational therapy practitioners regulated by this KAR will need to provide an email address and provide all information concerning prior felony and misdemeanor convictions or civil violations involving an offense of moral turpitude to the Kentucky Board for Licensure in Occupational Therapy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by practitioners in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this amendment enhances the Kentucky Board for Licensure in Occupational Therapy's ability to protect the public and effective communicate with licensees.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees as outlined in KRS 319A.150, KRS 319A.170, and License renewal fees as outlined in KRS 319A160.

(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 amended administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all 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? Kentucky Board of Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A.070(3).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This amendment will not create any new revenue for the board.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Occupational Therapy
(Amendment)

201 KAR 28:030. Short-term practice of occupational therapy for persons practicing under KRS 319A.090(1)(e).

RELATES TO: KRS 319A.090

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.090 provides that certain persons may be exempt from the licensure requirements of KRS Chapter 319A. This administrative regulation sets forth the requirements for persons who are temporarily practicing in Kentucky and who seek to engage in the practice of occupational therapy for no more than sixty (60) days in a calendar year pursuant to KRS 319A.090(1)(e).

Section 1. (1) Any individual who intends to practice occupational therapy in the Commonwealth of Kentucky, in association with a Kentucky OT/L, under the provisions of KRS 319A.090(1)(e) shall submit to the board the following information:

(a) Name, permanent address, address in Kentucky, email address, and telephone number or number where the individual can be reached;

(b) The name, business address, and phone number of the OT/L with whom the individual is associated;

(c) The dates on which the individual intends to practice in Kentucky; and

(d) A copy of the current license from the state in which the individual is licensed along with a statement from the licensing authority that the individual is in good standing; or

(e) A letter of verification issued by the NBCOT stating that the individual meets the current requirements for certification as an

OTR or a COTA and is in good standing.

(2) The information as described in subsection (1) of this section shall be submitted to the board prior to the commencement of practice.

(3) The applicant's request may be approved by the board chair upon receipt of all items listed in this administrative regulation.

SCOTT DEBURGER, OTR/L

APPROVED BY AGENCY: November 13, 2014

FILED WITH LRC: November 14, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 31, 2014 at 10 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing 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 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 11:59 pm on December 31, 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 Hutcherson, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296, ext. 226, fax 502-564-4818, email Jennifer.Hutcherson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Jeremy Reed, Scott DeBurger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth procedures for compliance with KRA 319A.090 (1) (e) as authorized by KRS 319A.070(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A.090 (1) (e) by establishing guidelines for individuals licensed in another state to notify and comply with requirements for compliance. This administrative regulation is consistent with the policy mandate of KRS 319A.090 (1) (e).

(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 outlining the communication and requirements for persons who are temporarily practicing in Kentucky and who seek to engage in the practice of occupational therapy for no more than sixty (60) days in a calendar year.

(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 by having persons who are temporarily practicing in Kentucky and who seek to engage in the practice of occupational therapy for no more than sixty (60) days in a calendar year provide the Kentucky Board of Licensure for Occupational Therapy with an email address.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enhance the effectiveness of communication processes between persons who are temporarily practicing in Kentucky and who seek to engage in the practice of occupational therapy for no more than sixty (60) days in a calendar year and the Kentucky Board of Licensure for Occupational Therapy.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by providing guidelines communication between persons who are temporarily practicing in Kentucky and who seek to engage in the practice of occupational therapy for no more than sixty (60) days in a calendar year and the Kentucky Board of Licensure for Occupational Therapy as required by 319A.090.

(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 improving communication processes between persons who are temporarily practicing in Kentucky and who seek to engage in the practice of occupational therapy for no more than sixty (60) days in a calendar year and the Kentucky Board of Licensure for Occupational Therapy.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts only a few numbers of persons who are temporarily practicing in Kentucky and who seek to engage in the practice of occupational therapy for no more than sixty (60) days in a calendar year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pursuant to KRS 319A.090 (1) (e) and this regulation, persons will have to provide the Kentucky Board of Licensure for Occupational Therapy with an email address.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by practitioners in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this amendment enhances the effectiveness communication between such persons and the Kentucky Board of Licensure for Occupational Therapy.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees for persons licensed under KRS 319A and set forth in KAR 319A.070

(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 amended administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A.070(3), KRS 319A.090(1)(e).

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

(a) Estimate the effect of this administrative regulation on the

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

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

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

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This amendment will not create any new revenue for the board.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Occupational Therapy
(Amendment)

201 KAR 28:060. Requirements for licensure.

RELATES TO: KRS 319A.100, 319A.110, 319A.130

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 319A and pertinent parts of KRS 319A.070(3) require the board to establish a procedure for the licensure of persons who wish to practice in this state as an OT/L or an OTA/L. This administrative regulation sets forth the procedure by which those applicants shall apply for a license under the provisions of KRS[~~KAR~~] Chapter 319A.

Section 1. Licensure of an OT/L. An applicant for licensure as an OT/L that has not previously been licensed, certified, or registered in any state shall meet the following requirements:

(1) Submit a completed "OT/L Application Form 6/2003";

(2) Submit a certified copy of the applicant's transcript indicating that the applicant for an OTR/L has a baccalaureate degree, postbaccalaureate certificate, master's degree, or doctorate degree from an occupational therapy program accredited by the ACOTE or its equivalent;

(3) Submit electronic verification[~~a current copy of the certificate issued~~] by the NBCOT stating that the applicant meets the requirements of certification as an OTR/L;[~~and~~]

(4) Successfully complete the jurisprudence exam; and

(5) Submit the appropriate fee for licensure as required by 201 KAR 28:110.

Section 2. Licensure of OTA/L. Applicants for licensure as an OTA/L that have not previously been licensed in any state shall meet the following requirements:

(1) Submit a completed "OT/L Application Form 6/2003";

(2) Submit a certified copy of the applicant's official academic transcript indicating that the applicant has graduated from an occupational therapy assistant educational program approved by the ACOTE or its equivalent;

(3) Submit electronic verification[~~a current copy of the certificate issued~~] by the NBCOT stating that the applicant meets the requirements of certification as a COTA;[~~and~~]

(4) Successfully complete the jurisprudence exam; and

(5) Submit the appropriate fee for licensure as required by 201 KAR 28:110.

Section 3. Licensure of Persons Licensed, Certified, or Registered in Other States. An applicant for licensure as an OT/L or OTA/L that is or has been licensed, certified, or registered in another state shall submit:

(1) A completed "OT/L Application Form 6/2003" or "OTA/L Application Form 6/2003";

(2) An official statement from every jurisdiction in which the applicant has held a license or credential that the individual is in good standing in that jurisdiction;

(3) A current copy of the certificate issued by the NBCOT stating that the individual met the initial requirements for certification as an OTR or a COTA;[~~and~~]

(4) Successfully complete the jurisprudence exam; and

(5) The appropriate fee for licensure as required by 201 KAR 28:110.

Section 4. Foreign-trained Applicants. An applicant for licensure as an occupational therapist who was trained at an educational facility in a country or nation other than the United States shall submit:

(1) A completed "OT/L Application Form 6/2003";

(2) A current copy of the certificate issued by the NBCOT stating that the individual met the initial requirements for certification as an OTR;

(3) The appropriate fee for licensure as required by 201 KAR 28:110; [~~and~~]

(4) Successfully complete the jurisprudence exam; and

(5) Evidence of legal permission, as furnished by the U.S. Department of Immigration and Naturalization, for employment in the United States as documented by:

(a) I-94 form;

(b) Alien registration card;

(c) Temporary resident card;[~~or~~]

(d) NBCOT Visa Verification; or

(e) A stamp on their passport.

(6)[~~(5)~~] A foreign-trained applicant who is or has been licensed, certified, or registered in another jurisdiction of the United States shall comply with the requirements of Section 3(3) of this administrative regulation.

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

(a) "OT/L Application Form 6/2003"; and

(b) "OTA/L Application Form 6/2003".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure of Occupational Therapist, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT DEBURGER, OTR/L

APPROVED BY AGENCY: November 13, 2014

FILED WITH LRC: November 14, 2014 at 0 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 31, 2014 at 10 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing 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 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 11:59 pm on December 31, 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 Hutcherson, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296, ext. 226, fax 502-564-4818, Jennifer.Hutcherson@ky.gov.

REGULATORY ANALYSIS AND TIERING STATEMENT

Contact persons: Jeremy Reed, Scott DeBurger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administra-

tive regulation sets forth the procedure by which applicants shall apply for a license under the provisions of KAR Chapter 319A.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a procedure for the licensure of persons who wish to practice in this state as an OT/L or an OTA/L.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A by establishing a procedure for the licensure of persons who wish to practice in this state as an OT/L or an OTA/L. This administrative regulation is consistent with the policy mandate of KRS 319A.070.

(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 explicating a procedure for the licensure of persons who wish to practice in this state as an OT/L or an OTA/L.

(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 require persons that have not previously been licensed, certified, or registered in any state to provide electronic verification from NBCOT directly that he/she meets the requirements of certification instead of providing a paper copy of a certificate from NBCOT provided by the applicant. This amendment also requires all applicants for licensure to successfully complete a Jurisprudence exam. Applicants who were trained at an educational facility in a country or nation other than the United States will be allowed to utilize the NBCOT Visa Verification process as evidence of legal permission for employment as an occupational therapist in the United States.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to minimize the potential for fraudulent or inaccurate copies of NBCOT certificates to be utilized as evidence for successfully meeting requirements for certification. In addition, the NBCOT electronic verification system is the most time sensitive and secure form for qualifying NBCOT certification verification. The Jurisprudence exam assures that applicants for licensure have demonstrated knowledge of the statutes and regulations pursuant to the practice of occupational therapy. Allowing foreign-trained applicants to utilize the NBCOT Visa Verification system expands options for applicants' verifications that meet current practices of external Visa verification. These changes allow the Kentucky Board for Licensure in Occupational Therapy to more effectively and efficiently carry out its duties and powers.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing a procedure for persons who wish to practice in this state as an OT/L or an OTA/L, and in order for the Kentucky Board of Licensure Occupational Therapy Board to complete its powers and duties as related to KRS 319A.100, 319A.110, 319A.130.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes allowing for electronic verification by NBCOT for applicants that have not previously been licensed, certified, or registered in any state, by increasing licensees' knowledge of KRS 319A statutes and 201 KAR 28 regulations, and by allowing foreign trained applicants to utilize the NBCOT Visa Verification process. These changes will allow the Kentucky Board for Licensure in Occupational Therapy to verify credentials more timely, effectively, and efficiently in relation to current external credentialing practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts every occupational therapy practitioner applying for licensure in the state.

(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: occupational therapy practitioners will need to read and understand KRS 319A. and 201 KAR 28 and will be required to demonstrate this knowledge through an online exam to the Kentucky Board for Licensure in Occupational Therapy. Persons that have not previously been licensed, certified, or registered in any state applying for licensure will have to request from NBCOT that an electronic verification of success exam completion be submitted to the state. Foreign trained practitioners applying for licensure would be able to utilize the most recognized and valid process for providing evidence of legal permission, for employment as an occupational therapist in the United States

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by applicants for licensure as an OT/L or OTA/L that are or have been licensed, certified, or registered in another state or who are foreign trained but it will require an additional cost to NBCOT for applicants that have not previously been licensed, certified, or registered in any state in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this regulation amendment will benefit applicants for licensure as an OT/L or OTA/L that have not previously been licensed, certified, or registered in any state by shortening the time of application completion. The Kentucky Board for Licensure in Occupational Therapy can receive notification of successful credential verification on the same day as the applicant, which will reduce the application timeline by at least 2 – 3 weeks. All applicants will benefit from having an external assessment demonstrating their knowledge of state statutes and regulations for the practice of occupational therapy and foreign trained applicants will be able to utilize the most recognized and established current practice process for providing evidence of legal permission for employment as an occupational therapist in the United States

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

(a) Initially: The online Jurisprudence exam will initially cost approximately $4,000. - $6,000 to develop and administer.

(b) On a continuing basis: Ongoing costs includes updates and maintenance of the Jurisprudence exam which is approximately $2,000 for implementing the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License renewal fees as outlined in KRS 319A160.

(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 amended administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is applicable as compliance requirements for applicants very. Applicants for licensure that have not previously been licensed, certified, or registered in any state must pay NBCOT for the NBCOT electronic verification to be sent to the Kentucky Board for Licensure in Occupational Therapy which will require an additional cost on their part to NBCOT. Applicants for licensure who are foreign trained will have to provide evidence for eligibility to work as an occupational therapist in the United States. There are no tiering requirements for the Jurisprudence exam for all applicants will have the same requirement.

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 Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation: KRS 319A.070(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) 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 development of the online Jurisprudence exam will require expenditures by the Kentucky Board of Licensure for Occupational Therapy of approximately $4,000.00 – $6,000. within the first full year that the administrative regulation change goes into effect. The electronic verification by the NBCOT stating that the applicant meets the requirements of certification will not require additional expenditures.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated by the amendment to this regulation. Currently the regulation states that applicants shall submit the appropriate fee as set forth in KRS 319A.170 this provision remains unchanged.

(c) How much will it cost to administer this program for the first year? $4,000 - $6,000 for the first year of the Jurisprudence exam administration.

(d) How much will it cost to administer this program for subsequent years? The continuing revision, updating, processing, and administration of the online Jurisprudence exam will be approximately $2,000 per year

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board or Licensure for Occupational Therapy
(Amendment)

201 KAR 28:070. Examination.

RELATES TO: KRS 319A.120

STATUTORY AUTHORITY: KRS 319A.070(3), 319A.120(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 319A requires the board to promulgate administrative regulations establishing the requirements for an examination to be taken by an applicant for licensure. This administrative regulation establishes those requirements.

Section 1. Examination Approved by the Board. The examinations approved for licensure are:

(1) The NBCOT certification examination for occupational therapists; and

(2) The NBCOT certification examination for occupational therapy assistants.

Section 2. (1) An applicant for licensure shall take the appropriate examination as authorized by NBCOT and shall receive a passing score on the examination.

(2) It shall be the responsibility of the applicant to make arrangements to:

(a) Sit for the examination;

(b) Pay the requisite examination fee to NBCOT; and

(c) Ensure that the board receives <u>electronic</u> evidence <u>from NBCOT</u> of successful completion of the examination.

SCOTT DEBURGER, OTR/L

APPROVED BY AGENCY: November 13, 2014

FILED WITH LRC: November 14, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 31, 2014 at 10 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing 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 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 11:59 pm on December 31, 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 Hutcherson, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296, ext. 226, fax 502-564-4818, Jennifer.Hutcherson@ky.gov.

REGULATORY ANALYSIS AND TIERING STATEMENT

Contact persons: Jeremy Reed, Scott DeBurger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for an examination to be taken by an applicant for licensure by the Kentucky Board of Licensure for Occupational Therapy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish examination requirements related KRS 319A.120

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A by establishing the examination requirements set forth in KRS 319A.070(3), 319A.120(4).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for an examination to be taken by an applicant for licensure under Kentucky Revised Statute KRS 319A.

(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 change will require that electronic evidence of successful exam completion come directly from NBCOT.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to assure secure valid timely examination results are received by the Kentucky Board for Licensure in Occupational Therapy in order to effectively carry out its duties and powers for granting licenses.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by setting the requirements for examination in KRS 319A.070(3), 319A.120(4) so that the Kentucky Board of Licensure Occupational Therapy Board can carry out its duties effectively, timely and in alignment with current practice standards for secure and valid exam results reporting.

(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 mandating that valid exam results are sent securely and directly from the examination body NBCOT to the Kentucky Board for Licensure for Occupational Therapy.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts only occupational therapy new graduates who have never been licensed or certified previously that sit for the examination to become certified by NBCOT which is required to become licensed by the Kentucky Board for Licensure for Occupational Therapy.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administra-

tive regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: occupational therapy new graduates when applying for examination by NBCOT as exam candidates will need to request that electronic exam scores be sent to the Kentucky Board for Licensure in Occupational Therapy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The request for electronic exam results be sent from NBCOT to the Kentucky Board will cost thirty-five (35) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this amendment assists entities in (3) to obtain a license to practice in a timelier efficient manner with fewer hard copy document requirements. This electronic score report is delivered at the same time that the applicant receives the score report.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees as outlined in KRS 319A.150, KRS 319A.170, and License renewal fees as outlined in KRS 319A160.

(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 amended administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is applicable for this amendment requirement will only affect those applicants who have never previously been licensed or certified by any other state.

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 Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A.070(3), 319A.120(4)

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This amendment will not create any new revenue for the board.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Occupational Therapy
(Amendment)

201 KAR 28:090. Renewals.

RELATES TO: KRS 319A.160

STATUTORY AUTHORITY: KRS 319A.070(3), 319A.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 319A.070(3) allows the board to promulgate administrative regulations establishing procedures for annual renewal of licenses. This administrative regulation establishes those procedures.

Section 1. (1) A person licensed as an OT/L or an OTA/L shall annually, before October 31, pay to the board a renewal fee as set forth in 201 KAR 28:110 for the renewal of the license and file an [~~"~~]Annual Renewal Application[~~"~~], incorporated by reference in Section 5 of this administrative regulation[4]. A license not renewed before October 31 of each year shall expire.

(2) A license issued to a person during the last ninety (90) days of a licensure period shall expire at the end of the subsequent licensure period.

Section 2. A sixty (60) day grace period shall be allowed beginning October 31, during which time an individual may renew his or her license upon payment of the late renewal fee as set forth in 201 KAR 28:110. A license not renewed before December 31 shall terminate based on the failure of the individual to renew in a timely manner. Upon termination, the licensee shall no longer be eligible to practice occupational therapy in the Commonwealth and shall be sent notice at the last known address available to the board of termination, and to cease and desist practice.

Section 3. After the sixty (60) day grace period, an individual with a terminated license shall have the license reinstated upon:

(1) Payment of the late renewal fee plus a reinstatement fee as set forth by 201 KAR 28:110;

(2) Completion of the Reinstatement Application;

(3) Documentation of employment from the time of termination until the present;

(4)[~~(3)~~] Documentation that licensure, certification, or registration in other states is in good standing;[~~and~~]

(5)[~~(4)~~] Documentation of current or initial certification by the National Board for Certification in Occupational Therapy or its equivalent;

(6) Completion of the board jurisprudence exam; and

(7) Proof of completion of continuing education as required on the Reinstatement Application.

Section 4. Steps to renew an OT/L or OTA/L license:

(1) Payment of the renewal fee as set forth by 201 KAR 28:110;

(2) Completion of the Annual Renewal Application, incorporated by reference in Section 5 of this administrative regulation, either online or by paper;

(3) Completion of twelve (12) continuing competence units; and

(4) Completion of the board jurisprudence exam.

Section 5. Incorporation by Reference. (1) "Annual Renewal Application", 8/06 ed., is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT DEBURGER, OTR/L

APPROVED BY AGENCY: November 13, 2014

FILED WITH LRC: November 14, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A pub-

lic hearing on this administrative regulation shall be held on December 31, 2014 at 10 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing 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 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 11:59 pm on December 31, 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 Hutcherson, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296, ext. 226, fax 502-564-4818, Jennifer.Hutcherson@ky.gov.

REGULATORY ANALYSIS AND TIERING STATEMENT

Contact persons: Jeremy Reed, Scott DeBurger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the process used by the Kentucky Board of Licensure for Occupational Therapy for licensees to annually renew the license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for establishing procedures for annual renewal of licenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS Chapter 319A.070(3) by establishing the procedures for annual renewal.

(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 Kentucky Revised Statute KRS 319A establishing procedures for annual renewal of licenses.

(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 change the existing regulation by requiring all licensees to complete a Jurisprudence exam when renewing the license.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to document and verify that licensees have knowledge of requirements set forth in the statutes and regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute KRS Chapter 319A.070(3) allowing the board to promulgate administrative regulations establishing procedures for annual renewal of licenses

(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 documenting and verifying that licensees completing the annual renewal process have knowledge of the content and actions required to comply with the statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts every occupational therapy practitioner licensed under the statute.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: occupational therapy practitioners will need to read the statutes and regulations and complete an online multiple choice exam pertaining to the statute and regulations in order to renew the license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by practitioners in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this amendment enhances the licensee's knowledge and awareness of the statute and regulations thus assisting in decision making that may reduce risk of non-compliance.

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

(a) Initially: $4,000 - $6,000 in exam construction and building the website (this cost is inclusive of the cost of implementation for 201 KAR 28:060)

(b) On a continuing basis: An approximate cost of $2,000 annually will be required for updating and maintenance of the online services. (This cost is inclusive of the cost of implementation for 201 KAR 28:060)

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees as outlined in KRS 319A.150, KRS 319A.170, and License renewal fees as outlined in KRS 319A160.

(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 amended administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A.070(3), 319A.160(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) 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 initial expenditure will be approximately $4,000 - $6,000. for development and implantation of the online examination. This cost is the same as the amount set forth in the amendment change in 201 KAR 28:060. No new revenues will be obtained 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 additional revenue will be generated by this regulation change.

(c) How much will it cost to administer this program for the first year? $4,000. - $6,000.

(d) How much will it cost to administer this program for subsequent years? The annual upkeep and maintenance of the website is estimated at $2,000 per year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Occupational Therapy
(Amendment)

201 KAR 28:110. Fees.

RELATES TO: KRS 319A.160(10), 319A.170
STATUTORY AUTHORITY: KRS 319A.070(3), 319A.169(10), 319A.170
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3) allows the board to promulgate administrative regulations to carry out the provisions of KRS Chapter 319A. KRS 319A.170 requires fees for initial license, renewal and late renewal to be determined by the board, and KRS 319A.160(10) allows the board to set an inactive license renewal fee. This administrative regulation establishes those fees.

Section 1. Original License Fees. The following fees shall be paid in connection with all types of occupational therapy licenses:
(1) The fee for initial licensure as an OT/L shall be fifty (50) dollars; and
(2) The fee for initial licensure as an OTA/L shall be thirty-five (35) dollars.

Section 2. Renewal Fees and Penalties. The following fees shall be paid in connection with licensure renewals and late renewal penalties:
(1) The renewal fee for licensure as an OT/L shall be fifty (50) dollars;
(2) The renewal fee for licensure as an OTA/L shall be thirty-five (35) dollars;
(3) The late renewal fee, including penalty, for late renewal during the grace period extending from November 1 to December 31[~~July 1 to August 29~~] shall be twenty-five (25)[~~seventy-five (75)~~] dollars;[~~and~~]
(4) The renewal fee for an inactive license shall be ten (10) dollars; and
(5) The reinstatement fee shall be seventy-five (75) dollars.

Section 3. Duplicate License Fee. The fee for a duplicate license shall be ten (10) dollars.

SCOTT DEBURGER, OTR/L
APPROVED BY AGENCY: November 13, 2014
FILED WITH LRC: November 14, 2014 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 31, 2014 at 10 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing 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 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 11:59 pm on December 31, 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 Hutcherson, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296, ext. 226, fax 502-564-4818, Jennifer.Hutcherson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jeremy Reed, Scott DeBurger
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation allows the board to promulgate administrative regulations to carry out the provisions of KRS Chapter 319A. KRS 319A.170 requires fees for initial license, renewal and late renewal to be determined by the board, and KRS 319A.160(10) allows the board to set an inactive license renewal fee. This administrative regulation establishes those fees
(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth procedures for compliance with KRS 319A.160(10), 319A.170
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A.070(3).
(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 outlining fees for initial license, renewal and late renewal.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
How the amendment will change this existing administrative regulation: This amendment will change the regulation by outlining the correct dates of the late renewal grace period and changing the late renewal fee from seventy-five (75) dollars to twenty-five (25) dollars.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to eliminate inaccurate dates for the late renewal grace period and to adjust the late renewal fee amount to not disadvantage some licensees more than others. Since there is a tiering of fees for OT/L and OTA/L, the current wording disadvantaged some due to the differences in the license fees.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute KRS 319A.170 by setting fees for initial license, renewal and late renewal.
(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 adjusting the wording so that all licensees pay the same additional fee for renewing the license after the deadline. Currently the seventy-five (75) dollar wording means that an OT/L renewing late pays a twenty-five (25) dollar penalty and an OTA/L renewing late is paying a forty (40) dollar penalty for renewing after the deadline.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts all occupational therapy practitioners licensed in Kentucky who are renewing the license.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All must complete the renewal process on an annual basis.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If a licensee renews after the deadline of October 31st a late renewal fee of twenty-five (25) dollars will be added to the cost of renewal.
(c) As a result of compliance, what benefits will accrue to the entities identified in question. All practitioners who renew the license after the deadline will be subject to the same fee. This benefits any OTA/L who renews after the deadline. The new wording will benefit all in clarifying the language of the regulation, reducing confusion.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional costs are necessary to implement the changes made by this amendment.
(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The

fees for persons licensed under KRS 319A and set forth in 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 will be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does establish fees for license annual renewal. This amendment does not increase fees, but clarifies the late renewal fee so that the fee is consistent and equal for all practitioners.

(9) TIERING: Is tiering applied? Tiering is applicable as for OT/L license renewal fee is fifty (50) dollars and OTA/L renewal fee is thirty-five (35) dollars. The amendment eliminates an unintentional tiering of the late renewal 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? Kentucky Board of Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A.070(3), 319A.169(10), 319A.170

(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) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation sets fees for renewals which is a large revenue source for the Kentucky Board of Licensure for Occupational Therapy but the amendment will reduce the revenue for late renewal fees of OTA/L practitioners only by fifteen (15) dollars. The estimate of reduction in revenue is less than $375.00 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? No additional fees will be collected, yet this administrative regulation generates the largest annual revenue source for the Kentucky Board of Licensure for Occupational Therapy.

(c) How much will it cost to administer this program for the first year? No additional costs

(d) How much will it cost to administer this program for subsequent years? No additional costs associated with the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This amendment will not create any new revenue for the board.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Occupational Therapy
(Amendment)

201 KAR 28:130. Supervision of occupational therapy assistants, occupational therapy aides, occupational therapy students, and temporary permit holders.

RELATES TO: KRS 319A.010(4), (5), 319A.100

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(l) authorizes the board to promulgate administrative regulations to define appropriate supervision for persons who are delivering occupational therapy services. This administrative regulation establishes the requirements of that supervision, the documentation required in supervision, and the process for reviewing the supervision process.

Section 1. Definitions. (1) "Countersign" means the OT/L signs the client's documentation after actively reviewing the history of the intervention provided to the client and confirming that, in light of the entire intervention plan, the OTA/L's entry is proper.

(2) "Face-to-face supervision" means being physically present in the room and being able to directly communicate with an individual while observing and guiding the activities of that individual, including:

(a) A review of the occupational therapy services being provided to a client that might affect the therapeutic outcomes and the revision of the plan of care for each client; and

(b) An interactive process between the supervisor and the individual under supervision involving direct observation, cotreatment, dialogue, teaching, and instruction in a face-to-face setting.

(3) "Supervisor" means the OT/L who is providing supervision.

Section 2. General Policy Statement for Supervision. (1) The OT/L shall have the ultimate responsibility for occupational therapy outcomes. Supervision shall be a shared responsibility.

(2) The supervising OT/L shall have a legal and ethical responsibility to provide supervision and the supervisee shall have a legal and ethical responsibility to obtain supervision.

(3) Supervision by the OT/L of the supervisee's provision of occupational therapy services shall always be required, even when the supervisee is experienced and skilled in a particular practice area.

Section 3. Supervision of Licensed Occupational Therapy Assistants. (1) An OTA/L shall assist in the practice of occupational therapy only under the supervision of an OT/L.

(2) The supervisor shall provide no less than four (4) hours per month of general supervision for each occupational therapy assistant which shall include no less than two (2) hours per month of face-to-face supervision.

(3) The amount of supervision time shall be prorated for a part-time OTA/L.

(4) The supervisor or the OTA/L may institute additional supervision based on the competence and experience of the OTA/L.

(5) The supervisor shall assign and the OTA/L shall accept only those duties and responsibilities for which the OTA/L has been specifically trained and which the OTA/L is qualified to perform.

(6) Specific responsibilities for supervising OT/Ls and OTA/Ls.

(a) Assessment and reassessment.

1. Client evaluation is the responsibility of the OT/L.

2. The OTA/L may contribute to the evaluation process by gathering data, administering structured tests, and reporting observations.

3. The OTA/L may not evaluate independently or initiate therapy prior to the OT/L's evaluation.

(b) Intervention planning.

1. The OT/L shall take primary responsibility for the intervention planning.

2. The OTA/L may contribute to the intervention planning as directed by the OT/L.

(c) Intervention.

1. The OT/L shall be responsible for the outcome and delivery of the occupational therapy intervention.

2. The OT/L shall be responsible for assigning appropriate therapeutic interventions to the OTA/L.

(d) Discontinuation of intervention.

1. The OT/L shall be responsible for the discontinuation of occupational therapy services.

2. The OTA/L may contribute to the discontinuation of intervention as directed by the OT/L.

(7) Documentation requirements.

(a) Notations recorded by an OTA/L to an initial evaluation, plan of care, or discharge summary, that are documented in a client's permanent record, shall be countersigned by the supervisor

within fourteen (14) calendar days of the notation[~~The supervisor shall countersign those aspects of the initial evaluation, the plan of care, and the discharge summary recorded by the OTA/L within fourteen (14) calendar days of the notation, which documentation shall be included in the client's permanent record~~].

(b) The supervising OT/L and individuals under supervision shall each maintain a log which shall document:

1. The frequency of the supervision provided;

2. The observation, dialogue and discussion, and instructional techniques employed;

3. The type of supervision provided, either general or face-to-face;

4 The dates on which the supervision occurred; and

5. The number of hours worked by the OTA/L each month.

(c) It shall be the responsibility of the supervising OT/L to maintain a list of any OTA/L that he or she has supervised with the OTA/L's name and license number.

(d) It shall be the responsibility of the OTA/L under supervision to maintain a list of his or her supervising OT/L with that individual's name and license number.

(8) A supervising OT/L shall not have more than the equivalent of three (3) full time OTA/Ls under supervision at any one (1) time.

(9)(a) In extenuating circumstances, when the OTA/L is without supervision, the OTA/L may continue carrying out established programs for up to thirty (30) calendar days under agency supervision while appropriate occupational therapy supervision is sought.

(b) It shall be the responsibility of the OTA/L to notify the board of these circumstances and to submit, in writing, a plan for resolution of the situation.

(10) A supervisor shall be responsible for ensuring the safe and effective delivery of OT services and for fostering the professional competence and development of the OTA/Ls under his or her supervision.

Section 4. Supervision of Occupational Therapy Aides. (1) An occupational therapy aide shall provide supportive services only with face-to-face supervision from an OT/L or OTA/L.

(2) The supervising OT/L or OTA/L shall be in direct verbal and visual contact with the occupational therapy aide, at all times, for all therapy-related activities.

Section 5. Occupational Therapy Students. (1) A person practicing occupational therapy and performing occupational therapy services under KRS 319A.090(1)(c) shall be enrolled in an ACOTE accredited occupational therapy or occupational therapy assistant educational program or its equivalent.

(2) When an occupational therapy student is participating in supervised fieldwork education experiences, the student may, at the discretion of the supervising OT/L or OTA/L, be assigned duties or functions commensurate with his or her education and training.

(3) A supervisor shall be responsible for ensuring the safe and effective delivery of OT services and for fostering the professional competence and development of the students under his or her supervision.

Section 6. Temporary Permits. (1) A temporary permit holder shall be:

(a) Supervised by an OT/L; and

(b) The OT/L shall be responsible for all occupational therapy outcomes.

(2) The supervising OT/L shall be available at all times to provide supervision.

(3) Face-to-face supervision shall be provided for at least thirty (30) minutes daily. The face-to-face supervision shall not occur through electronic means.

(4) The temporary permit holder who is applying for a license as an OT/L may perform all of the functions of the OT/L, with the exception of supervision.

(5) A temporary permit holder who is applying for a license as a OTA/L may perform all of the functions of a OTA/L, with the exception of supervision.

Section 7. Audit of Supervision Activities. (1) The board shall perform a random audit of supervision logs for up to ten (10) percent of all licensees.

(2) The licensee who is audited shall be required to furnish documentation of the completed supervision log required by Section 3(7) of this administrative regulation.

(3) The licensee who is audited by the board shall respond to the audit within sixty (60) days of the date of the request.

(4) A licensee who fails to comply with the supervision requirements of this administrative regulation shall be subject to disciplinary action that may include suspension or revocation of the person's license.

SCOTT DEBURGER, OTR/L

APPROVED BY AGENCY: November 13, 2014

FILED WITH LRC: November 14, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 31, 2014 at 10 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing 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 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 11:59 pm on December 31, 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 Hutcherson, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296, ext. 226, fax 502-564-4818, Jennifer.Hutcherson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Jeremy Reed, Scott DeBurger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines appropriate supervision for persons who are delivering occupational therapy services and establishes the requirements of that supervision pertaining to the documentation required in supervision, and the process for reviewing monitoring and recording the supervision process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth procedures for compliance with 319A.070(3)(j)

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of 319A.070(3)(j)

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures and guidelines for the supervision process.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the regulation by clarifying how documentation is countersigned and further explicates the meaning of face-to-face supervision for temporary permit holders.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify documentation countersigning procedures of the OT/L as it pertains to OTA/L documentation and it clarifies that face-to-face supervision for temporary permit holders cannot occur through electronic means.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute KRS 319A.070(3)(j) by defining appropriate supervision for persons who are delivering occupational therapy ser-

vices. This administrative regulation establishes the requirements of that supervision, the documentation required in supervision, and the process for reviewing the supervision process for the establishment of standards for acceptable performance.

(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 clarifying the process of countersigning by the OT/L of documentation completed by the OTA/L and further defining the process of face-to-face supervision of temporary permit holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts all occupational therapists who countersign OTA/L documentation and it affects all OTA/L practitioners licensed in the state. It also will affect all practitioners who supervise temporary permit holders and those individuals who are temporary 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 take to comply with this administrative regulation or amendment: Countersigning notes and providing and receiving the appropriate level of supervision.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): no additions costs will occur.

(c) As a result of compliance, what benefits will accrue to the entities identified in question. All practitioners will have clear supervision guidelines for documentation and providing face-to-face supervision for temporary permit holders.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees for persons licensed under KRS 319A and set forth in 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 will be necessary to implement this amended 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

(9) TIERING: Is tiering applied? Tiering supervision requirements set forth in the regulation are tired for occupational therapy assistants, occupational therapy aides, occupational therapy students, and temporary permit holders for only OTA/L practitioners are regulated practitioners under KRS 319A.

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 Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This amendment will not create any new revenue for the board.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Occupational Therapy
(Amendment)

201 KAR 28:140. Code of ethics and unprofessional conduct[~~and code of ethics~~].

RELATES TO: KRS 319A.160, 319A.190

STATUTORY AUTHORITY: KRS 319A.070(3), 319A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 319A provides for the denial, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license for various violations of the Act and violation of the administrative regulations promulgated pursuant thereto. This administrative regulation sets forth a description of the code of ethics and unprofessional conduct[~~and also a code of ethics~~].

Section 1. The following code of ethics consists of general guidelines for occupational therapy practice. The code of ethics shall be as established in this section.

(1) An OT/L or an OTA/L shall be responsible for providing services without regard to race, creed, national origin, sex, age, handicap, disease entity, social status, financial status, or religious affiliation.

(2) An OT/L or an OTA/L shall be acquainted with applicable local, state, federal, and institutional rules and shall function accordingly.

(3) An OT/L or an OTA/L shall be responsible for informing employers, employees, and colleagues about those laws and policies that apply to the profession of occupational therapy.

(4) An OT/L or an OTA/L shall not use or participate in the use of any form of communication that contains a false, fraudulent, deceptive, or unfair statement or claim.

(5) An OT/L or an OTA/L shall report any illegal, incompetent, or unethical practice to the appropriate authority.

(6) An OT/L or an OTA/L shall hold the appropriate credentials for providing service.

(7) An OT/L or an OTA/L shall actively maintain high standards of professional competence.

(8) An OT/L or an OTA/L shall function within the parameters of his or her competence and the standards of the profession.

(9) An OT/L or an OTA/L shall accurately represent his or her competence and training to the public.

(10) An OT/L or an OTA/L shall refer clients to other service providers or consult with other service providers when additional knowledge and expertise is required.

(11) An OT/L or an OTA/L shall protect the confidential nature of information gained from educational, practice, and investigational activities unless sharing the information is necessary to protect the well-being of a third party.

(12) An OT/L or an OTA/L shall not disclose privileged information when participating in reviews of peers, programs, or systems.

(13) An OT/L or an OTA/L shall include those people served in the intervention planning process.

(14) An OT/L or an OTA/L shall maintain goal-directed and objective relationships with all people served.

(15) An OT/L or an OTA/L shall accurately record and report client information.

(16) An OT/L or an OTA/L shall inform those people served of the nature and potential outcomes of therapy and shall respect the right of potential recipients of service to refuse therapy.

(17) An OT/L or an OTA/L shall inform subjects involved in education or research activities of the potential outcome of those activities.

(18) An OT/L or an OTA/L shall take all reasonable precautions to avoid harm to the recipient of services or detriment to the recipient's property.

(19) An OT/L or an OTA/L shall establish fees, based on cost analysis, that are commensurate with services rendered.

(20) An OT/L or an OTA/L shall require those whom they supervise to adhere to ethical standards of conduct.

(21) An OT/L or an OTA/L who employs or supervises colleagues shall provide appropriate supervision.

(22) An OT/L or an OTA/L shall recognize the contributions of colleagues when disseminating professional information[~~Failure to comply with any of the provisions in this section shall constitute unprofessional conduct in the practice of occupational therapy.~~

~~(1) An OT/L or an OTA/L shall not delegate to an unlicensed employee or person a service which requires the skill, knowledge or judgment of an OT/L or an OTA/L;~~

~~(2) An OT/L or an OTA/L shall address goals identified in the evaluation and intervention plan;~~

~~(3) An OT/L or an OTA/L shall inform the referring source when any requested occupational therapy service is contraindicated, in the professional judgment of the licensee, and may refuse to carry out that request;~~

~~(4) An OT/L or an OTA/L shall not continue occupational therapy services beyond the point of possible benefit to the client or provide therapy to the client more frequently than necessary to obtain the maximum therapeutic effect;~~

~~(5) An OT/L or an OTA/L shall not directly or indirectly request, receive or participate in the dividing, transferring, assigning, rebating or refunding of an unearned fee or profit by means of a credit or other valuable consideration as an unearned commission, discount or gratuity in connection with the furnishing of occupational therapy services;~~

~~(6) An OT/L or an OTA/L shall not permit another person to use his or her license for any purpose;~~

~~(7) An OT/L or an OTA/L shall not abuse alcohol or any controlled substance which affects the licensee's ability to engage in the practice of occupational therapy in a safe and competent manner;~~

~~(8) An OT/L or an OTA/L shall not verbally or physically abuse a client;~~

~~(9) An OT/L or an OTA/L shall not engage in false or misleading advertising, betrayal of a professional confidence, or falsification of a client's records;~~

~~(10) An OT/L or an OTA/L shall report a change of name or address to the board within thirty (30) days after a change of name or address occurs;~~

~~(11) An OT/L or an OTA/L shall notify the board within thirty (30) days after being adjudged guilty of malpractice by a court of competent jurisdiction;~~

~~(12) An OT/L or an OTA/L shall comply with any subpoena issued by the board; and~~

~~(13) An OT/L or an OTA/L shall report to the board any violation of the Act or these administrative regulations.~~

~~(14)(a) An OT/L or an OTA/L shall not provide occupational therapy services in an incompetent manner.~~

~~(b) Incompetent practice includes:~~

~~1. A lack of the knowledge, judgment, or skill necessary to perform those modalities, methods, and techniques that come within the practice of occupational therapy;~~

~~2. A deviation below the standard of practice ordinarily possessed and applied by other OT/Ls and OTA/Ls in the Commonwealth of Kentucky acting in the same or similar circumstances; or~~

~~3. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of occupational therapy in the Commonwealth of Kentucky.~~

~~(15) An OT/L shall competently provide the following minimum services:~~

~~(a) Proper interpretation of all referrals;~~

~~(b) Proper client evaluations;~~

~~(c) The identification and documentation of the client's problems and goals;~~

~~(d) The identification and documentation of an intervention plan;~~

~~(e) The appropriate OT services called for by the plan of care;~~

~~(f) A determination of the appropriate portions of the therapy program to be delegated to assistive personnel;~~

~~(g) A determination of the assistive personnel's qualifications by training, experience, license, or certification to perform tasks before delegating those tasks;~~

~~(h) The appropriate supervision of individuals as required by 201 KAR 28:130;~~

~~(i) Timely client reevaluations; and~~

~~(j) Maintain timely and adequate client records of all occupational therapy activity and client response.~~

~~(16) An OTA/L shall competently provide the following minimum services as appropriate:~~

~~(a) The appropriate therapy called for by the intervention plan;~~

~~(b) A determination of the appropriate portions of the therapy program to be delegated to assistive personnel;~~

~~(c) A determination of the assistive personnel's qualifications by training, experience, license, or certification to perform tasks before delegating those tasks;~~

~~(d) The appropriate supervision of individuals as required by 201 KAR 28:130; and~~

~~(e) Maintain timely and adequate client records of all occupational therapy activity and client response.~~

~~(17)(a) An OT/L or an OTA/L shall not engage in acts of sexual misconduct with recipients of their services or in their presence.~~

~~(b) Sexual misconduct includes:~~

~~1. Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual.~~

~~2. Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact or acts of a sexual nature.~~

~~(18)(a) An OT/L or an OTA/L shall not seek to obtain payment of a professional fee or compensation of any form through fraudulent means.~~

~~(b) Seeking payment or compensation through fraudulent means includes:~~

~~1. Reporting incorrect service dates for the purpose of obtaining payment;~~

~~2. Reporting charges for services not actually rendered other than unkept appointments;~~

~~3. Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee or the licensee's employer is entitled;~~

~~4. Aiding a recipient of services in fraudulently obtaining payment from a third party; or~~

~~5. Otherwise falsifying a record for the purpose of obtaining a payment~~].

Section 2. Failure to comply with any of the provisions in this section shall constitute unprofessional conduct in the practice of occupational therapy.

(1) An OT/L or an OTA/L shall report to the board any violation of the act or these administrative regulations.

(2) An OT/L or an OTA/L shall report a change of name or address to the board within thirty (30) days after a change of name or address occurs.

(3) An OT/L or an OTA/L shall notify the board within thirty (30) days after being adjudged guilty of malpractice by a court of competent jurisdiction.

(4) An OT/L or an OTA/L shall comply with any subpoena issued by the board.

(5) An OT/L or an OTA/L shall not permit another person to use his or her license for any purpose.

(6) An OT/L or an OTA/L shall not delegate to an unlicensed employee or person a service which requires the skill, knowledge, or judgment of an OT/L or an OTA/L.

(7) An OT/L or an OTA/L shall inform the referring source when any requested occupational therapy service is contraindicated, in the professional judgment of the licensee, and may refuse to carry out that request.

(8) An OT/L shall competently provide the following minimum services:

(a) Proper interpretation of all referrals;

(b) Proper client evaluations;

(c) The identification and documentation of the client's problems and goals;

(d) The identification and documentation of an intervention plan;

(e) The appropriate OT services called for by the plan of care;

(f) A determination of the appropriate portions of the therapy program to be delegated to assistive personnel;

(g) A determination of the assistive personnel's qualifications by training, experience, license, or certification to perform tasks before delegating those tasks;

(h) The appropriate supervision of individuals as required by 201 KAR 28:130;

(i) Timely client reevaluations; and

(j) Maintain timely and adequate client records of all occupational therapy activity and client response.

(9) An OTA/L shall competently provide the following minimum services as appropriate:

(a) Seek appropriate supervision as required by 201 KAR 28:130;

(b) The appropriate therapy called for by the intervention plan;

(c) A determination of the appropriate portions of the therapy program to be delegated to assistive personnel;

(d) A determination of the assistive personnel's qualifications by training, experience, license, or certification to perform tasks before delegating those tasks;

(e) The appropriate supervision of individuals as required by 201 KAR 28:130; and

(f) Maintain timely and adequate client records of all occupational therapy activity and client response.

(10)(a) An OT/L or an OTA/L shall not provide occupational therapy services in an incompetent manner.

(b) Incompetent practice includes:

1. A lack of the knowledge, judgment, or skill necessary to perform those modalities, methods, and techniques that come within the practice of occupational therapy;

2. A deviation below the standard of practice ordinarily possessed and applied by other OT/Ls and OTA/Ls in the Commonwealth of Kentucky acting in the same or similar circumstances; or

3. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of occupational therapy in the Commonwealth of Kentucky.

(11) An OT/L or an OTA/L shall address goals identified in the evaluation and intervention plan.

(12) An OT/L or an OTA/L shall not continue occupational therapy services beyond the point of possible benefit to the client or provide therapy to the client more frequently than necessary to obtain the maximum therapeutic effect.

(13) An OT/L or an OTA/L shall not engage in false or misleading advertising, betrayal of a professional confidence, or falsification of a client's records.

(14)(a) An OT/L or an OTA/L shall not seek to obtain payment of a professional fee or compensation of any form through fraudulent means.

(b) Seeking payment or compensation through fraudulent means includes:

1. Reporting incorrect service dates for the purpose of obtaining payment;

2. Reporting charges for services not actually rendered other than unkept appointments;

3. Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee or the licensee's employer is entitled;

4. Aiding a recipient of services in fraudulently obtaining payment from a third party; or

5. Otherwise falsifying a record for the purpose of obtaining a payment.

(15) An OT/L or an OTA/L shall not directly or indirectly request, receive, or participate in the dividing, transferring, assigning, rebating, or refunding of an unearned fee or profit by means of a credit or other valuable consideration as an unearned commission, discount, or gratuity in connection with the furnishing of occupational therapy services.

(16) An OT/L or an OTA/L shall not abuse alcohol or any controlled substance which affects the licensee's ability to engage in the practice of occupational therapy in a safe and competent manner.

(17) An OT/L or an OTA/L shall not verbally or physically abuse a client.

(18)(a) An OT/L or an OTA/L shall not engage in acts of sexual misconduct with recipients of their services or in their presence.

(b) Sexual misconduct includes:

1. Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual; or

2. Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact or acts of a sexual nature[~~The following code of ethics consists of general guidelines for occupational therapy practice. The code of ethics shall be as follows:~~

~~(1) An OT/L or an OTA/L shall be responsible for providing services without regard to race, creed, national origin, sex, age, handicap, disease entity, social status, financial status or religious affiliation;~~

~~(2) An OT/L or an OTA/L shall inform those people served of the nature and potential outcomes of therapy and shall respect the right of potential recipients of service to refuse therapy;~~

~~(3) An OT/L or an OTA/L shall inform subjects involved in education or research activities of the potential outcome of those activities;~~

~~(4) An OT/L or an OTA/L shall include those people served in the intervention planning process;~~

~~(5) An OT/L or an OTA/L shall maintain goal-directed and objective relationships with all people served;~~

~~(6) An OT/L or an OTA/L shall protect the confidential nature of information gained from educational, practice, and investigational activities unless sharing the information is necessary to protect the well-being of a third party;~~

~~(7) An OT/L or an OTA/L shall take all reasonable precautions to avoid harm to the recipient of services or detriment to the recipient's property;~~

~~(8) An OT/L or an OTA/L shall establish fees, based on cost analysis, that are commensurate with services rendered;~~

~~(9) An OT/L or an OTA/L shall hold the appropriate credentials for providing service;~~

~~(10) An OT/L or an OTA/L shall function within the parameters of his competence and the standards of the profession;~~

~~(11) An OT/L or an OTA/L shall actively maintain high standards of professional competence;~~

~~(12) An OT/L or an OTA/L shall refer clients to other service providers or consult with other service providers when additional knowledge and expertise is required;~~

~~(13) An OT/L or an OTA/L shall be acquainted with applicable local, state, federal, and institutional rules and shall function accordingly;~~

~~(14) An OT/L or an OTA/L shall be responsible for informing employers, employees and colleagues about those laws and policies that apply to the profession of occupational therapy;~~

~~(15) An OT/L or an OTA/L shall require those whom they supervise to adhere to ethical standards of conduct;~~

~~(16) An OT/L or an OTA/L shall accurately record and report client information;~~

~~(17) An OT/L or an OTA/L shall accurately represent his or her competence and training to the public;~~

~~(18) An OT/L or an OTA/L shall not use or participate in the use of any form of communication that contains a false, fraudulent, deceptive, or unfair statement or claim;~~

~~(19) An OT/L or an OTA/L shall report any illegal, incompetent or unethical practice to the appropriate authority;~~

~~(20) An OT/L or an OTA/L shall not disclose privileged information when participating in reviews of peers, programs, or systems;~~

~~(21) An OT/L or an OTA/L who employs or supervises colleagues shall provide appropriate supervision; and~~

~~(22) An OT/L or an OTA/L shall recognize the contributions of colleagues when disseminating professional information~~].

SCOTT DEBURGER, OTR/L

APPROVED BY AGENCY: November 13, 2014

FILED WITH LRC: November 14, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 31, 2014 at 10 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing 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 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 11:59 pm on December 31, 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 Hutcherson, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296, ext. 226, fax 502-564-4818, Jennifer.Hutcherson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Jeremy Reed, Scott DeBurger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth a description of the code of ethics and unprofessional conduct in the practice of occupational therapy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth procedures for compliance with KRS 319A.070(3), 319A.190.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A.160, 319A.190.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures and guidelines for professional code of ethics and behaviors that are unprofessional and can potentially cause harm to consumers of occupational therapy.

(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 regulation by more clearly spelling out what the code of ethics is and clarifying various areas of unprofessional behavior. The current regulation formatting reads like a laundry list of statements beginning with what one shall not do. This amendment cleans up the language and categorizes components of the code of ethics and the unprofessional behaviors so that a licensee will have a much clearer understanding of what actions one shall do and what actions one shall not engage in.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify ethical actions that licensees shall do and to clarify actions considered unprofessional and subject to disciplinary action by the board.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes KRS 319A.070(3), 319A.190 by defining actions licensees shall complete as a part of the code of ethics and actions considered unprofessional which shall not be done by licensees. This administrative regulation sets forth a description of the code of ethics and unprofessional conduct

(d) How the amendment will assist in the effective administration of the statutes: This amendment will explicate actions licensees shall do as a part of the code of ethics prior to listing what unprofessional behaviors a licensee shall not do. The amendment also categorizes or classifies actions into various components of the process of providing care grouping actions together in an effort to clarify terms for licensees and the public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts all licensees regulated under KRS 319.A, all consumers of occupational therapy services, and it impacts agencies or organizations that hire occupational therapists.

(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: Licensees will have to read and understand the regulation and act in accordance with the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): no additions costs will occur.

(c) As a result of compliance, what benefits will accrue to the entities identified in question. Licensees will have a clearer understanding of what they shall and shall not do when engaged in the practice of occupational therapy. Consumers and representatives of agencies or organizations who hire licensed occupational therapy personnel will have a clearer understanding of the ethical duties of licensed practitioners.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees for persons licensed under KRS 319A as set forth in KRS 319A.170, 201 KAR 28:110 and 201 KAR 28:090.

(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 amended 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

(9) TIERING: Is tiering applied? The regulation does set out explicit code of conduct actions for OT/L and OTA/L practitioners licensed under KRS 319.A therefore tiering does apply to actions within the code of conduct and actions deemed unprofessional.

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 Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A.070(3), 319A.190

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

(a) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This amendment does not create any new revenue for the board.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Occupational Therapy
(Amendment)

201 KAR 28:170. Deep physical agent modalities.

RELATES TO: KRS 319A.010(8), 319A.080(4), 319A.170(1)(c)

STATUTORY AUTHORITY: KRS 319A.070(3), 319A.080(4)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.080(4) allows the board to set forth guidelines for the training and instruction necessary for the use of deep physical agent modalities. KRS 319A.070 states that the board shall issue a certification to a person who qualifies under this administrative regulation. This administrative regulation sets forth the requirements for obtaining certification in deep physical agent modalities.

Section 1. Definition. "DPAM Specialty Certification" means the certification issued to a Kentucky-licensed occupational therapist or licensed occupational therapist assistant who meets the standards set forth in KRS 319A.180 and this administrative regulation and who has been certified by the board.

Section 2. Application. A licensee, before utilizing deep physical agent modalities, shall submit an application to the board for a DPAM Specialty Certification. (1) The application shall be accompanied by:

(a) Payment of the fee required by KRS 319A.170(1)(c); and[~~.~~]

(b) Proper documentation that the applicant has met all educational and clinical requirements for certification which include:

1. Successful completion of the requisite hours of training and instruction required by KRS 319A.080(4) for the level of licensure held by the applicant; and

2. Successful completion of the five (5) treatment sessions that are signed off by the DPAM supervisor and meet the requirements specified in Section 4 of this administrative regulation.

(2) The documentation shall include:

(a) The names and addresses of the person or organization presenting the courses, workshops, seminar, or training attended by the applicant;

(b) A copy of the course syllabus or a description of the course, workshop, or seminar which includes a summary of the learning objectives and teaching methods employed in the course, workshop, or seminar, a timed agenda of the course, workshop, or seminar with the content areas identified in Section 3(2)(a) to (j) of this administrative regulation clearly detailed within the timeframes.[~~and~~] the qualifications of the instructors, and KBLOT course approval documentation provided by the board to the person or organization presenting the course, workshop, or seminar;

(c) The name,[~~and~~] address, and credentials of the person identified as the DPAM supervisor who supervised the five (5) treatment sessions;

(d) A statement signed by the designed program official confirming successful completion of the training or course of instruction; and

(e) A statement signed by the DPAM supervisor confirming that the applicant has completed five (5) supervised treatment sessions and that the criteria set forth in Section 4 of this administrative regulation have been met[~~; and~~

~~(e) A statement signed by the designed program official confirming successful completion of the training or course of instruction~~].

(3) A DPAM Specialty Certification shall be issued by the board before the individual can begin using deep physical agent modalities except when a qualified licensee is performing those modalities as part of a supervised program to complete the five (5) supervised treatment sessions required for a DPAM Specialty Certification under this administrative regulation.

(4) The board shall maintain a roster of persons who have been issued DPAM Specialty Certification for the use of deep physical agent modalities.[~~(5) An OT/L or OTA/L who is also licensed by the Kentucky Board of Physical Therapy as a physical therapist or physical therapist assistant and who seeks a DPAM certification shall be certified by the board upon application.~~]

Section 3. Training and Instruction. (1) The training and instruction shall be earned by direct personal participation in courses, workshops, or seminars.

(2) The content of the courses, workshops, or seminars shall include hands on training and instruction. Training shall not consist of all on-line courses that do not provide hands on lab instruction. Training shall include[~~in~~] the following subject areas:

(a) Principles of physics related to specific properties of light, water, temperature, sound, and electricity;

(b) Physiological, neurophysiological, and electrophysiological changes which occur as a result of the application of each of the agents identified in KRS 319A.010(8);

(c) Theory and principles of the utilization of deep physical agents which includes guidelines for treatment or administration of agents within the philosophical framework of occupational therapy;

(d) The rational and application of the use of deep physical agents;

(e) The physical concepts of ion movement;

(f) Critical thinking and decision making regarding the indications and contraindications in the use of deep physical agents;

(g) Types selection and placement of various agents utilized;

(h) Methods of documenting the effectiveness of immediate and long-term effects of interventions;

(i) Characteristics of equipment including safe operation, adjustment, and care of the equipment; and

(j) Application and storage of specific pharmacological agents.

(3) The training and instruction shall include at a minimum eight (8) hours for an OTA/L and four (4) hours for an OT/L of hands on laboratory experience using DPAMs.

(4) All courses, workshops, or seminars utilized for DPAM Specialty Certification shall meet the requirements of subsection (2)(a) to (j) of this section, be at least four (4) hours in length, and[~~The programs shall be approved or recognized either by the American Occupational Therapy Association or the American Society of Hand Therapists or~~] be approved by the board.

(5)[~~(4)~~] A person or organization who is seeking board approval for training and instruction for DPAM courses, workshops, or seminars which are intended to meet the requirements of KRS 319A.080(4) shall submit a ["]DPAM Course, Workshop, or Seminar Provider Approval Application Form["] to the board prior to the first occurrence of the DPAM course, workshop, or seminar. Once approved by the board, a DPAM course, workshop, or seminar may occur multiple times throughout the year of approval. A DPAM course, workshop, or seminar approval shall expire one (1) year after the approval date. A new DPAM Course, Workshop, or Seminar Provider Approval Application Form shall be submitted to the board on an annual basis.

Section 4. Supervised Treatment Sessions. (1) The supervised treatment sessions required for DPAM Specialty Certification shall be sufficiently detailed to allow the DPAM[~~Specialty Certification~~] supervisor to determine that the supervisee has demonstrated the following skills:

(a) The ability to evaluate or contribute to the evaluation of the client, depending upon the applicant's licensure status as an OT/L or an OTA/L and make an appropriate selection of the deep physical agent to be utilized;

(b) A thorough knowledge of the effects of the deep physical agent which is to be utilized;

(c) The ability to explain the precaution, contraindication, and rationale of the specific deep physical agent utilized;

(d) The ability to formulate and justify the occupational therapy intervention plan specifically delineating the adjunctive strategy associated with the use of each deep physical agent;

(e) The capability to safely and appropriately administer the deep physical agent;

(f) The ability to properly document the parameters of intervention which include the client's response to treatment and the recommendations for the progression of the intervention process; and

(g) The skills identified in paragraphs (d) and (f) of this subsection are not applicable to an OTA/L's practice and an OTA/L is not required to demonstrate the skill in a supervised treatment session.

(2) The supervised treatment sessions shall include one (1) session for each of the following areas:

(a) Iontophoresis;

(b) Ultrasound; and

(c) Electrical stimulation.

(3) The remaining two (2) sessions may cover any deep physical agent identified in KRS 319A.010(8) including those identified in subsection (2)(a) to (c) of this section.

(4) Supervised treatment sessions may be completed in a laboratory portion of an instructional course, provided that the instructor meets the board's requirements for a DPAM ~~specialty certification~~ supervisor and that all of the requirements of this administrative regulation have been met.

(5)[~~5.~~] Treatment sessions shall be completed under the direct supervision of an OT/L[~~a person~~] who meets the requirements of subsection (5) of this section and is approved by the board.

(6)[~~6.~~] Before an OT/L[~~individual~~] may be a DPAM supervisor for the treatment sessions specified in this administrative regulation, he or she shall:

(a) Have a DPAM Specialty Certification issued by the board;

(b)[~~Be licensed or certified by a state agency that has the authority to permit the use of deep physical agent modalities;~~

~~(b) Be licensed at a level which permits the individual to fully and independently evaluate the client;~~

~~(c)~~] Be in good standing with the board[~~that agency~~]; and

(c)[~~(d)~~] Have one (1) year of clinical experience in the use of deep physical agent modalities.

(7) Individuals other than OT/Ls who have previously been approved as a DPAM supervisor under this administrative regulation shall maintain the status as a DPAM supervisor until March 31, 2015. After this time, only OT/Ls who meet the requirements of this section shall remain active DPAM supervisors and be approved by the board.

(8) The issuance of the DPAM specialty certification by the board only shows that the applicant has met the minimum requirements of KRS 319A.080(4)(a). It shall be the duty of the individual licensee to determine his or her competency to provide a specific DPAM for a client.

Section 5. An OTA/L certified to use DPAMs under this administrative regulation may only use DPAMs when supervised by an OT/L certified to use DPAMs under this administrative regulation.

Section 6. Incorporation by Reference. (1) "DPAM Course, Workshop or Seminar Provider Approval Application Form", November 14, 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT DEBURGER, OTR/L

APPROVED BY AGENCY: November 13, 2014

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jeremy Reed, Scott DeBurger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for obtaining certification in deep physical agent modalities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth procedures for compliance with KRS 319A.080(4)

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A.070(3), 319A.080(4)(b) by outlining the procedures for obtaining a DPAM Specialty Certification KRS 319A.080(4) (b) which outlines the need to promulgate regulations to set forth the guidelines for training and instruction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures and guidelines for the DPAM Specialty Certification, for the requirements of the courses, workshops or seminars, and for the skills of the DPAM supervisor.

(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 regulation by clarifying that courses, workshops, or seminars must have hands on use of the DPAMs. It will change who can be a DPAM supervisor to only OT/Ls who are regulated under 319A who have used DAPMs for longer than an a year the amendment will place minimal timelines on approved courses and require that all courses must be approved by the board.

(b) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute KRS 319A.080(4) by defining appropriate course content, course requirements, supervision and application for licensees applying for a DPAM Specialty Certification.

(c) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by clarifying the process of completing the steps for obtaining a DPAM Specialty Certification and the requirements of training and instruction.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts licensees who are seeking to become DPAM Specialty Certified, individuals or organizations planning on conducting courses, workshops or seminars pertaining to DPAMs and to individuals who currently are or those wanting to become DPAM supervisors.

(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, in-

cluding:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment requires all courses, workshops or seminars be approved by the board, that licensees apply to become DPAM certified. The changes are meant to clarify and streamline the application process for licensees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): no additional costs will occur with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question. All practitioners will have clearer guidelines for documentation of training and instruction to become DPAM Specialty Certified. This amendment will reduce the time required for the approval process.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees for persons licensed under KRS 319A.170.

(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 amended administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does have establish fees for application for DPAM Specialty Certification, but this amendment does not alter the fee structure of the regulation.

(9) TIERING: Is tiering applied? Tiering of training requirements are set forth in the regulation. OTA/L, have different standards than OT/Ls under this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A.080, 319A.070.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Occupational Therapy
(Amendment)

201 KAR 28:180. Temporary permits.

RELATES TO: KRS 319A.100

STATUTORY AUTHORITY: KRS 319A.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.100 authorizes the board to issue a temporary permit to certain applicants for licensure. This administrative regulation sets forth the requirements for obtaining and practicing under a temporary permit.

Section 1. The applicant for a temporary permit shall submit the following items to the board for temporary permit consideration:

(1) A completed application form for licensure as an occupational therapist as defined in 201 KAR 28:060 or submit a completed application form for licensure as an occupational therapy assistant as required by 201 KAR 28:060;

(2) An official verification of the completion of educational requirements and fieldwork requirements from an educational program accredited by ACOTE or its equivalent;

(3) A completed Supervision Temporary Permit Form from a licensed occupational therapist who is currently in good standing with the board, indicating that the licensed occupational therapist shall assume responsibility for the supervision of the temporary permit applicant in accordance with the requirements of 201 KAR 28:130, Section 2;

(4) An official NBCOT Authorization to Test Form or its equivalent and evidence that an official NBCOT Score Transfer Report was requested to be sent to the Kentucky Board of Licensure for Occupational Therapy; and

(5) The appropriate fee for licensure as required by 201 KAR 28:110.

Section 2. A temporary permit holder who is working towards becoming licensed as an occupational therapist or occupational therapy assistant who has been unsuccessful in passing the NBCOT or equivalent certification examination for a second time shall have the temporary permit revoked by the board[~~shall notify the board in writing within ten (10) calendar days from receiving notification from NBCOT the he/she has failed to pass the examination on the second attempt.~~

~~Section 3. If the examination is available on an ongoing, on-demand basis, a temporary permit shall be valid for up to 180 days from issuance by the board~~].

Section 3.[~~4.~~] Upon successful completion of the certification examination, a temporary permit holder shall be licensed by the board[~~immediately submit a copy of the NBCOT certification or its equivalent to obtain licensure~~].

Section 4.[~~5.~~] Incorporation by Reference. (1) "Supervision Temporary Permit Form" is incorporated by reference.

(2) This material[~~It~~] may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT DEBURGER, OTR/L

APPROVED BY AGENCY: November 13, 2014

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PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 31, 2014 at 10 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing 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 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 hear-

ing 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 11:59 pm on December 31, 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 Hutcherson, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296, ext. 226, fax 502-564-4818, Jennifer.Hutcherson@ky.gov

REGULATORY ANALYSIS AND TIERING STATEMENT

Contact persons: Jeremy Reed, Scott DeBurger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for obtaining and practicing under a temporary permit through approval from the Kentucky Board of Licensure for Occupational Therapy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish temporary permit requirements related KRS 319A.100

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A.100 by establishing up to date requirements set forth in KRS 319A.100.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for supervision and practice as a temporary permit holder.

(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 change will require that electronic evidence of successful exam completion come directly from NBCOT and eliminates outdated language since the examination is available electronically on a demand basis and an unsuccessful candidate can take the exam within thirty (30) days.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to assure timely examination results processing of temporary permit holders and issuance of licenses. The changes will also close a current loop hole that exists with the old wording that extends the period that a non-competent individual can practice under a temporary permit beyond the two (2) examination attempts spelled out in KRS 319A.100.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by setting the requirements for supervision and timing of temporary permits in KRS 319A.100. so that the Kentucky Board of Licensure Occupational Therapy Board can carry out its duties effectively, timely and in alignment with current practice standards for secure and valid exam results reporting and periods between examinations.

(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 mandating that valid exam results are sent securely and directly from the examination body NBCOT to the Kentucky Board for Licensure for Occupational Therapy and that incompetent individuals cannot continue to practice as a temporary permit holder beyond two unsuccessful attempts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts only occupational therapy new graduates who have never been licensed or certified previously that want to practice before sitting for the examination to become certified by NBCOT which is required to become licensed by the Kentucky Board for Licensure for Occupational Therapy. In today's environment less than five (5) percent licensees opt for becoming temporary permit holders prior to obtaining full licensure.

(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: occupational therapy new graduates when applying for examination by NBCOT as exam candidates will need to request that electronic exam scores be sent to the Kentucky Board for Licensure in Occupational Therapy before requesting a temporary permit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The request for electronic exam results be sent from NBCOT to the Kentucky Board will cost thirty-five (35) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this amendment assists entities in (3) to obtain a license to practice in a timelier more efficient manner with fewer hard copy document requirements. A temporary Permit holder will receive full licensure status automatically upon receipt of a successful passing score. The electronic score report to KBLOT is delivered at the same time that the applicant receives the score report.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees as outlined in KRS 319A.150, KRS 319A.170, and License renewal fees as outlined in KRS 319A160.

(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 amended administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is applicable for this amendment requirement will only affect those applicants who have never previously been licensed or certified by any other state and seek to become temporary permit holders before being fully licensed by the board.

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 Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A

(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 - No change

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None – No Changes

(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: This amendment does not create any new revenue for the board.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure of Occupational Therapy
(Amendment)

201 KAR 28:200. Continuing competence.

RELATES TO: KRS 210.366, 319A.070(3)(d), 319A.160

STATUTORY AUTHORITY: KRS 319A.070(3)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3) allows the board to set forth the requirements for continuing competence. This administrative regulation sets forth the requirements for licensees to demonstrate continuing competence.

Section 1. Definitions. (1) "Continuing competence" means a dynamic, multidimensional process to develop and maintain the knowledge, skills, interpersonal abilities and critical and ethical reasoning necessary to perform occupational therapy professional responsibilities.

(2) "Continuing competence unit" means an assigned unit of measure for each continuing competence activity for which the values are given in Section (5) of this administrative regulation.

(3) "Contact hour" means sixty (60) minutes engaged in a learning activity, excluding meals, breaks, and registration.

(4) "CCU" means continuing competence unit.

(5) "Training program in suicide assessment, treatment, and management" means a training program that contains suicide assessment including screening and referral, suicide treatment, and suicide management approved by the board.

Section 2. Continuing Competence Requirements. (1) A licensee applying for license renewal shall complete a minimum of twelve (12) CCUs of qualified activities for maintaining continuing competence during the preceding annual renewal period.

(2) A licensee who is issued a license for a period less than twelve (12) months shall prorate the number of CCUs to one (1) CCU for each month licensed.

(3) An applicant for reinstatement or licensure who was previously licensed by the board and whose license has been put on inactive status, revoked, or expired for three (3) years or less from the time the application is filed shall obtain twelve (12) CCUs of qualified activities for maintaining continuing competence for each year in which the license has been in the status prior to receiving the license.

(4) An applicant for licensure who was previously licensed by the board and whose license has lapsed for more than three (3) years shall obtain thirty-six (36) CCUs of qualified activities for maintaining continuing competence.

(5) Beginning January 1, 2015, a licensee shall, at least once every six (6) years, complete six (6) hours of training in suicide assessment, treatment, and management that is approved by the board. During the implementation of this requirement, all practitioners licensed before the implementation date shall complete the first training by July 2016. A licensee applying for initial licensure or certification on or after the effective implementation date may delay completion of the first training required by this section for six (6) years after initial licensure if he or she can demonstrate successful completion of at least six (6) hours of academic training in suicide assessment, treatment, and management that:

(a) Was completed no more than six (6) years prior to the application for initial licensure; and

(b) Is listed on the best practices registry of the American Foundation for Suicide Prevention and the Suicide Prevention Resource Center.

Section 3. Qualified Activities for Maintaining Continuing Competence. The following activities qualify for the continuing competence requirements of this administrative regulation:

(1) Continuing education courses.

(a) A licensee may earn one (1) CCU for each contact hour in continuing education courses including workshops, seminars, conferences, electronic courses, or self-study courses.

(b) Documentation for this activity shall include a certificate of completion or similar documentation including:

1. Name of course, date, and the author or instructor;

2. Name of sponsoring organization and the location of the course; and

3. The number of contact hours attended.

(c) A suicide assessment, treatment, and management training program attended to meet the requirements established in Section 2(5) of this administrative regulation shall total six (6) hours of CCU and be approved by the board.

(2) Employer provided in-service training.

(a) A licensee may earn one (1) CCU for each contact hour of in-service training provided to the licensee by the licensee's employer.

(b) No more than six (6) CCUs of employer-provided training may be counted towards the total number of required CCUs. If an employer hosts continuing education courses open to practitioners outside of the organization, these courses shall fall under subsection (1) of this section.

(c) Training that deals with issues completely unrelated to the practice of occupational therapy that are required for employment compliance standards shall not be counted toward the continuing competence requirements.

(d) Documentation for this activity shall include a certificate of completion or similar documentation including:

1. Name of course, date, and the instructor;

2. Name of providing organization and the location of the course; and

3. The number of contact hours attended.

(e) In-service training is structured training that is offered to an employee and that is intended to maintain or enhance the employee's job performance or to meet requirements that are imposed on the employer by a credentialing body.

(3) Academic coursework.

(a) Participation in on-site or distance learning academic courses from a university, college, or vocational technical adult education course related to the practice of occupational therapy shall be counted towards the requirements of this administrative regulation.

(b) A licensee may earn six (6) CCUs per credit hour.

(c) Documentation for this activity shall include:

1. An official transcript indicating successful completion of the course and the date on which the course was taken; and

2. A description of the course from the school catalogue or course syllabus.

(4) Independent study.

(a) Independent study may includes reading books, journal articles, reviewing videos, and activities of a similar nature.

(b) A licensee may earn one (1) CCU for one (1) contact hour spent in an independent study activity.

(c) Documentation for this activity shall include:

1. Title, author, and publisher of the material;

2. The time spent on the material;

3. The date of completion; and

4. A statement that describes how the activity relates to a licensee's current or anticipated roles and responsibilities.

(d) No more than six (6) CCUs from this category shall be counted toward the total.

(5) Mentorship.

(a) Credit may be earned by each participant in a formalized mentorship agreement defined by a signed contract between the mentor and mentee that outlines specific goals and objectives and designates the plan of activities for the participants.

(b) A licensee may earn one (1) CCU for five (5) contact hours

spent in activities directly related to achievement of goals and objectives under a mentorship agreement.

(c) Documentation for this activity shall include:

1. The name of mentor and mentee;

2. A copy of a signed agreement;

3. The dates, hours spent and focus of mentorship activities; and

4. A statement outlining the outcomes of mentorship agreement.

(6) Fieldwork supervision.

(a) Credit may be earned by participation as the primary clinical fieldwork educator for an OT or OTA fieldwork student.

(b) A licensee may earn one (1) CCU per forty (40) hours of supervision for each fieldwork student supervised.

(c) Documentation shall include:

1. A written verification from the school to the fieldwork educator with the name of student, school, and dates of fieldwork or the signature page of the completed student evaluation form.

2. Evaluation scores and comments should be deleted or blocked out.

(7) Professional writing.

(a) Credit may be earned by the publication of a book, chapter, or article.

(b) A licensee may earn:

1. Twelve (12) CCUs as an author of a book;

2. Six (6) CCUs as an editor of a book;

3. Six (6) CCUs as author of a chapter;

4. Four (4) CCUs as author of a peer reviewed article;

5. Two (2) CCUs as author of a nonpeer reviewed article;

(c) Documentation for this activity shall consist of full reference for publication including, title, author, editor, and date of publication; or copy of acceptance letter if not yet published.

(8) Professional presentations and instruction.

(a) Credit may be earned by the presentation of academic guest lectures, state or national workshops or conferences, and employer-provider in-service training for OT/Ls or OTA/Ls.

(b) A licensee may earn two (2) CCUs for each hour of credit that is awarded for an activity.

(c) Documentation for this activity shall include a copy of official program, schedule, or syllabus including presentation title, date, hours of presentation, and type of audience or verification of that signed by the sponsor.

(9) Research.

(a) Credit may be earned for the development of or participation in extensive scholarly research activities or extensive outcome studies.

(b) A licensee may earn one (1) CCU for one (1) contact hour spent working on a research project.

(c) Documentation for this activity shall include verification from the primary investigator indicating the name of research project, dates of participation, major hypotheses or objectives of the project, and licensee's role in the project.

(10) Grants.

(a) Credit may be earned for the development of a grant proposal.

(b) A licensee may earn one (1) CCU for one (1) contact hour spent working on a grant proposal.

(c) Documentation for this activity shall include name of grant proposal, name of grant source, purpose and objectives of the project, and verification from the grant author regarding licensee's role in the development of the grant if not the author.

(11) Professional meetings and activities.

(a) Participation in board or committee work with agencies or organizations in professionally related areas to promote and enhance the practice of occupational therapy may be counted toward the requirements of this administrative regulation.

(b) A licensee may earn one (1) CCU for five (5) contact hours on a committee or board.

(c) Documentation for this activity shall include:

1. The name of the committee or board, name of the agency or organization, purpose of service, and description of licensee's role; and

2. The participation shall be validated by an officer or representative of the organization or committee.

(d) No more than six (6) CCUs from this category shall be counted toward the total.

(12) Specialty certifications.

(a) The board shall recognize completion of activities that result in an advanced competence credential or specialty certification earned or recertified during the current renewal period.

(b) A licensee may earn up to twelve (12) CCUs for each advanced competence recognition or specialty certification credential earned or recertified during a renewal period.

(c) Documentation for this activity shall include a certificate of completion that identifies satisfactory completion of requirements for obtaining advanced competence recognition or specialty certification.

(13) Continuing competence plan.

(a) A licensee may earn two (2) CCUs for completion of activities related to the development and implementation of a continuing competence plan for professional development.

(b) Documentation for this activity shall include a signed document by the licensee attesting to the fact that he or she has used a formal assessment process which included the establishment of professional development goals and objectives and a portfolio approach to organize and document continuing competence activities related to the licensee's plan.

(14) Volunteer services.

(a) Credit may be earned by participation in volunteer services performed for organizations, populations, or individuals if the services maintain or enhance the licensee's competence in professional skills in the practice of occupational therapy.

(b) A licensee may earn one (1) CCU for each five (5) contact hours.

(c) Documentation for this activity shall include verification letter from organizations and report of outcomes of services provided.

(d) No more than six (6) CCUs from this category shall be counted toward the total.

Section 4. Approval of Courses for Continuing Education Credit under Section 3(1) of this administrative regulation.

(1) A continuing education course shall be current in subject matter and relevant to the practice of occupational therapy.

(2) A continuing education course under Section 3(1) of this administrative regulation shall qualify for credit under this administrative regulation if it is approved by one of the following methods:

(a) The board shall approve a course or provider of a course that is administered or approved by:

1. A recognized national, state, or local occupational therapy association;

2. An accredited health care organization or facility; or

3. An accredited college or university.

(b) A continuing education course provider who does not come within the provisions of paragraph (a) of this subsection shall submit the following information to the board at least ninety (90) days prior to the presentation of the course:

1. A thorough course description;

2. A statement of the projected learning outcomes;

3. A statement of the target audience;

4. The content focus of the course;

5. A detailed agenda for the activity;

6. A statement of the number of contact hours requested;

7. A listing of the presenters and their qualifications; and

8. A sample of the certificate of completion awarded to successful attendees.

(c) A licensee who does not come within the provisions of paragraph (a) or (b) of this subsection shall submit to the following information to the board:

1. A thorough course description;

2. A statement of the achieved learning outcomes;

3. The content focus of the course;

4. A detailed agenda for the activity;

5. A statement of the number of contact hours requested;

6. A listing of the presenters and their qualifications; and

7. A sample of the certificate of completion awarded to successful attendees.

Section 5. Waiver of Requirements. Under extenuating circumstances, the board may waive all or part of the continuing competence activity requirements of this administrative regulations if an occupational therapist or occupational therapy assistant submits written request for a waiver and provides evidence to the satisfaction of the board of an illness, injury, family hardship, active military service, or other similar extenuating circumstance which precluded the individual's completion of the requirements on a case-by-case basis.

Section 6. Documentation and Reporting Procedures. (1) A licensee shall maintain the required proof of completion for each continuing competence activity as specified in these administrative regulations.

(2) The required documentation shall be retained by the licensee for a minimum of one (1) year following the last day of the license renewal period for which the continuing competence activities were earned.

(3) A licensee shall not send his or her continuing competence activity documentation to the board unless audited under Section 7 of this administrative regulation or otherwise requested by the board.

Section 7. Audit of Continuing Competence Activities. (1) The board shall perform a random audit of up to ten (10) percent of all licensees who shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period.

(2) A licensee who is audited shall respond to the audit within sixty (60) days of the date of the request.

(3) A licensee who fails to comply with the continuing competence activity requirements of this administrative regulation may be subject to disciplinary action that may include suspension or revocation of license.

Section 8. Other Provisions. (1) A licensee may not carry over continuing competence activity CCUs from one (1) licensure period to the next.

(2) A licensee may not receive credit for completing the same continuing competence activity more than once.

SCOTT DEBURGER, OTR/L

APPROVED BY AGENCY: November 13, 2014

FILED WITH LRC: November 14, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 31, 2014 at 10 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing 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 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 11:59 pm on December 31, 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 Hutcherson, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296, ext. 226, fax 502-564-4818, Jennifer.Hutcherson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jeremy Reed, Scott DeBurger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for licensees to demonstrate continuing competence.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth procedures for compliance with KRS 319A.160 and KRS 210.366.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A.160(2) for the board to set a required number of continuing education units for license renewal.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures and guidelines for continuing competence units. Additionally, it sets forth the requirements for suicide training programs.

(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 regulation by clarifying continuing competence units provided through employer in-services and it outlines the procedures for suicide prevention training requisites based upon new statue requirements of KRS 210.336.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to include the new suicide prevention training programs and to clarify continuing competence units obtained through employer in-services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute KRS 319A.160 (2) and KRS 210.366 by defining procedures for obtaining suicide training education and outlining the procedures for obtaining continuing competence units.

(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 clarifying the process of obtaining continuing competence units and the requirements related to suicide prevention training programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts all licensees regulated by KRS319A.

(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 change requires licensees to obtain continuing education pertaining to suicide prevention training every six years.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): the cost of six (6) hours of CE every six (6) years which annualizes out to no more than twenty (20) dollars per year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question. All practitioners will obtain evidence based training on the best methods for preventing suicide which can assist licensees in more effective interventions for clients.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees for persons licensed under KRS 319A and set forth in 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 will be necessary to implement this amended 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

(9) TIERING: Is tiering applied? No tiering is applied for all licensees will be held to the same standards.

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 Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A.070(3)(a)KRS 319A.070(3)(d), 319A.160; KRS 210.366

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This amendment does not create any new revenue for this board.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure of Occupational Therapy
(Amendment)

201 KAR 28:220. Per diem of board members.

RELATES TO: KRS 319A.030

STATUTORY AUTHORITY: KRS 319A.030, 319A.070(1), (3)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(a) authorizes the board to promulgate administrative regulations and administer the provisions of KRS Chapter 319A. KRS 319A.030 authorizes board members to receive a per diem as provided by law for members of state boards, commissions, and committees. This administrative regulation sets out the per diem amount members will receive when required to represent the board or attend its meetings.

Section 1. Each member of the board shall receive a per diem of $200[~~100~~] for attending each meeting of the board or otherwise representing the board.

SCOTT DEBURGER, OTR/L

APPROVED BY AGENCY: November 13, 2014

FILED WITH LRC: November 14, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 31, 2014 at 10 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing 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 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 11:59 pm on December 31, 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 Hutcherson, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 4060,. phone 502-564-3296, ext. 226, fax 502-564-4818, Jennifer.Hutcherson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jeremy Reed, Scott DeBurger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation authorizes board members to receive a per diem as provided by law for members of state boards, commissions, and committees

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth procedures for compliance with KRS 319A.070(3)(a)

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A.070(3)(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by allowing board members to receive a per diem for attending meeting or for representing the board.

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

How the amendment will change this existing administrative regulation: This amendment will increase the per diem rate for board members from $100 to $200.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide more adequate compensation for board members taking off from work to attend meetings and represent the board.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 319A.070(3)(a) which authorizes the board to promulgate administrative regulations and administer the provisions of KRS Chapter 319A. KRS 319A.030 authorizes board members to receive a per diem as provided by law for members of state boards, commissions, and committees.

(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 adjusting the per diem rate so that board members can take off of work and a quorum is achieved at each meeting of the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts members of the Kentucky Board of Licensure for Occupational Therapy (seven (7) members). Each board meeting runs two and a half (2.5) – four (4) hours in length, which requires board members to take off from their regularly scheduled jobs to participate in meetings.

(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 board members must attend meetings and attend official functions representing the board in order to obtain a per diem.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No added costs for board members will occur.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question. Board members will have an increase in per diem pay for conducting the business of the board.

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

(a) Initially: The increase in per diem will be about $4,800 the first year.

(b) On a continuing basis: the increased cost will be approximately $400 per month on an on-going basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees for persons licensed under KRS 319A, newly licensed and renewal licensees as out lined in KRS 319A.170 201 KAR 28:090, 201 KAR 28:060.

(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 amended 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 for licensure.

(9) TIERING: Is tiering applied? Tiering is not 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? Kentucky Board of Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A.030, 319A.070(1), (3)(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.

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

(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? Estimated at $4,800 the first year.

(d) How much will it cost to administer this program for subsequent years? Increased expenses of approximately $5,600 per year.

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 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dark goose" means a Canada goose, white-fronted goose, or brant.

(2) "Light Goose" means a snow goose or Ross's goose.

(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60

(4) "Waterfowl" is defined by KRS 150.010(40).

Section 2. (1) Except as established in[~~authorized by~~] 301 KAR 2:222, 2:225, or 2:226, a person shall not hunt waterfowl except during the seasons established in this administrative regulation.

(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Season dates. (1) Duck, coot, and merganser. The season shall:

(a) Begin[~~Beginning~~] on Thanksgiving Day for four (4) consecutive days; and

(b) Be for fifty-six (56) consecutive days ending on the last Sunday in January of the following year.

(2) Canada goose.[~~:~~]

(a) In the Eastern, Pennyrile, and Western Goose Zones, the season shall begin[~~beginning~~] on Thanksgiving Day and continue[~~continuing~~] until[~~the last day in~~] January 31.

(b) In the Northeast Goose Zone, the season shall begin[~~: Beginning~~] on the third Saturday in December and continue until January 31[~~1 for thirty-one (31) consecutive days~~].

(3) White-fronted and brant geese. The season shall begin[~~, beginning~~] on Thanksgiving Day and continue[~~continuing~~] until[~~the last day in~~] January 31.

(4) Light goose. The season shall begin[~~:~~

~~(a) Beginning~~] on Thanksgiving Day and continue[~~continuing~~] until[~~the last day in~~] January 31.

(5) [~~; and~~

~~(b)~~] Light Goose Conservation Order.

(a) In the[~~season:~~

~~1.~~] Western Duck Zone, the season shall be[~~:~~] from February 1 through March 31, except:

1.[~~a.~~] The season shall be closed during the first full weekend in February; and

2.[~~b.~~] Youth hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226.

(b) In the[~~2.~~] Eastern Duck Zone, the season shall be from February 1 through March 31.

(6)[~~(5)~~] A person shall not hunt a light or dark goose in:

(a) The areas of Laurel River Lake as posted by sign; or

(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. In the Ballard Zone that is established in 301 KAR 2:224:

(1) A person hunting waterfowl shall:

(a) Hunt from a blind unless hunting in flooded, standing timber;

(b) Not hunt from or establish a blind:

1. Within 100 yards of another blind; or

2. Within fifty (50) yards of a property line; and

(c) Not possess more than one (1) shotgun while in a blind.

(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in 301 KAR 2:221, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits. (1) Ducks.[~~:~~] The daily limit shall be six (6), which[~~that~~] shall not include more than:

(a) Four (4) mallards;

(b) Two (2) hen mallards;

(c) Three (3) wood ducks;

(d) One (1) black duck;

(e) Two (2) redheads;

(f) Two (2) pintails;
(g) Three (3) scaup;
(h) One (1) mottled duck; or
(i) One (1)[~~Two (2)~~] canvasback.
(2) Coot. The[:] daily limit shall be fifteen (15).
(3) Merganser. The[:] daily limit shall be five (5), which shall not include more than two (2) hooded mergansers.
(4) Dark goose. The[:] daily limit shall be five (5), which[~~that~~] shall not include more than:
(a) Three (3) Canada geese;
(b) Two (2) white-fronted geese; or
(c) One (1) brant.
(5) Light goose. The[:] daily limit shall be twenty (20), except that there shall not be a limit during the Light Goose Conservation Order season.
(6) The possession limit shall be triple the daily limit, except that there shall not be a light goose possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:
(1) 2 p.m. if hunting geese in the Northeast Goose Zone during a Canada goose season;
(2) Sunset in the remainder of the state, except as established in 301 KAR 2:222; or
(3) One-half (1/2) hour after sunset if hunting light geese during the Light Goose Conservation Order season.

Section 7. Falconry Waterfowl Season and Limits. (1) The[~~Season dates:~~
~~(a)~~] Light goose season shall be[:] November 5 through January 31.
(2)[~~; (b)~~] Light Goose Conservation Order season.
(a) In the[:
~~1.~~] Western Duck Zone, the season shall be[:] from February 1 through March 31, except:
1.[~~a.~~] The season shall be closed during the first full weekend in February; and
2.[~~b.~~] Youth hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226.
(b) In the[~~2.~~] remainder of the state, the season shall be[:] from February 1 through March 31.
(3) The season for all[~~; and~~
~~(c)~~] other waterfowl shall be from[:] November 5 through January 31.
(4) The[~~(2)~~] daily limit shall be[:] three (3) waterfowl, except that there shall not be a limit on light goose during the Light Goose Conservation Order season.
(3) The possession limit shall be nine (9)[~~: six (6)~~] waterfowl, except that there shall not be a possession limit on light goose during the Light Goose Conservation Order season.

Section 8. Permit for the Light Goose Conservation Order season. (1) A person hunting light goose during the Light Goose Conservation Order season shall first obtain a free permit by completing the online Snow Goose Conservation Order Permit process on the department's Web site at fw.ky.gov.
(2) A person hunting light goose during the Light Goose Conservation Order season shall submit a Snow Goose Conservation Order Permit Survey to the department by April 10.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Snow Goose Conservation Order Permit", January 2014; and
(b) "Snow Goose Conservation Order Permit Survey", January 2014.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane[~~Game Farm Road~~], Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN WALDROP, Deputy Commissioner
For GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary
APPROVED BY AGENCY: October 13, 2014
FILED WITH LRC: October 27, 2014 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 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 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 through December 31, 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 the administrative regulation does: This administrative regulation establishes waterfowl seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).
(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2014-2015 waterfowl hunting seasons in accordance with the USFWS.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates and bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing hunting season and bag limit requirements and providing reasonable hunting opportunity consistent with state, national, and international management requirements and strategies.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: This amendment will add days to the Canada goose season in Kentucky's Northeast Goose Zone. In addition, the amendment will adjust waterfowl daily bag and possession limits to reflect that permitted by federal waterfowl season frameworks under the current season structure.
(b) The necessity of the amendment to this administrative regulation: Waterfowl seasons and limits are set on an annual basis following the establishment of federal frameworks by the U.S. Fish and Wildlife Service each summer. It is the Department's responsibility to allow quality hunting opportunity within these federal frameworks. The added days will overlap the Christmas holiday period which will provide more regional opportunity for local waterfowl hunters.
(c) How does the amendment conform to 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 that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that may 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: The current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting season and bag limits.

(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 costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be an increased opportunity to hunt waterfowl in the state.

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

(a) Initially: There will not be an additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of funding to be used for 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 fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Wildlife Division and Law Enforcement Division.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(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 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 amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? No new costs will be incurred in the administration of this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No new costs will be incurred in the administration of 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters. The season on snow geese is shorter than the federal framework because migration patterns for this species result in a paucity of birds early in the federal framework. The Canada goose season in the Northeast Goose Zone is shorter than is permitted in the rest of the state because of the desire to maintain a huntable population in that region of the state.

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:222. Waterfowl hunting requirements on public lands.

RELATES TO: KRS 150.010(40), 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Blind" means a:

(a) Concealed enclosure;

(b) Pit; or

(c) Boat.

(2) "Department blind" means a permanently fixed blind structure built by the department.

(3) "Hunt site" means a specific location where waterfowl hunting is allowed, as approved by the department or the U.S. Army Corps of Engineers.

(4) "Layout blind" means a portable blind that when fully deployed allows one (1) person to be concealed above the surface of the ground.

(5) "Party" means:

(a) A person hunting alone; or

(b) Two (2) to four (4) people who share a department blind or hunt site.

(6) "Permanent blind" means a blind left in place by a waterfowl hunter longer than twenty-four (24) hours.

(7) "Regular waterfowl season" means the open waterfowl season that does not include the Light Goose Conservation Order or the September wood duck, teal, and Canada goose seasons as established in 301 KAR 2:221 and 2:225.

(8)[~~"Waterfowl" is defined by KRS 150.010(40).~~

~~(9)~~] "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. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

Section 3. (1) Except as established in this section or in Section 4 of this administrative regulation, on a Wildlife Management Area:

(a) A person hunting waterfowl shall not:

1. Establish or hunt from a permanent waterfowl blind;

2. Hunt within 200 yards of:

a. Another occupied hunt site;

b. Another legal waterfowl hunting party; or

c. An area closed to waterfowl hunting;

(b) A person shall not hunt in a designated recreation area or access point;

(c) More than four (4) persons shall not occupy a waterfowl blind or hunt site; and

(d) A hunter shall remove decoys and personal items daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt.

(2) In order to establish or use a permanent waterfowl blind or hunt site on Lake Barkley, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug Travis Wildlife Management Areas, a person:

(a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;

(b) May designate one (1) other person as a partner; and

(c) Shall not hold more than one (1) permit per area.

(3) A person who participates in a drawing for a hunt site permit shall:

(a) Be at least eighteen (18) years of age; and

(b) Possess:

1. A valid Kentucky hunting license;

2. A Kentucky waterfowl permit; and

3. A federal duck stamp.

(4) The holder of a hunt site permit shall:

(a) Construct or establish the blind or hunt site before November 20 or forfeit the permit;

(b) Not lock a waterfowl blind; and

(c) Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department based on weather or water level conflicts.

(5) A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(6) A waterfowl blind restriction established in this section shall not apply to a falconer if a gun or archery season is not open.

Section 4. Wildlife Management Area Requirements. (1) The regular waterfowl season provisions shall apply, as established in 301 KAR 2:221, except as established in this section.

(2) The provisions of this section shall not apply to a waterfowl hunting season that opens prior to October 15, as established in 301 KAR 2:225.

(3) A person shall not:

(a) Hunt on an area marked by a sign as closed to hunting;

(b) Enter an area marked by signs as closed to public access; or

(c) Hunt a species on an area marked by signs as closed to hunting for that species.

(4) On Wildlife Management Areas in Ballard County:

(a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:

1. The daily bag limit for ducks is greater than three (3); and

2. The daily bag limit for Canada goose is greater than or equal to two (2); and

(b) At least one (1) person in a waterfowl blind shall be eighteen (18) years of age or older if hunting in a department waterfowl blind or hunt site[~~at Ballard or Boatwright WMA~~].

(5) At Ballard WMA:

(a) The duck, coot, merganser, and goose season shall be the first Wednesday in December through the last Sunday in January;

(b) Youth waterfowl season shall be the first full weekend in February;

(c) A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Day, or New Year's Day; and

(d) A person hunting waterfowl shall:

1. Apply for the waterfowl quota hunt as established in Section 5 of this administrative regulation;

2. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream of Dam 53 to fifty (50) yards downstream from the southern border of Ballard Wildlife Management Area from October 15 through March 15; and

3. Exit the area by 2 p.m. during the regular waterfowl season, except as authorized by the department.

(6) At Boatwright WMA, including the Olmsted, Peal, and Swan Lake units:

(a) A party shall:

1. Not hunt on Monday, Tuesday, Christmas Day, or New Year's Day;

2. Obtain a daily check-in card by 8 a.m. before entering the area from the first Wednesday in December through the last Sunday in January; and

3. Check out the same day by:

a. Visiting the designated Check station prior to 8 a.m.; or

b. Depositing the check-in card at a department-designated drop point after 8 a.m.;

(b) Duck season shall be open one-half (1/2) hour before sunrise to sunset beginning Thanksgiving Day for four (4) consecutive days on areas of Boatwright WMA that are open to hunting;

(c) A department blind or hunt site shall be assigned through a daily drawing through the last Sunday in January;

(d) A department blind or hunt site shall be offered to another hunter on a first-come, first-served basis, if the blind or hunt site has not been assigned during the daily drawing;

(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season;

(f) A boat blind shall not be permitted in flooded timber, except:

1. During periods of flood if no other access is possible; or

2. A mobility-impaired hunter may hunt from a boat; <u>and</u>

(g) A party shall only hunt waterfowl:

1. From a department blind; or

2. From layout blinds set so that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party,

and within 200 yards of a hunt site in December and January during the regular waterfowl season.

(7)[; (h)] On the Peal unit of Boatwright WMA:

(a)[1.] More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

(b)[2.] More than four (4) parties shall not hunt at the same time on Fish Lake;

(c)[3.] More than three (3) parties shall not hunt at the same time on First Lake or Second Lake; and

(d)[4.] A party shall not hunt waterfowl except within twenty-five (25) feet of a hunt site during December and January.

(8)[; and

(i)] On the Swan Lake Unit of Boatwright WMA:

(a)[1.] A person shall not hunt waterfowl from Thanksgiving Day through the first Tuesday in December;

(b)[2.] The area open to hunting during the regular waterfowl season shall be open for the Light Goose Conservation Order season as established in 301 KAR 2:221; and

(c)[3.] Blind restrictions shall not apply to the Light Goose Conservation Order season.

(9)[(7)] Lake Barkley WMA.

(a) A permanent blind shall only be established within ten (10) yards of a blind site.

(b) Waterfowl refuge areas shall be:

1. The area west of the Cumberland River channel, as marked by buoys, between river mile fifty-one (51), at Hayes Landing Light, south to the Tennessee Valley Authority's power transmission lines at river mile fifty-five and five-tenths (55.5) shall be closed from November 1 through February 15; and

2. The area within Honker Bay and Fulton Bay, as marked by buoys and signs, which shall be closed from November 1 through March 15.

(c) A person shall not hunt from October 15 through March 15:

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(10)[(8)] Barren River Lake WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(11)[(9)] Miller Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

(12)[(10)] Lake Cumberland WMA. The following sections shall be closed to the public from October 15 through March 15:

(a) The Wesley Bend area, bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road; and

(b) The Yellowhole area, bounded by Fishing Creek Road and Hickory Nut Road.

(13)[(11)] Pioneer Weapons WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(14)[(12)] Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(d) On Black Lake, Fish Lake, Forked Lake, Indian Camp Lake, Number Four Lake, and Upper Goose Lake, all waterfowl hunting after November 1:

1. Shall be from hunt sites assigned by a random preseason drawing; and

2. Shall be within ten (10) yards of a hunt site, including periods of Mississippi River flooding.

(15)[(13)] Grayson Lake WMA. A person shall not hunt waterfowl:

(a) Within the no-wake zone at the dam site marina;

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; or

(d) Within three-quarters (3/4) of a mile from the dam.

(16)[(14)] Green River Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(17)[(15)] Kaler Bottoms WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(18) Kentucky River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(19)[(16)] Land Between the Lakes National Recreation Area.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;

2. The eastern one-third (1/3) of Smith Bay, as marked by buoys; and

3. The eastern two-thirds (2/3) of Duncan Bay, as marked by buoys;

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit if hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat on a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A person hunting waterfowl shall remove decoys and personal items daily.

(20)[(17)] Obion Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(21)[(18)] Ohio River Islands WMA.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to the power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to public access from October 15 through March 15.

(c) Shooting hours shall be one-half (1/2) hours before sunrise until 2 p.m.

(d) A person shall not enter a hunting area prior to 4 a.m. daily.

(22)[(19)] Peabody WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) The following areas, as posted by signs, shall be closed to the public from October 15 through March 15:

1. The Sinclair Mine area, bounded by Hwy 176, the haul road, and Goose Lake Road; and

2. The Ken area, bounded by Wysox Road, H2 Road, H1 Road, and H6 Road.

(23)[(20)] Robinson Forest WMA. The main block of the WMA shall be closed to waterfowl hunting.

(24)[(21)] Sloughs WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall exit the area by 2 p.m. during the regular waterfowl season.

(d)[~~On the Grassy Pond Powell's Lake Unit, a person hunting waterfowl:~~

~~1. Shall hunt:~~

~~a. From a department blind; or~~

~~b. From a blind within twenty-five (25) yards of a blind site; and~~

~~2. Shall remove decoys and personal items from the area on a daily basis.~~

~~(e)~~] On the Jenny Hole-Highlands Creek and Grassy Pond Powell's Lake units[~~Unit~~], a person hunting waterfowl shall:

1. Hunt:

a. From a department blind;

b. Within twenty-five (25) yards of a hunt site; or

c. No closer than 200 yards of another hunting party; and

2. Remove decoys and personal items from the area on a daily basis.

(e)[~~(f)~~] If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds; and

2. Shall not hunt closer than 200 yards from another boat.

(f)[~~(g)~~] If hunting waterfowl on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. A person shall hunt from a blind assigned by the department through a drawing as established in Section 5 of this administrative regulation;

2. A person may occupy a permitted blind if not claimed by the permittee within one (1) hour before sunrise;

3. A person shall not possess more than fifteen (15) shotgun shells, except that the shotgun shell possession limit shall be twenty-five (25) if:

a. The daily bag limit for ducks is greater than three (3); and

b. The daily bag limit for Canada goose is greater than or equal to two (2);

4. If under eighteen (18) years of age, a person shall be accompanied by an adult; and

5. The waterfowl blind for a mobility-impaired person shall be open to the public if the permit holder or another mobility-impaired person has not claimed the blind on that day by one (1) hour before sunrise.

(g)[~~(h)~~] The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except for:

1. Waterfowl from November 1 through March 15; and

2. The modern gun deer season.

(h)[~~(i)~~] The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(i)[~~(j)~~] A hunter drawn to hunt Sloughs WMA through a preseason draw shall submit a completed Sloughs WMA Waterfowl Hunter Survey Report at the conclusion of the hunt or shall be ineligible to participate in the waterfowl blind or quota draw the following year.

(25)[~~(22)~~] South Shore WMA.

(a) The WMA shall be closed to hunting from November 15 through January 15, except for waterfowl and dove hunting.

(b) A hunter shall use a department blind.

(c) A department blind shall be available daily on a first-come, first-served basis.

(26)[~~(23)~~] Taylorsville Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(27)[~~(24)~~] Yatesville Lake WMA. The following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north from the mouth of the Greenbrier Creek embayment to the dam, including the island.

(28)[~~(25)~~] Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(29)[~~(26)~~] Cedar Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(30)[~~(27)~~] Dix River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(31)[~~(28)~~] J.C. Williams WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

Section 5. Ballard WMA and Sloughs WMA. (1) A person applying to hunt waterfowl on Ballard WMA or the Sauerheber Unit of Sloughs WMA shall:

(a) Apply by:

1. Calling 1-877-598-2401 and completing the telephone application process; or

2. Completing the online Ballard or Sloughs Waterfowl Quota Hunt Form process on the department's Web site at fw.ky.gov;

(b) Apply from September 1 through September 30;

(c) Pay a three (3) dollar application fee for each application; and

(d) Not apply more than one (1) time for each hunt.

(2) A person drawn to hunt may bring up to three (3) additional hunters.

(3) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs that have a preseason or daily drawing.

Section 6. State Parks. (1) Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 13 through January 31 on designated areas of state parks at:

(a) Barren River;

(b) Grayson Lake;

(c) Greenbo Lake;

(d) Lake Barkley;

(e) Lincoln Homestead;

(f) Nolin Lake;

(g) Paintsville Lake;

(h) Pennyrile Lake;

(i) Rough River Lake; and

(j) Yatesville Lake.

(2) Hunters shall check in each day at the front desk of the state park or a designated check-in location on days that the park office is not open.

(3) During check-in hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

(4) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days that the park office is not open.

Section 7. Youth-Mentor and Mobility-Impaired Waterfowl Hunts. (1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries each Saturday and Sunday in January.

(2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with each youth-mentor hunt.

(3) A youth or mobility-impaired person shall register in advance and carry a department provided postcard notification on the day of the hunt.

(4) A mobility-impaired person shall also submit a mobility-impaired access permit pursuant to 301 KAR 3:026.

(5) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(6) Each youth shall not be accompanied by more than one (1) adult.

(7) One (1) adult may accompany two (2) youths.

(8) A mobility-impaired hunter may be accompanied by no more than one (1) assistant who may also hunt.

(9) A person shall:

(a)[~~Shall~~] Hunt from an established blind; and

(b)[~~Shall~~] Not change blinds.

(10) A blind shall not be used by more than four (4) hunters.

(11) A person shall only discharge a firearm from a blind.

(12) A person shall not possess more than fifteen (15) shotshells.

(13) A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.

(14) A person shall encase a firearm if traveling to and from a blind.

(15) A hunter shall:

(a) Cease hunting by noon; and

(b) Exit the area by 1 p.m.

(16) All decoys and equipment shall be removed at the end of each day's hunt.

(17) A hunter shall report harvest by depositing a completed hunt permit at the designated location.

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

(a) "Sloughs WMA Waterfowl Hunter Survey Report", January 2014; and

(b) "Ballard or Sloughs Waterfowl Quota Hunt Form", January 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane[~~Game Farm Road~~], Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN WALDROP, Deputy Commissioner
For GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: October 13, 2014

FILED WITH LRC: October 27, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 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 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 through December 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mac, 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 the administrative regulation does: This administrative regulation establishes waterfowl seasons, bag limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2014-2015 waterfowl hunting requirements on public lands in accordance with the USFWS and Department management objectives.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to establish hunting season dates, bag limits and other hunting requirements. KRS 150.360 authorizes the department to restrict methods and hunting hours for taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation assists the above statutes by managing waterfowl populations and hunting opportunity consistent with state and national management requirements and strategies.

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

(a) How the amendment will change the existing administrative regulation: This amendment sets hunting dates on Ballard and the Swan Lake Unit of Boatwright WMAs, sets daily stop times for waterfowl hunting on Kentucky River and Yellowbank WMA's, and opens the Grassy Pond-Powell's Lake Unit on Sloughs WMA to walk-in waterfowl hunters.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide quality public hunting opportunity with minimal area use conflict that is consistent with meeting state and federal waterfowl management objectives.

(c) How does the amendment conform to 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 that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that may 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 of 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 in season dates and hunting requirements will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting seasons.

(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 or amended costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity for quality waterfowl hunting on public areas.

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

(a) Initially: This administrative regulation change will not result in any additional cost for the Department to administer initially.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of funding to be used for 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 funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Wildlife Division and Law Enforcement Division.

(2) Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

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

(c) How much will it cost to administer this program for the first year? No new costs will be incurred in the administration of this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No new costs will be incurred in the administration of 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters. The greatest wintering and migrating waterfowl concentrations are located on public lands managed by the Department. The Department imposes more restrictive hunting regulations on these lands in effort to meet waterfowl management objectives while still providing quality hunting opportunity.

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

RELATES TO: KRS 150.170, 150.180, 150.370, 150.399, 150.415, 150.416, 150.990, 150.995

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(7), (9), 150.360, 150.400, 150.410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.175(7), (9) authorizes the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals.[~~KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night.~~] This administrative regulation establishes seasons, bag limits,[~~and~~] legal methods of take, and checking and recording requirements for hunting and trapping furbearers.

Section 1. Definitions. (1) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill the animal upon capture.

(2) "Dry land set" means a trap that is not set in, or floating upon, the[~~to submerge an animal in~~] water of a stream, river, pond, lake, wetland, or other water course[~~upon capture~~].

(3) "Foothold trap" means a commercially manufactured spring-loaded trap with smooth, metallic or rubber soft-catch jaws that close upon an animal's foot.

(4) "Furbearer" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, least weasel, long-tailed weasel, river otter, bobcat, coyote, or striped skunk.

(5) "Hunter" means a person legally taking[~~hunting~~] furbearers[~~with gun, gun and dog, bow and arrow, dog, or~~] by means other than trapping[~~falconry~~].

(6) "Otter Zone 1" means the following counties: Anderson, Ballard, Bath, Boone, Bourbon, Bracken, Breckinridge, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Daviess, Fayette, Fleming, Franklin, Fulton, Gallatin, Grant, Graves, Grayson, Hancock, Hardin, Harrison, Henderson, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, Mason, McCracken, McLean, Meade, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Pendleton, Robertson, Rowan, Scott, Shelby, Spencer, Trigg, Trimble, Union, Webster, and Woodford.

(7) "Otter Zone 2" means all Kentucky counties not included in subsection (6) of this section.

(8) "Snare" means a wire, cable, or string with a knot, loop, or a single piece closing device, the deployment of which is or is not spring-assisted, but any spring-assisted device is not for the purpose of applying tension to the closing device.

(9) "Squaller" means a hand-operated, mouth-operated, or electronic call capable of mimicking the vocalizations of furbearers.

(10) "Trap" means a body-gripping trap, box trap, deadfall, foothold trap, snare, or wire cage trap used to catch furbearers.

(11) "Water set" means a trap set in, or floating upon, the[~~to submerge an animal in~~] water of a stream, pond, lake, wetland, or other water course[~~upon capture~~].

(12) "Youth" means a person who has not reached sixteen (16) years of age.

Section 2. License[~~Hunting~~] Requirements. [~~(1)~~] Unless ex-

empted by KRS 150.170, a person shall carry proof of purchase of a:

(1) Valid hunting license while hunting furbearers; or

(2) Valid trapping license while trapping furbearers.

Section 3. Furbearer Hunting Seasons. Except as established in 301 KAR 2:049, a person shall only take furbearers by hunting during the seasons established in subsections (1) through (5) of this section:

(1) Bobcat, from one-half (1/2) hour before sunrise on the fourth Saturday in November through the last day of February;

(2) Coyote, year-round;

(3) Raccoon and opossum, October 1 through the last day of February;

(4) All other furbearers except as established in subsection (5) of this section, from one-half (1/2) hour before sunrise on the third day of modern gun deer season through the last day of February; and

(5) Furbearers taken by falconry, September 1 through March 30.

Section 4. Furbearer Trapping Season. Except as established in 301 KAR 2:049, a person shall only take furbearers by trapping from one-half (1/2) hour before sunrise on the third day of the modern gun deer season through the last day of February.

Section 5. License-Exempt Youth Season. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may hunt or trap furbearers without a license, but all other statewide requirements shall apply.

Section 6. Legal Hunting Weapons. Except as established in Section 7(8) of this administrative regulation[~~(2) Unless established in subsection (10) of this section~~], a hunter shall only use the weapons established in subsections (1)[~~paragraphs (a)~~] through (6)[~~(f)~~] of this section[~~subsection~~] to hunt[~~take~~] furbearers:

(1)[~~(a)~~] Centerfire gun;

(2)[~~(b)~~] Rimfire gun;

(3)[~~(c)~~] Shotgun;

(4)[~~(d)~~] Bow and arrow;

(5)[~~(e)~~] Crossbow; or

(6)[~~(f)~~] An air gun using pellets at least .22 caliber in size.

Section 7. Hunter Restrictions (1)[~~(3)~~] Furbearers may be taken during daylight hours only, except for the following, which may also be taken after daylight hours:

(a) Coyote;

(b) Opossum; or

(c) Raccoon.

(2)[~~(4)~~] A person shall not take a raccoon or opossum during daylight hours during the modern gun deer season, as established in 301 KAR 2:172.

(3)[~~(5)~~] A person hunting[~~hunter~~] in a boat shall not use a light in conjunction with taking a raccoon or opossum.

(4)[~~(6)~~] A person shall not use the following while chasing a raccoon or opossum from noon on March 1 through September 30;

(a) A firearm;

(b) Slingshot;

(c) Tree climber; or

(d) Any device to kill, injure, or force a raccoon or opossum from a tree or den.

(5)[~~(7)~~] A person may use a squaller year-round.

(6)[~~(8)~~] There shall not be a closed season on:

(a) Chasing red and gray foxes during daylight hours for sport and not to kill; or

(b) Chasing raccoons or opossums for sport and not to kill.

(7)[~~(9)~~] A hunter may use a hand or mouth-operated call, electronic call, or any other attracting device during a furbearer hunting season.

(8)[~~(10)~~] A person may take a coyote after daylight hours, with the following restrictions:

(a) A person shall not use artificial light or other means designed to make wildlife visible at night from June 1 through January 31;

(b) Any artificial light or other means designed to make wildlife visible at night shall not be connected to or cast from a mechanized vehicle;

(c) A person shall not use any weapon other than a shotgun; and

(d) A person shall not use a shell with a single projectile.

Section 8. Legal Traps[~~3. Trapping Methods and Requirements~~]. (1)[~~Unless exempted by KRS 150.170, a person shall carry proof of purchase of a valid trapping license while trapping furbearers. (2)~~] A person who is trapping with a dry land set shall only use traps as established in paragraphs (a) through (e) of this subsection[~~not~~]:

(a)[~~Set traps closer than ten (10) feet apart; or~~

~~(b) Use any trap except for the following:~~

~~1.~~] Deadfall;

(b)[~~2.~~] Wire cage or box trap;

(c)[~~3.~~] Foothold trap with a maximum inside jaw spread of six (6) inches measured perpendicular to the hinges;

(d) A snare; or

(e) Except as established in 301 KAR 2:049, a[~~4.~~] body-gripping trap with a maximum inside jaw spread of seven and one-half (7.5) inches measured parallel with the trigger:

1. In the center of the trap; and

2. In the unset position[~~; or~~

~~5. A snare~~].

(2)[~~(3)~~] There shall be no restrictions on the size or type of trap used as a water set.

Section 9. Trapper Restrictions. (1)[~~(4)~~] A trap shall not be set in a trail or path commonly used by a human or a domestic animal.

(2)[~~(5)~~] A trapper may use lights from a boat or a vehicle in conjunction with trapping furbearers.

Section 10. Hunter Orange. A person trapping furbearers shall be exempt from hunter orange clothing requirements as established in 301 KAR 2:132, 2:172, and 2:300.

Section 11.[~~4.~~] Trap Tags. (1) Each trap shall have a metal tag attached to it that clearly shows[~~one (1) of the following~~]:

(a) The name and address of the person setting, using, or maintaining the trap; or

(b) A wildlife identification number issued by the department and the 1-800-25ALERT department hotline phone number.

(2) A person applying for a wildlife identification number shall apply by:

(a) Completing the Wildlife Identification Number for Trap Tags – Application available on the department's Web site at [~~www.~~]fw.ky.gov; or

(b) Calling the department's information center at 1-800-858-1549.

(3) The following information shall be required for a person to apply for a wildlife identification number:

(a) Name;

(b) Current home address;

(c) Social Security number;

(d) Current phone number;

(e) Date of birth; and

(f) Driver's license number, if available.

(4) A person shall:

(a) Not use a trap tag that has an inaccurate or outdated address;

(b) Not use a trap tag that has a wildlife identification number that corresponds to an inaccurate or outdated address or phone number; and

(c) Contact the department to provide updated address and phone number.

(5) A wildlife identification number shall be valid for the life of the holder.

[~~Section 5. Hunting Season Dates. Except as established in 301 KAR 2:049, a person shall not take the following wildlife except~~

~~during the dates established in this section:~~

~~(1) Bobcat: from one-half hour before sunrise on the fourth Saturday in November through the last day of February;~~

~~(2) Coyote: year round;~~

~~(3) Raccoon and Opossum: October 1 through the last day of February;~~

~~(4) All other furbearers except as established in subsection (5) of this section: from one-half hour before sunrise on the third day of the modern gun deer season through the last day of February; or~~

~~(5) Furbearers taken by falconry: September 1 through March 30.~~

~~Section 6. Trapping Season Dates. Except as established in 301 KAR 2:049, a person shall not take furbearers except from one-half hour before sunrise on the third day of the modern gun deer season through the last day of February.~~

~~Section 7. License-Exempt Season for Youth. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may hunt or trap furbearers without a license, but all other statewide requirements shall apply.~~]

Section 12.[~~8.~~] Bag Limits. (1) There shall not be a bag limit on furbearers except as established in subsections (2) through (6) of this section.

(2)[~~(1)~~] A person shall not take more than five (5) bobcats per season, no more than three (3) of which shall be taken with a gun.

(3)[~~(2)~~] A person shall not take more than ten (10) river otters per season in Otter Zone 1.

(4)[~~(3)~~] A person shall not take more than six (6) river otters per season in Otter Zone 2.

(5)[~~(4)~~] The total river otter bag limit per season shall be ten (10) per person, only six (6) of which can be taken from Otter Zone 2.

(6)[~~(5)~~] A falconer hunting within the falconry season, but outside the dates specified in Section 3(3)[~~5(3)~~] and (4) of this administrative regulation, shall not take more than two (2) of any furbearer per day.

Section 13.[~~9.~~] Harvest Recording. (1) Immediately after harvesting[~~taking~~] a river otter or bobcat, and prior to[~~before~~] moving the carcass, a person shall record in writing the[~~following information~~]:

(a)[~~The~~] Species;

(b)[~~The~~] Date;

(c)[~~The~~] County where taken; and

(d)[~~The~~] Sex of the river otter or bobcat on:

1. [~~animal.(2) The information listed in subsection (1) of this section shall be recorded on one (1) of the following:~~

~~(a)~~] The hunter's log section on the reverse side of a license or permit;

2. A[~~(b) The~~] hunter's log printed from the department's Web site at fw.ky.gov[~~section in the current hunting and trapping guide~~];

3.[~~(c)~~] A hunter's log available from any KDSS agent; or

4.[~~(d)~~] An index card or similar card.

(2)[~~(3)~~] A person shall retain and possess the completed hunter's log while hunting or trapping during the current season.

Section 14.[~~10.~~] Checking a River Otter or Bobcat. (1) A person who harvests[~~takes~~] a river otter or bobcat shall check each animal by:

(a) Completing[~~Check each animal by calling~~] 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 [~~toll free number listed in the current hunting and trapping guide~~] on the day the river otter or bobcat is recovered[~~harvested~~];

2. Prior to processing the carcass[~~(b) Provide the information requested by the automated check-in system~~]; and

3. Prior to transporting the raw fur, pelt, or unskinned carcass out of Kentucky; and

(b) Writing[~~(c) Write~~] the check-in confirmation number[~~provided by the automated check-in system~~] on the hunter's log as established in Section 13[9] of this administrative regulation.

(2) A person who intends to sell the raw fur of a river otter or bobcat to a licensed fur processor, fur buyer, or taxidermist or wishing to export a river otter or bobcat pelt outside the United States shall:

(a) Contact the department and request a Convention on International Trade of Endangered Species of Flora and Fauna (CITES) tag by providing:

1. A valid check-in confirmation number as established in subsection (1) of this section; and

2. A street address where the tag is to be mailed; or

(b) Complete[~~Access the department's Web site at www.fw.ky.gov and complete and submit~~] the CITES tag request form on[~~to~~] the department's Web site at fw.ky.gov[~~department~~].

(3) A person who is transferring[~~intends to transfer to another person~~] a river otter or bobcat that does not have an attached CITES tag shall attach to the carcass a handmade tag that contains the[~~following~~]:

(a)[~~The~~] Confirmation number;

(b)[~~The~~] Hunter or trapper's name; and

(c)[~~The~~] Hunter or trapper's phone number.

(4) A person shall not knowingly provide false information when[~~while~~]:

(a) Completing the hunter's log;

(b) Checking a river otter or bobcat;[~~or~~]

(c) Completing a CITES tag request form; or

(d) Creating a handmade carcass tag.

(5) A CITES tag shall be attached to the raw fur, pelt, or unskinned carcass upon receipt of the tag from the department per the instructions provided by the department and remain attached[~~with the pelt~~] until it is processed or exported outside the United States.

(6) Possession of an unused CITES tag[~~that is~~] issued by the department shall be prohibited.

Section 15.[~~11.~~] Transporting and Processing a River Otter or Bobcat. (1) A person shall not sell the raw fur of a river otter or bobcat except to a licensed:

(a) Fur buyer;

(b) Fur processor; or

(c) Taxidermist.

(2) A taxidermist, fur buyer, or fur processor shall:

(a) Not accept a river otter or bobcat carcass or any part thereof[~~of a river otter or bobcat~~] without a proper carcass tag or CITES tag established in Section 14[~~10~~] of this administrative regulation; and

(b) Retain[~~Keep~~] the[~~following~~] information established in subparagraph 1. through 4. of this paragraph from a hunter or trapper:

1. Name;

2. Address;

3. Confirmation number or CITES tag number; and

4. Date received for each river otter or bobcat.

Section 16.[~~12.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Wildlife Identification Number for Trap Tags – Application", April 2014 edition; and

(b) "CITES Tag Request" form, 2014 edition[~~, is incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern time.

KAREN WALDROP, Deputy Commissioner
For GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: November 8, 2014

FILED WITH LRC: November 12, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 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 through December 31, 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 4060, 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 regulation establishes season bag limits, legal methods of take, and checking and recording requirements for furbearer hunting and trapping.

(b) The necessity of this administrative regulation: This regulation is necessary to provide adequate furbearer hunting and trapping opportunities and to properly manage furbearer populations in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS. 150.175(7)(9) authorizes the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to promulgate administrative regulations to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate traps tags, trap visitation, and trap placement to protect domestic animals.

(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 the seasons, bag limits, and methods used to trap and hunt furbearers 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 eliminates an existing ten (10) foot spacing requirement between traps set on dry land, amends the definition for "water sets," eliminates hunter orange clothing requirements for trappers, requires CITES tags to be attached to furbearers upon receipt from the department and requires that river otters and bobcats must be telechecked before leaving Kentucky. 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 manage hunter and trapper opportunity without negatively impacting the furbearer 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 those who hunt or trap furbearers may be affected by this regulatory amendment. The Department sold 3,390 trapping licenses during the 2013-14 license year. Those individuals who hunt furbearers would also be affected, but that number is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A person trapping on private land may now set traps on dry land without a minimum spacing requirement between traps. Trappers setting traps as "water sets" will need to comply with the definition of a "water set". A person trapping furbearers will no longer be required to wear hunter orange when trapping during a modern firearm season for bear, deer, or elk. Trappers and hunters must comply with new checking requirements for river otters and bobcats.

(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 and trappers 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): New trap restrictions will increase trapping efficiency and success. Elimination of the hunter orange clothing requirement for fur trappers will make trap lines less visible to the public and therefore lessen potential for theft of traps. New checking requirements for river otters and bobcats will assist in keeping fur trappers in compliance with federal restrictions that govern the sale of fur. Trappers will also benefit from the new definition of "water set", which is more inclusive of common water trapping methods.

(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 were established directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not applied because all furbearer hunters and trappers in Kentucky must 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's Wildlife Division and Law Enforcement Division 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), 150.175, 150.360, 150.400, and 150.410.

(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 additional revenue is expected to be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for subsequent years? No additional revenue is expected to be generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? Administrative costs for the first year are expected to remain the same.

(d) How much will it cost to administer this program for subsequent years? Administrative costs for subsequent years are expected to remain the same.

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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(Amendment)

910 KAR 3:030. Traumatic brain injury trust fund operations program.

RELATES TO: KRS Chapter 13B, 42.320(2)(d), 45A.075, 45A.080, 189A.050(3)(d)1, 205.900(3), 211.470-211.478,

STATUTORY AUTHORITY: KRS 211.474(1), EO 2009-541

NECESSITY, FUNCTION, AND CONFORMITY: EO 2009-541 transferred the functions and funds of KRS 189A.050(3)(d)1 to the Department for Aging and Independent Living. KRS 211.474(1) requires the Traumatic Brain Injury Trust Fund Board of Directors to promulgate administrative regulations necessary to carry out the provisions of KRS 211.470 through 211.478. This administrative regulation establishes the Traumatic Brain Injury Trust Fund Operations Program.

Section 1. Definitions. (1) "Applicant" means a person:

(a) Who applies for the program, including a legally responsible individual[~~legal representative~~] on behalf of an applicant;

(b) Who participates in the development of, and agrees to, a service plan for the use of the program; and

(c) For whom a completed service plan is submitted to the program.

(2) "Benefit" means financial assistance provided to a recipient to cover the cost of services approved by the service plan review committee.

(3) "Benefit management program" or "program" means the entity recommended by the board that provides case management services and facilitates distribution of trust fund monies.

(4) "Board" is defined by[~~in~~] KRS 211.470(1).

(5) "Cabinet" is defined by KRS 211.470(2).

(6) "Case management" means a process, coordinated by a case manager, for linking a recipient to appropriate, comprehensive, and timely home or community based services as identified in the service plan by:

(a) Planning;

(b) Referring;

(c) Monitoring; and

(d) Advocating[~~managing a recipient's case for traumatic brain injury services including:~~

~~(a) Assisting and developing a service plan for the recipient;~~

~~(b) Knowledge of resources for a recipient;~~

~~(c) Assisting with accessing local resources for a recipient;~~

~~(d) Education of an applicant, recipient, or family member regarding the program and available resources; and~~

~~(e) Monitoring of the services received by a recipient as part of an approved service plan~~].

(7) "Case manager" means the individual employee responsible for:

(a) Coordinating services and supports from all agencies involved in providing services required by the service plan;

(b) Ensuring all service providers have a working knowledge of the service plan; and

(c) Ensuring services are delivered as required[~~a person who provides case management services to applicants and recipients~~].

(8) "Community residential services" means retraining and rehabilitation of a recipient in a nonemergency situation in a community setting.

(9) "Companion services" means nonmedical supervision and socialization services for the purpose of:

(a) Preventing the need for institutionalization; and

(b) Assisting a recipient in maintaining community placement based upon an approved service plan.

(10) "Conflict free" is defined by 907 KAR 12:010, Section 1(15).

(11) "Department" means the Department for Aging and Independent Living (DAIL).

(12) "Educational or experiential equivalent" means:

(a) Two (2) semesters totaling at least twenty-four (24) hours of course work; and

(b) At least 400 documented hours of experience assisting brain injured or other disabled individuals through:

1. Practicum placement;

2. Clinicals; or

3. Volunteerism.

(13)[~~(11)~~] "Environmental modification" means a physical adaptation to a recipient's home:

(a) For the purpose of helping a recipient function with greater independence in the recipient's own home; or

(b) Which is necessary to accommodate medical equipment and supplies required for the recipient's welfare.

(14)[~~(12)~~] "Fund" or "trust fund" is defined by KRS 211.470(4).

(15)[~~(13)~~] "Good cause" means a circumstance beyond the control of a recipient that affects the recipient's ability to access an approved benefit, including:

(a) Illness or hospitalization of the individual that is expected to last thirty (30) days;

(b) Death or incapacitation of the primary caregiver; or

(c) Unavailability of a service provider that is expected to last thirty (30) days.

(16) "Immediate family" is defined by KRS 205.8451(3).

(17)[~~(14)~~] "Integrated environment" means other individuals in a nonresidential setting integrated with those individuals who have a brain injury and in which both are being served to improve community living skills.

(18) "KYTBI data system" means the internet based data system used to monitor, track, and maintain recipient information, annual and lifetime allocations, and case work performed on behalf of a recipient.

(19) "Legally responsible individual" means an individual who has a duty under state law to care for another person and includes:

(a) A biological, adoptive, or foster parent of a minor child who provides care to the child;

(b) The legal guardian who is responsible for the care of the recipient; or

(c) A spouse of a recipient.

(20)[~~(15)~~] "Medical records" means records signed by a physician documenting an applicant's or recipient's traumatic brain injury including:

(a) Hospital records; or

(b) Diagnostic imaging reports as related to KRS 211.470(3).

(21) "Natural supports" means a non-paid person, or community resource who can provide, or has historically provided assistance to the consumer or, due to the familial relationship, would be expected to provide assistance when capable.

(22)[~~(16)~~] "Noncrisis behavior programming" means an individually-designated nonemergency service plan intended to increase a recipient's adaptive social behavior that is provided by a behavioral therapist or clinical psychologist.

(23)[~~(17)~~] "Occupational therapist" is defined by KRS 319A.010(3).

(24)[~~(18)~~] "Occupational therapy" means the therapeutic use of self-care, work, and leisure activities to enhance independent functioning or skill development.

(25)[~~(19)~~] "Personal care assistance services" is defined by

KRS 205.900(3).

(26) "Physical therapist" is defined by KRS 327.010(2).

(27) "Physical therapy" is defined by KRS 327.010(1).

(28)[~~(20)~~] "Prevocational service" means a service designed to develop a prerequisite skill necessary to prepare a recipient for paid or unpaid employment provided beyond other external program resources and provided by an occupational therapist or rehabilitation counselor.

(29)[~~(21)~~] "Psychological and mental health services" means services provided by a mental health professional licensed by the state which are:

(a) Designed to help a recipient to resolve personal issues or interpersonal problems resulting from a traumatic brain injury; or

(b) Provided to a recipient's direct caregiver to preserve the stability of a recipient's community living situation, as part of an approved service plan.

(30)[~~(22)~~] "Recipient" means an eligible applicant who receives a benefit as defined by Section 1(2) of this administrative regulation[~~or legal representative on behalf of the recipient with an approved service plan who receives a benefit~~].

(31)[~~(23)~~] "Respite care" means a skilled or unskilled service provided to a recipient on a short-term basis if there is an absence or need for relief of a recipient's caregiver.

(32)[~~(24)~~] "Service plan" means a document that itemizes the goals, services, equipment, or items which are subject to review by the service plan review committee.

(33)[~~(25)~~] "Service plan review committee" means a committee composed of persons with traumatic brain injuries or their family members and professionals in the field of brain injury as outlined in Section 4(5)(b).

(34)[~~(26)~~] "Specialized medical equipment and supplies" means items which are of direct medical or therapeutic[~~remedial~~] benefit to a recipient and assist the recipient to maintain community placement.

(35)[~~(27)~~] "Speech-language pathologist" is defined by KRS 334A.020(3).

(36)[~~(28)~~] "Speech and language therapy" means an intervention designed to maximize a recipient's language, pragmatic, articulation, swallowing, and cognitive skills.

(37)[~~(29)~~] "Structured day program services" means a service:

(a) Provided by a certified or licensed entity; and

(b) Performed in a nonresidential setting which is designed to develop and improve a recipient's skills through activities and skill trainings in areas of:

1. Personal well being;

2. Social and community living; and

3. Independent living management.

(38)[~~(30)~~] "Supported employment services" means supervision and training of a recipient in a work site at which persons without disabilities are employed and for a recipient who:

(a) Is unlikely to obtain competitive employment at or above minimum wage; or

(b) Needs ongoing support to perform competitive employment.

(39)[~~(31)~~] "Traumatic brain injury" is defined in KRS 211.470(3).

(40)[~~(32) "Unit" means a billed service calculated in fifteen (15) minute increments.~~ ~~(33)~~] "Wrap-around service" means a service, equipment, or item, not excluded by KRS 211.474(2)(e), which will enhance a recipient's ability to live in the community, consistent with the recipient's overall service plan.

Section 2. Board Operating Procedures. (1)(a) A board member shall adhere to the bylaws of the board and the confidentiality requirements as specified in KRS 211.474(3).

(b) If a member fails to act in accordance with the bylaws, the chair of the board shall recommend to the governor the dismissal of that member.

(2) A board member shall not:

(a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:

1. Personal;

2. Professional; or

3. Financial; or

(b) Directly assist another individual, regardless of where the person resides, to apply for benefits from the fund, except a board member:

1. May refer another individual but not directly assist another individual to apply for benefits from the fund; and

2. Shall not refer himself or an eligible family member or receive benefits from the fund at the same time as being a member of the board.

(3) The board shall review a quarterly report of the program's activities in accordance with Section 4(8) of this administrative regulation.

(4) The board shall direct the department to:

(a) Issue a request for proposal for the benefit management program in accordance with KRS 45A.080; or

(b) Operate the program within the department.

Section 3. Department Duties. (1) The department may issue a request for proposal:

(a) If directed by the board; and

(b) In accordance with KRS 45A.080.

(2) The department may rescind all or part of an awarded benefit if the recipient does not utilize all or part of the benefit within a twelve (12) month plan period[~~shall:~~

~~(a) Review each proposal properly submitted in accordance with the request for proposal issued;~~

~~(b) Determine an entity to operate the program under contract based upon:~~

~~1. The boards' recommendation; and~~

~~2. Consideration of the:~~

~~a. Experience of the entity in the provision of services to individuals with traumatic brain injury;~~

~~b. Priority of services to individuals with traumatic brain injury within the entity's overall operation;~~

~~c. Expertise of the entity's staff in the provision of services to individuals with traumatic brain injury;~~

~~d. Experience in the provision of the entity's case management services;~~

~~e. Capacity of the entity to provide case management services to individuals with traumatic brain injury statewide;~~

~~f. Experience in and the capacity of the entity to develop community resources for individuals with traumatic brain injury statewide;~~

~~g. Capacity of the entity to distribute benefits from the fund to recipients;~~

~~h. Capacity of the entity to manage applicant, recipient, benefit, and program evaluation data;~~

~~i. Fiscal policies and practices and the financial stability of the entity;~~

~~j. Accessibility of the entity to individuals with traumatic brain injury throughout the state;~~

~~k. Entity's proposed cost to operate the program; and~~

~~l. Entity's proposed procedures for evaluating the program; and~~

~~(c) Contract with a qualified entity:~~

~~1. At the direction of the board; and~~

~~2. Contingent on the availability of funds~~].

Section 4. Duties of the Program. The program shall:

(1) Establish a toll free telephone number for the purpose of enabling individuals with a traumatic brain injury to apply for benefits from the fund;

(2) Engage in public information activities for the purpose of informing individuals with a traumatic brain injury about the availability of case management services and benefits from the fund and other sources;

(3) Review an applicant's documentation of the applicant's diagnosed brain injury and Kentucky residency to determine eligibility as specified in Section 5 of this administrative regulation;

(4) Assign a case manager within two (2) business days of the determination;

(5) Establish a service plan review committee:

(a) For the purpose of reviewing proposed service plans for approval or denial;

(b) Which shall:

1. Include a minimum of one (1) person with a traumatic brain injury or the guardian or advocate of a person with a traumatic brain injury;

2. Include a minimum of one (1) professional with expertise in the field of traumatic brain injury; and

3. Not have two (2) individuals from the same agency or family serve consecutive terms; and

(c) In which a member shall be limited to serve twelve (12) consecutive months but may be reappointed to the service plan review committee twelve (12) months after the date of the expiration of the member's most recent term of service on the committee;

(6) Accept a request for benefits from the fund;

(7) Distribute benefits to a recipient based upon an approved service plan;

(8) Submit a list of approved or denied service plans in a quarterly report to the department; and

(9) Provide conflict free case management services:

(a) To applicants and recipients statewide, including the provision of assistance in accessing a needed support or service, regardless of funding source; and

(b) By a case manager who:

1. Possesses a bachelor's degree in a health or human services profession from an accredited college or university with:

a. One (1) year experience in health or human services; or

b. The educational or experiential equivalent in the field of brain injury or physical disabilities;

2. Is a currently licensed RN as defined by KRS 314.011(5) who has at least two (2) years of experience as a professional nurse in the field of brain injury or physical disabilities;

3. Is a currently licensed LPN as defined by KRS 314.011(9) who has:

a. At least three (3) years of experience in the field of brain injury or physical disabilities; and

b. An RN to consult and collaborate with regarding changes to the service plan; or

4. Has a master's degree from an accredited college or university;

(10) Be certified by the DAIL beginning July 1, 2015; and

(11) Be supervised by a case management supervisor who shall have four (4) years or more experience as a case manager[~~the following individuals licensed in Kentucky with two (2) or more years experience working in the brain injury field:~~

~~1. A registered nurse;~~

~~2. A practical nurse; or~~

~~3. An individual who has a bachelor's or higher degree in the human services field and who meets applicable requirements of the individual's particular field including a degree in:~~

~~a. Psychology;~~

~~b. Sociology;~~

~~c. Social work; or~~

~~d. Rehabilitation counseling; and~~

~~4. That requires the individuals specified in subparagraphs 1 through 3 of this paragraph to have six (6) additional hours of continuing education within the field of traumatic brain injury annually~~].

Section 5. Eligibility. (1) An applicant shall be eligible for a benefit from the fund:

(a) In accordance with:

1. KRS 211.470(3); and

2. KRS 211.472(2)(a) and (c); and

(b) If the applicant is a legal resident of Kentucky.

(2) A resident of an institution or hospital shall not be eligible for benefits from the fund:

(a) Unless the resident is anticipated to be within two (2) weeks of discharge and the benefits facilitate a discharge to the community; and

(b) If funding is available.

(3) An applicant shall provide medical records of the applicant's traumatic brain injury to the program.

(4) An applicant shall document that the applicant has no other public or private payor source, other than the trust fund, which covers the type of service the applicant is requesting.

Section 6. Procedures for Obtaining a Benefit From the Fund. (1)(a) A benefit for assistance from the fund shall be directly related to an applicant's brain injury or care of the applicant.

(b) A referral for benefits may be made by, or on behalf of, an eligible person by contacting the program in the following manner:

1. Telephone;

2. In person;

3. In writing;

4. Facsimile;[~~or~~]

5. Email; or

6. Online.

(2) Upon receipt of referral, the program shall notify the applicant[~~recipient~~] or referral source of the documentation needed to determine eligibility as specified in Section 5 of this administrative regulation.

Section 7. Benefits Available from the Fund. (1) An applicant may apply for one (1) or more benefits from the fund as follows:

(a) Noncrisis behavior programming;

(b) Case management;

(c) Community residential services, which shall include at least the following:

1. Dressing;

2. Oral hygiene;

3. Hair care;

4. Grooming;

5. Bathing;

6. Housekeeping;

7. Laundry;

8. Meal preparation;

9. Shopping;

10. Room and board; and[~~or~~]

11. Twenty-four (24) hour supervision of a recipient;

(d) Companion services;

(e) Environmental modification to the recipient's residence if:

1.a. The recipient is listed on the deed and a copy is provided to the case manager;

b. The recipient is a minor residing in a home owned by his parent; or

c. The recipient is an adult residing in a home owned by his legal guardian and provides:

(i) Written documentation, by the owner, approving the modification;

(ii) A copy of the legal documents verifying parental status or guardianship;

(iii) A copy of the deed documenting the owner who has provided the written approval for modification; and

(iv) Written documentation that the dwelling is safe and free of structural defect; and

2. The recipient or owner provides:

a. At least two (2) estimates of cost and scope of modification;

b. A copy of the chosen contractor's license and liability insurance policy or a signed release of liability that no contractor is available within thirty (30) miles of the recipient's residence; and

c. Documentation from a health care professional that the requested modification is necessary;

(f) Occupational therapy provided by an occupational therapist;

(g) Physical therapy provided by a physical therapist;

(h) Prevocational service, which shall include at least the following:

1. Assisting a recipient to understand the meaning, value, and demands of work;

2. Assisting a recipient to learn or reestablish skills, attitudes, and behaviors necessary for employment; or

3. Assisting the individual to improve functional capacities;

(i)[~~(h)~~] Psychological and mental health services, which may include[~~shall include at least~~] the following:

1. Training to improve interpersonal skills;

2. Social skills;

3. Problem-solving skills;

4. Training to remediate a cognitive problem resulting from the traumatic brain injury;

5. Treatment for a substance abuse problem related to the

traumatic brain injury;
6. Psychological assessment; and
7. Neuropsychological evaluation;
(j)[~~(i)~~] Respite care in:
1. The recipient's own home;
2. Another personal residence; or
3. Another setting, if approved by the program;
(k)[~~(j)~~] Specialized medical equipment and supplies with written documentation of need from a:
1. Physician;
2. Licensed health care provider; or
3. Licensed therapist;
(l)[~~(k)~~] Speech and language therapy provided by a speech-language pathologist which may[~~shall~~] include[~~at least~~] the following:
1. Articulation therapy;
2. The design of and instruction in the use of augmentative communication strategies or devices;[~~or~~]
3. Cognitive retraining strategies; or
4. Swallowing therapy;
(m)[~~(l)~~] Structured day program services, which shall include at least the following:
1. Direct supervision of the recipient;
2. Specific training to allow a recipient to improve functioning and to reintegrate into the community;
3. Social skills training;
4. Sensory skill development;
5. Motor skill development;
6. Teaching of concepts and skills necessary for the increased independence of the recipient; and
7. Other services to increase:
a. Adaptive behavioral responses; and
b. Community reintegration;
(n)[~~(m)~~] Supported employment services;
[~~(n) Personal care assistance services; or~~]
(o) Wrap-around services, which may[~~shall~~] include[~~at least~~] the following:
1. Assistance in transporting a recipient, such as to and from[~~a~~]:
a. A medical appointment;
b. A therapy appointment;[~~or~~]
c. A counseling appointment; or
d. Other destinations in the community as specified in the recipient's service plan;
2. Dental services by a licensed professional;
3. Vision services by an optometrist, ophthalmologist, or optician;
4.[~~Other destinations in the community as specified in the recipient's service plan;~~
~~5. Vehicle~~] Modification to the recipient's vehicle for accessibility if the:
a. Recipient is listed on the vehicle title and a copy is provided to the case manager; or
b. Owner provides written documentation:
(i) Approving the vehicle modification;
(ii) That the vehicle is for the use of the recipient;
(iii) That the vehicle is safe and mechanically sound; and
(iv) That the vehicle is insured[~~6. A one (1) time expenditure of funds for the payment of the recipient's health insurance expenses, for a period not to exceed three (3) months~~].
(2) Program[~~Wrap-around~~] funds shall not be expended to pay for[~~for payment of~~]:
(a) Attorney fees;
(b) Court costs or fines assessed as a result of a conviction for a criminal offense;
(c) The cost of incarceration;[~~or~~]
(d) Other court ordered monetary judgments;
(e) Insurance premiums, copays, or deductibles;
(f) The purchase or leasing of vehicles;
(g) The purchase or renting of homes;
(h) Home owner association fees;
(i) Vacations;
(j) Recreational activities;
(k) Food, including groceries or eating out;
(l) Utilities;
(m) Immediate family; or
(n) Natural supports.

Section 8. Case Management Services. (1) Following the program's determination of eligibility, the assigned case manager shall contact a recipient no later than three (3) business days and complete the following responsibilities:
(a) Conduct an independent assessment;
(b) Identify the recipient's needs for service and supports;
(c)[~~(b)~~] Identify potential resources to meet the applicant's need for services and supports;
(d)[~~(c)~~] Assist the applicant in obtaining needed services and supports regardless of funding source;
(e)[~~(d)~~] Determine that the fund is the payor of last resort;
(f)[~~(e)~~] Coordinate, arrange, and document identified service needs of the recipient;
(g)[~~(f)~~] Develop an individualized service plan that shall:
1. Relate to[~~an~~] assessed needs[~~problem~~];
2.[~~Identify goals to address the assessed problem;~~
~~3. Identify a scope, duration, and unit of service required to address goals;~~
~~4.~~] Identify a source of service utilized in this administrative regulation; and
3.[~~5. Include a plan for reassessment of the identified problem; and~~
~~6.~~] Be signed by the recipient or recipient's representative and case manager, with a copy provided to the recipient;
(h)[~~(g)~~] Assist in the identification of local resources for individuals with traumatic brain injury;
(i)[~~(h)~~] Document all face-to-face contacts with the recipient in the KYTBI data system[~~recipient's case record~~] including time in and out[~~and mileage~~], if applicable;
(j) Maintain caseload as assigned[~~(i) Monitor a recipient's active caseload~~]:
1. Upon available funding, at a minimum one (1):
a. Face-to-face contact at least every other month;
b. Face-to-face at place of residence at least annually; and
c. Phone contact during any month a face-to-face contact does not occur; and
2. Document in the KYTBI data system[~~case record~~] each contact made with the recipient including the face-to-face visit's time in and out and mileage, if applicable; and
(k)[~~(j)~~] Complete a proposed service plan which shall specify:
1. The name, address, and telephone number of the applicant;
2. The TBI Trust Fund identification number[~~Social Security number of the applicant~~];
3. A clinical summary[~~Medical documentation~~] of the recipient's traumatic brain injury;
4. An explanation[~~The applicant's own identification~~] of needed services and supports;
5. The requested benefit from the fund;
6. Documentation of the recipient's lack of a payor source for the requested service including:
a. An explanation of circumstances leading to the need to request funding; and
b. Attempts to find other funding such as:
(i) An agency denial or documentation of a noncovered service by insurance or other entity;
(ii) Department for Medicaid Services denial; or
(iii) Denial from other community programs[~~Community action programs denial~~];
7.[~~The relationship of receipt of the benefit to the applicant's ability to live in the community, consistent with the recipient's overall service goals;~~
~~8. Establishment of long term planning goals of how the applicant shall maintain stability after the benefit has been received;~~
~~9.~~] The signature of the applicant, or the applicant's legal representative[~~conservator or guardian~~], indicating agreement with the terms of the service plan; and
8.[~~10.~~] The mechanism for distribution of benefits from the fund.

(2) The case manager shall submit the proposed service plan in the KYTBI data system upon completion of all supporting documents[~~to the service plan review committee for approval~~].

(3) The program designee shall verify completion of the service plan and place the case on the service plan review list in chronological order of receipt.

Section 9. Service Plan Review Committee Duties. (1) The service plan review committee shall:

(a) Verify the trust fund is payor of last resort of the submitted service plan specified in Section 8(1)(h)[~~(g)~~] of this administrative regulation, based upon supplemental documents outlined in Section 5(3) and (4) of this administrative regulation;

(b) Verify eligibility of an applicant or recipient's service plan in accordance with Section 5 of this administrative regulation;

(c) Consider a service plan in the chronological[~~documented~~] order in which the completed service plan[~~it~~] is received;

(d) Review the service plan to determine if[~~:~~

~~1. The applicant is eligible for benefits from the fund in accordance with KRS 211.470(3) and 211.474(2) and with Section 5 of this administrative regulation;~~

~~2.~~] the benefit requested from the fund meets the requirements of KRS 211.474(2)(d); [~~and~~

~~3. The requested services are coordinated by a case manager;~~]

(e) Approve or deny an applicant or recipient's service plan;

(f) Approve[~~the rates of~~] reimbursement for the delivery of services according to a recipient's approved service plan; and

(g) Notify the program of an approved or denied service plan.

(2) The service plan review committee may:

(a) Approve the proposed service plan, for a period not to exceed twelve (12) months;

(b) Amend the proposed service plan; or

(c) Deny the proposed service plan and may provide[~~Make~~] recommendations to the applicant and the applicant's assigned case manager about other available resources or means to meet the applicant's need for services and supports.

(3) If the applicant disagrees with the decision made[~~an amendment~~] by the service plan review committee, the applicant may appeal the decision in accordance with Section 15 of this administrative regulation.

(4) The service plan review committee shall not approve the distribution of a benefit to a recipient in excess of $15,000 within any twelve (12) month period and $60,000 per lifetime pursuant to KRS 211.474(2)(c).

(5) The service plan review committee shall not approve the distribution of benefits to an applicant:

(a) Who does not meet the eligibility requirements established in Section 5 of this administrative regulation;

(b) If the requested benefits are intended for a purpose other than the direct health, safety, and welfare of the applicant;

(c) If the applicant fails to demonstrate a good faith effort that no other payor source is available to obtain the requested benefit;

(d) If other resources are available to the applicant to substantially meet a reasonable need for which the benefit is requested, including trusts, settlements, or restitution; or

(e) If the benefit requested is for the purpose of reimbursing the recipient for expenses incurred prior to approval of a service plan by the service plan review committee.

(6) A service plan shall be signed by the director of the program or the director's designee, and the applicant or the applicant's legally responsible individual[~~conservator or guardian~~].

Section 10. Approved Service Plan. (1) A recipient shall receive notification[~~a copy~~] of an approved benefit based upon the following types of services:

(a) Individual;

(b) Purchased goods; or

(c) Contractors[~~service plan from the case manager~~].

(2) A recipient with an approved service plan may change a service provider within an approved service category if there is no increased cost of the service.

(3) A recipient may make a permitted change by informing the case manager by:

(a) Telephone;

(b) Email;

(c) Facsimile; or

(d) In writing.

(4) The case manager may approve a service provider change in a service plan made without review by the service plan review committee.

(5) Involuntary termination and loss of approved benefits shall be initiated if an individual fails to access the approved benefits as outlined in the service plan within thirty (30) calendar[~~(30)~~] days of notification of approval of the service plan without good cause shown.

(a) The recipient or his designee[~~legal representative~~] shall have the burden of providing documentation of good cause as to the reason services cannot be accessed within ninety (90)[~~the thirty~~] calendar[~~(30)~~] days, including:

1. A statement signed by the recipient or legal representative;

2. A copy of letters to providers;

3. A copy of letters from providers; and

4. A copy of documentation from physicians or other health care professionals.

(b) Upon receipt of documentation of good cause, the program shall grant one (1) sixty (60) day extension in writing.

Section 11. Service Provider Requirements[~~Duties~~]. (1) A service provider may be:

(a) An employee of the recipient who shall provide:

1. A completed I-9;

2. A completed W-9;

3. A signed service agreement;

4. A criminal background check as required by law;

5. Verification of abuse, neglect, and fraud training; and

6. Completed timesheets submitted bi-weekly;

(b) A licensed or certified agency that shall provide a:

1. Copy of the agency's license or certification;

2. Signed service agreement; and

3. Completed W-9; or

(c) A licensed and insured contractor who shall provide:

1. A copy of the business license;

2. A copy of the liability insurance;

3. A completed W-9;

4. A signed service agreement;

5. Pictures before work begins; and

6. Pictures of the completed work.

(2) Upon notification of an approved service plan, the service provider shall:

(a) Accept the reimbursement[~~rate~~] approved in Section 9(1)(f) of this administrative regulation as payment in full;

(b) Not require additional payment from a recipient;[~~and~~]

(c) Submit an invoice for payment to the program entity within forty-five (45)[~~ninety (90)~~] days from date of service; and

(d) Not attempt to recoup from the service plan review committee beyond an approved reimbursement without prior written agreement by the recipient or legal representative.

(3)[~~(2)~~] A request for payment submitted after forty-five (45)[~~ninety (90)~~] days of the date of service delivery shall not be:

(a) Reimbursed by the Benefit Management Program; or

(b) Billed to the board or recipient.

Section 12. Procedures for Distribution of Benefits from the Fund. (1) The program shall distribute the fund to a service provider, contractor, or retailer for services rendered.

(2) The payment terms[~~mechanism~~] shall be specified in the service agreement[~~plan~~].

(3) The service provider or recipient shall provide to the program[~~, on a monthly basis,~~] documentation of the delivery of a service or benefit to a recipient according to the terms of the service agreement.

(4) A service shall be reimbursed or paid if it is delivered in accordance with a recipient's approved service agreement[~~plan~~].

(5) An expenditure not included in an approved service agreement[~~plan~~] shall not be paid by the provider, board, or cabinet.

(6) The cost of providing case management services to an applicant or recipient shall be exempt from the benefit limits established in Section 9(4) of this administrative regulation.

Section 13. Procedures for Placement on a Waiting List. (1) The program may establish a waiting list for benefits from the fund if it determines that no further funding is available[~~during the fiscal year~~].

(2) The waiting list shall be implemented as follows:

(a) An applicant or recipient shall be placed on the waiting list upon receipt, completion, and verification of a service plan by a program designee[~~of a referral for assistance from the fund~~].

(b) The order of placement on the waiting list shall be determined chronologically by date and time of verification[~~the referral for assistance from the fund~~].

(c) A recipient shall be notified by his case manager of verification of placement on the waiting list[~~written notification of the date and placement on the waiting list shall be mailed to the individual or his legal representative~~].

(3) The applicant shall be removed from the waiting list if:

(a)[~~After a documented attempt, the program is unable to locate the applicant or his legal representative as specified in Section 14(1)(f) of this administrative regulation;~~

~~(b)~~] The applicant secures requested benefit through another resource;

(b)[~~(c)~~] The applicant refuses a benefit in an approved service plan, unless the individual has made a permitted change in accordance with Section 10(2) through (4) of this administrative regulation; or

(c)[~~(d)~~] The applicant is deceased[~~; or~~

~~(e) The applicant is discharged from the program in accordance with Section 15 of this administrative regulation~~].

(4) The removal from the waiting list shall not prevent the submission of a new application at a later date for the applicant.

(5) If the applicant is removed from the waiting list, the program shall notify the applicant, or his legal representative in writing within ten (10) business days from the removal.

Section 14. Discharge Criteria. (1) A recipient shall be discharged from the Brain Injury Trust Fund Program if:

(a) The recipient reaches the maximum $60,000 lifetime benefit, except if the board waives the expenditure in accordance with KRS 211.474(2)(c);

(b)[~~A service plan is completed for an approved timeframe and if no other program is needed;~~

~~(c) A requested service plan is denied;~~

~~(d)~~] The recipient is noncompliant with program requirements[~~a plan of care~~];

(c)[~~(e)~~] The recipient chooses to be terminated from participation in the program;

(d)[~~(f) Contact cannot be made with the recipient by the program within three (3) months of last case management contact;~~

~~(g)~~] The recipient, caregiver, family, or guardian threatens or intimidates a case manager or other program staff;

(e)[~~(h)~~] Services accessed are referred and provided by another agency for continued service, if applicable;

(f) The recipient or service provider has had a substantiation of fraud related to the program;

(g) The recipient is no longer eligible pursuant to KRS 211.470(3)(a) through (f); or

(h)[~~(i) No case management services are provided within six (6) months; or~~

~~(j)~~] The recipient is deceased.

(2) A recipient may be discharged from the Brain Injury Trust Fund Program if:

(a) A service plan is completed for an approved timeframe and no other service is needed;

(b) A requested service plan is denied;

(c) Contact cannot be made with the recipient by the program within three (3) months of last case management contact; or

(d) No case management services have been provided within a six (6) month period.

(3) Recipients may reapply to the program without submittal of medical records except in accordance with subsection (1)(a) of this section.

(4)[~~(3)~~] All discharges shall be appealable in accordance with Section 15, except in accordance with subsection (1)(a) or (f) of this section[~~subject~~].

Section 15. Procedures for Appealing the Denial of an Application for Benefits from the Fund. (1) If an applicant is determined to be ineligible for benefits from the fund because medical records do not provide documentation of a traumatic brain injury, the applicant may submit:

(a) Medical documentation to support the diagnosis of the injury; or

(b) Additional medical opinions about the disability.

(2)(a) The program shall notify the applicant in writing if the service plan review committee does not approve a requested benefit.

(b) Notification shall be made within five (5) business days of the committee's decision.[~~(2) If an applicant is determined to be ineligible for benefits from the fund because medical records do not provide documentation of a traumatic brain injury, the applicant may submit:~~

~~(a) Medical documentation to support the diagnosis of the injury; or~~

~~(b) Additional medical opinions about the disability.~~]

(3) The program or the board shall not be liable for the cost of:

(a) A medical opinion obtained by an applicant; or

(b) An appeal.

(4) An applicant who wishes to appeal the denial of eligibility or benefits shall notify the program, in writing, within thirty (30) days of notification of the denial.

(5) Upon receipt of a written appeal, the program shall encumber funds if applicable and available in the amount requested until final resolution of the appeal.

(6) The program shall acknowledge receipt of a written appeal to the applicant, in writing, within three (3) business days of receipt.

(7) The program shall provide an opportunity for an informal dispute resolution for an applicant or his representative:

(a) To appear before the program director or designee and the benefits management program administrator[~~executive committee board~~] to present facts or concerns about the denial[~~of benefits~~]; and

(b) Within ten (10) business days of receipt of written appeal.

(8) The program shall inform an applicant, in writing, of the decision resulting from the informal dispute resolution within ten (10) business days of the review.

(9) An applicant dissatisfied with the result of the informal dispute resolution may appeal to the Division of Administrative Hearings of the Office of Communications and Administrative Review. The appeal shall be:

(a) In writing;

(b) Made within thirty calendar (30) days of receipt of the decision by the program; and

(c) Submitted to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(10) The department shall request the Division of Administrative Hearings of the Office of Communications and Administrative Review to conduct a hearing pursuant to KRS Chapter 13B.

DEBORAH S. ANDERSON, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 12, 2014

FILED WITH LRC: November 13, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 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 December 15, 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 oppor-

tunity 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 December 31, 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: Phyllis Sosa

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the operations of the Traumatic Brain Injury Trust Fund.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to administer and operate the Traumatic Brain Injury Trust Fund program to provide services to individuals affected by brain injury.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.474(1) authorizes the Traumatic Brain Injury Trust Fund Board to promulgate administrative regulations necessary to carry out the provisions of KRS 211.470-211.478. This administrative regulation establishes standards of service provision to individuals determined to be eligible for the traumatic brain injury trust fund program, establishes the trust fund board operating procedures, duties of the program, eligibility, procedures for obtaining a benefit from the trust fund, and benefits available from the trust fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide guidance to the Cabinet and Department on the provision of services and staff requirements in providing for the needs of individuals eligible for services through the trust fund.

(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 910 KAR 3:030 updates definitions, allows the trust fund board to direct the department on the operation of the program, and allows the department to process payments for benefits awarded and/or rescind all or part of an awarded benefit upon the recipient not utilizing the benefit within a twelve month plan period. The amendment also provides the qualifications for case managers, expands the referral opportunities to include online application, identifies the requirements for environmental modifications to a recipient's residence and vehicle modifications for accessibility, and provides clarification on what the trust fund cannot be utilized. This amendment adds service provider requirements and adds criteria for discharge from the trust fund program.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend the Traumatic Brain Injury Trust Fund program regulations to update the definitions and provide for more efficient operations of the program and funding.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies and establishes standards for the provision of services to individuals eligible for services through the traumatic brain injury trust fund.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide guidance to the Department staff to implement the requirements of KRS 211.470 to 211.478.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Cabinet for Health and Family Services, Department for Aging and Independent Living; the Traumatic Brain Injury Trust Fund Board; service providers, including general contractors; in-home service agencies; home health; outpatient therapy and private care providers dependent on the services needed and awarded to the 400 individuals currently being served through the trust fund; and over 20,000 potentially eligible individuals per year that are afflicted with brain injuries.

(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: DAIL will implement the eligibility criteria, service plan reviews, expenditure reviews, monitoring of services provided, discharge from the trust fund, and reporting to the trust fund board. The service providers will be required to follow the recipient's service plan, submitting invoices for service provision according to the service plan and maintaining required documentation. Recipients must comply with the approved service plan, and the Trust Fund Board will maintain oversight of the program expenditures and service provisions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will result from this amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board and DAIL will be able to verify that service provisions are conducted according to the approved service plan and ensure that the trust fund is maximizing the dollars to provide necessary services to individuals. Recipients will participate in the development of the service plan in order to meet their needs and will have a choice of service providers. Service providers will know what services they are authorized to provide for payment.

(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 to implement this amended regulation initially.

(b) On a continuing basis: There are no additional costs to implement this amended 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? The Traumatic Brain Injury Trust Fund is funded 100 percent through an account that is restricted to the Traumatic Brain Injury Trust 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 funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same 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? Department for Aging and Independent Living

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, 42.320(2)(d), 45A.075, 45A.080,189.050(3)(d)1, 205.900(3), 211.470 through 211.478.

(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 additional revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for subsequent years: This administrative regulation will not generate additional revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? For FY 2015, the program is anticipated to cost $3,749,351 and is dependent upon the revenues collected in the program's restricted account.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the program is anticipated to cost $3,749,351 and is dependent upon revenues collected in the program's restricted account.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

922 KAR 5:050. Funding requirements for domestic violence shelters.

RELATES TO: KRS 205.455(4), 209.020(2), 209.030(9), 209.160(1), (2), 209A.010-080, 45 C.F.R. 74, 92

STATUTORY AUTHORITY: KRS 194A.050(1), 209.030(1), (9), 209.160(1), (2), 209A.030(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to formulate all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.160(1) creates a trust and agency account to receive funds from the issuance of marriage licenses, and requires the cabinet to use these funds to provide protective shelter services for domestic violence victims. KRS 209.030(1) requires the cabinet to promulgate administrative regulations to effect the purposes of KRS Chapter 209 governing protective services to adults; and KRS 209A.030(1) requires the secretary to promulgate administrative regulations to effect the purposes of KRS Chapter 209A governing the protective services to victims of domestic violence. This administrative regulation establishes the requirements necessary for domestic violence shelters to receive funding.

Section 1. Definitions. (1) "Agency" means a private or public nonprofit incorporated organization, or organization in the process of obtaining nonprofit status:

(a) That has the capacity to provide domestic violence shelter and related services to a client; and

(b) With whom the cabinet or its designee contracts for services.

(2) "Annual plan and budget" means the annual application for funding submitted to the cabinet or its designee by each domestic violence shelter.

(3) "Cabinet" is defined by KRS 209.020(2) and KRS 209A.020(2)[~~means Cabinet for Health and Family Services~~].

(4)[~~"Cash" means nonstate money or funds given to the agency:~~

~~(a) For use in the domestic violence shelter program; and~~

~~(b) Not for use as a match with other grants or contracts.~~

~~(5) "Certified expenditures" mean nonstate cash expenditures incurred by an agency if expenditures are:~~

~~(a) Determined to be allowable, reasonable and necessary under federal, state, and local laws, including KRS 209.160, and 45 C.F.R. Parts 74 and 92, where applicable; and~~

~~(b) Not used to match another grant or contract.~~

~~(6)~~] "Client" means a:

(a) Domestic violence victim; and

(b) Dependent child of the domestic violence victim.

(5)[~~(7)~~] "District" is defined by KRS 205.455(4).

(6)[~~(8) "In-kind contributions" means property or services which:~~

~~(a) Directly benefit the services purchased;~~

~~(b) Are contributed by the agency or a third party without expenditure by the agency; and~~

~~(c) Are an allowable, reasonable and necessary cost in compliance with federal, state, and local law, including KRS 209.160, and 45 C.F.R. Parts 74 and 92, where applicable, if purchased by the agency.~~

~~(9) "Match" means locally generated funds or expenditures as required to obtain state funding in the form of:~~

~~(a) Certified expenditures;~~

~~(b) In-kind contributions; or~~

~~(c) Cash provided by an agency.~~

~~(10)~~] "Service provider" means the agency within each area development district, designated by the cabinet or its designee as the focal point of service delivery for domestic violence shelter and related services.

Section 2. General Funds. The cabinet or its designee shall annually allocate appropriated general funds to cabinet-approved service providers for the operation of domestic violence.

Section 3. Service Provider. (1)(a) The cabinet or its designee shall approve one (1) service provider for each area development district to receive an allocation of general funds in accordance with KRS 209.160(2).

(b) The approval shall be in effect unless rescinded following a review of the agency's performance and its annual plan and budget proposal for the upcoming year.

(2)(a) The cabinet or its designee shall select a service provider after a determination that the service provider meets the standards set forth in 922 KAR 5:040.

(b) Each selected agency shall submit a properly executed annual plan and budget proposal which shall indicate each agency's capacity to provide domestic violence shelter and other related services for a client.

(c) The application for funding shall:

1. Specify the type and kind of services the provider proposes to perform, either as a provider or under subcontract;

2. Detail fiscal considerations;

3. Assure that the agency and subcontractors shall comply with applicable federal and state laws, including KRS Chapters 209, 209A, and 45 C.F.R. Parts 74 and 92, where applicable; and

4. Include a commitment to provide outreach services in counties of the area development district in which it is located.

(3)(a)[~~Each service provider shall provide funds at the rate of twenty-five (25) percent local match to seventy-five (75) percent state general fund dollars.~~

~~(b) Of the required local match, five (5) percent shall be cash and the remainder may be provided in a combination of cash, certified expenditures, or in-kind contributions.~~

~~(c) Certified expenditures may be:~~

~~1. Incurred by the service provider; or~~

~~2. Certified on behalf of the service provider by a third party.~~

~~(d) A match shall not be provided by a state funded domestic violence program to or on behalf of another domestic violence contractor.~~

~~(e) A service provider may be subject to disallowances and reimbursement to the cabinet if the required local match is not documented by the provider.~~

~~(4)(a)~~] The cabinet or its designee shall allocate general funds to the service provider in each area development district.

(b) The service provider:

1. Shall be limited to providing services to the area development district where the service provider is located; and

2. May provide services to a client of another area development district if:

a. Shelter space or services are available for an additional client of another area development district; or

b. An emergency situation, such as a temporary closure of another area development district's domestic violence shelter, exists.

Section 4. Trust and Agency Funds. (1) The cabinet or its designee shall:

(a) Designate an agency as a service provider to receive trust and agency funds from the account created in KRS 209.160(1);

(b) Allocate trust and agency funds among each designated service provider at the amount approved by the cabinet or its designee for each designated service provider in accordance with the provider's approved plan and budget; and

(c) Require unencumbered funds to be returned to the cabinet if there is a change in the designated service provider.

(2) The cabinet or its designee may:

(a) Hold trust and agency funds allocated to a service provider at the beginning of each fiscal year which are not expended, to be expended by the same service provider the following year in accordance with the approved annual plan and budget; or

(b) Assign unencumbered funds returned from a designated service provider to a new designated service provider.

TERESA C. JAMES, LCSW, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 12, 2104

FILED WITH LRC: November 13, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 22, 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 December 15, 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 December 31, 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 establishes the requirements necessary for domestic violence shelters to receive funding.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide requirements for domestic violence shelters to receive funding.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing necessary funding requirements for domestic violence shelters.

(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 funding requirements for domestic violence shelters.

(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 removes the existing cost sharing (i.e., match) requirement for domestic violence shelters to eliminate the associated administrative and operational burdens, and it refines processes per recommendations of the Kentucky Coalition against Domestic Violence (KCADV), formerly known as the Kentucky Domestic Violence Association. Definitions that were unique to the cost sharing subsection were also removed. Additional technical corrections were made 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 remove existing match requirement for Kentucky's domestic violence shelter programs. The match requirement was originally intended to ensure programs seek additional funding opportunities, and as the programs have demonstrated success in diversifying funding streams, the requirement has become counterproductive for domestic violence programs. The cost share requirement creates administrative and operational burdens on shelters, and shelters are unable to use the cash or in-kind as match to leverage other non-state funding streams, including private foundation and federal grants. The match requirements contained in 922 KAR 5:050, which have been proposed for deletion in this amendment, have become detrimental to their original intention or purpose.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by maintaining requirements necessary for domestic violence shelters to receive funding, while eliminating administrative burdens for the domestic violence programs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by refining and updating state funding requirements for domestic violence shelters.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The affected entities include the fifteen (15) domestic violence shelters and related services located in each of the fifteen (15) area development districts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The fifteen (15) domestic violence shelters will continue to access funding for their program services through diversified sources in addition to state funds, including federal grants, local grants, private foundation grants, cash and in-kind donations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulated entities will incur no new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation supports funding diversification and sustainability of programs by removing the state funds' match requirement from domestic violence shelters. Through this regulatory amendment, match currently used by domestic violence shelters for state general funds can instead be used to match non-state funding sources.

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

(a) Initially: The administrative body does not anticipate any new or additional costs to implement the proposed regulatory amendment.

(b) On a continuing basis: The administrative body does not anticipate any new or additional costs to implement the proposed regulatory amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding provided to KCADV through the Department for Community Based Services is from the federal Family Violence Prevention and Services Grant, Social Services Block Grant, Temporary Assistance to Needy Families Block Grant, General Funds, and Restricted Funds derived from a portion of marriage license fees.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not necessary to implement the amendment to this administrative regulation.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 74, 92

2. State compliance standards. KRS 194A.050(1), 209.030(1), (9), 209.160(1), (2), 209A.030(1)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 74, 92

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 requirements or responsibilities, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different requirements or responsibilities 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 will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 209.030(1), (9), 209.160(1), (2), 209A.030(1), 45 C.F.R. 74, 92

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

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

(c) How much will it cost to administer this program for the first year? The administrative body does not anticipate any additional costs during the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative body does not anticipate any additional costs during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(Repealer)

503 KAR 1:111. Repeal of 503 KAR 1:110.

RELATES TO: KRS 15.330(1)(c), (f), 15.386(1), 15.404(1), 15.440(1)(d)

STATUTORY AUTHORITY: KRS 15.330(1)(c), (f), (h), 15.334(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) authorize the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training and to promulgate administrative regulations to implement that requirement. This administrative regulation repeals 503 KAR 1:110, as the subject matter of that administrative regulation is now governed by 503 KAR 3:120.

Section 1. 503 KAR 1:110, Department of Criminal Justice Training basic training: graduation requirements; records, is hereby repealed.

KEITH CAIN, Chair

APPROVED BY AGENCY: November 13, 2014

FILED WITH LRC: November 13, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD**:** A public hearing on this administrative regulation shall be held on December 23, 2014 at 9:00 a.m. in Room 211, Funderburk Building, Richmond, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five work days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 December 16, 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**:** Thor Morrison, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-1328, fax (859) 622-5027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Thor Morrison

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in accordance with KRS 13A.310(c), repeals 503 KAR 1:110, which establishes the curriculum and training requirements for those attending the Department of Criminal Justice Training Law Enforcement Basic Training Academy. A new regulation, 503 KAR 3:120, is simultaneously being promulgated to set forth the requirements for the DOCJT basic training academy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that the requirements for DOCJT will appear in the appropriate chapter and to avoid obsolete or duplicate material.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and KRS 15.990 to 15.992. KRS 15A.070(5) authorizes DOCJT to promulgate administrative regulations to establish graduation standards for DOCJT basic training, which is necessary for the administration of KLEFPF (KRS 15.410 through 15.510), and peace officer certification (KRS 15.310, and 15.380 through 15.402). The curriculum for basic training conducted at DOCJT should properly appear in 503 KAR Chapter 3.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation repeals language that is duplicative or obsolete.

(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 regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the Commonwealth that utilize DOCJT basic training, which is approximately 412 agencies, including most state, county and local agencies, but excluding the Kentucky State Police, the Lexington-Fayette Urban County Division of Police, and the Louisville Metro Police Department.

(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 agencies should not experience any detrimental impact; the repeal of duplicative and contradictory administrative regulation will benefit the regulated entities.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Duplicative or obsolete language will be eliminated.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE 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 affect all divisions of state or local government that employ peace officers who are required by KRS 15.380 to be certified, including city and county police departments, and county sheriffs' offices. All new city, county, and state law enforcement are required to attend and complete law enforcement basic training.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1), KRS 15.330(1)(a) and (h), and KRS 15.380.

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

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

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

(c) How much will it cost to administer this program for the first year? There should be no additional costs to the KLEC, DOCJT, or the agencies that are affected by this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No cost is associated with the repeal of 503 KAR 1:110.

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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(New Administrative Regulation)

503 KAR 3:120. Department of Criminal Justice Training basic training: graduation requirements; records.

RELATES TO: KRS 15.386, 15A.070

STATUTORY AUTHORITY: KRS 15A.070(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) authorizes the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training basic training course required for peace officer certification and participation in the Kentucky Law Enforcement Foundation Program Fund and for maintenance of basic training records. This administrative regulation takes the place of 503 KAR 1:110, which is repealed by 503 KAR 1:111.

Section 1. Basic Training Graduation Requirements. To graduate from the department's basic training course, a recruit shall successfully complete all required hours of training, based upon the curriculum approved by the Kentucky Law Enforcement Council in accordance with KRS 15.330 and 503 KAR 1:090.

Section 2. Physical Training Requirements. A recruit who is required to complete basic training in order to fulfill the peace officer certification provisions established in KRS 15.380 to 15.404 shall meet the physical training entry and graduation requirements established in this section. (1) Physical training entry requirements.

(a) Within five (5) days from the first date of the basic training course, the recruit shall be tested in the following events, in the order listed, as instructed and evaluated by qualified department instructors:

1. Bench press;
2. Sit-ups;
3. 300 meter run;
4. Push-ups; and
5. One and five-tenths (1.5) mile run.

(b) A recruit shall pass the physical training entry requirements if he or she achieves a score of fifty (50) points or more, based upon the following scoring of the physical training events listed in paragraph (a) of this subsection:

1. Bench Press, based upon a percentage of the recruit's body weight:

a. Nine (9) points - Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;

b. Nine and one-half (9.5) points - Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;

c. Ten (10) points - Recruit shall bench press at least sixty-four (64) percent of body weight;

d. Ten and one-half (10.5) points - Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and

e. Eleven (11) points - Recruit shall bench press at least seventy-three (73) percent or more of body weight;

2. Sit-ups:

a. Nine (9) points - Recruit shall complete at least thirteen (13) repetitions in one (1) minute;

b. Nine and one-half (9.5) points - Recruit shall complete at least sixteen (16) repetitions in one (1) minute;

c. Ten (10) points - Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and

d. Eleven (11) points - Recruit shall complete nineteen (19) repetitions or more in one (1) minute;

3. 300 meter run:

a. Nine (9) points - Recruit shall complete in sixty-eight (68) seconds or less;

b. Nine and one-half (9.5) points - Recruit shall complete in sixty-seven (67) seconds or less;

c. Ten (10) points - Recruit shall complete in sixty-five (65) seconds; and

d. Eleven (11) points - Recruit shall complete in less than sixty-five (65) seconds;

4. Push-ups:

a. Nine (9) points - Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;

b. Nine and one-half (9.5) points - Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;

c. Ten (10) points - Recruit shall complete at least twenty (20) repetitions in two (2) minutes;

d. Ten and one-half (10.5) points - Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and

e. Eleven (11) points - Recruit shall complete twenty-five (25) repetitions or more in two (2) minutes; and

5. One and five-tenths (1.5) mile run:

a. Nine (9) points - Recruit shall complete in 1,076 seconds (17:56) or less;

b. Nine and one-half (9.5) points - Recruit shall complete in 1,054 seconds (17:34) or less;

c. Ten (10) points - Recruit shall complete in 1,032 seconds (17:12) or less;

d. Ten and one-half (10.5) points - Recruit shall complete in 1,004 seconds (16:44) or less; and

e. Eleven (11) points - Recruit shall complete in 975 seconds (16:15) or less.

(c) A recruit shall:

1. Not be awarded more than eleven (11) points or less than nine (9) points in any one (1) of the five (5) physical ability events; and

2. Be deemed to have failed the physical ability test if he or she fails to achieve at least:

a. A total score of fifty (50) points; or

b. Nine (9) points on any one (1) physical training event.

(d) Retest.

1. A recruit who fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, except that a retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required overall fifty (50) point minimum.

2. A recruit who obtains a point value for each event, but does not obtain an overall score of fifty (50), shall be retested on the physical training entry test again, in its entirety.

3. A retest shall not occur any sooner than forty-eight (48) hours or any later than seventy-two (72) hours from the date of the initial test attempt.

4. All failed events shall be retested on the same date.

5. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training entry requirements.

6. If the recruit does not pass all previously failed events on the date of the retest, the recruit shall be unqualified to participate in the department's basic training course for which he is currently enrolled, and may reapply to participate in a future department basic training course. The recruit shall receive no credit for the part of the basic training course which he has completed.

(2) Physical training graduation requirements.

(a) In order to graduate, the recruit shall successfully complete each of the following physical ability requirements within five (5) days of graduation from law enforcement basic training, which, except for the entry test score requirements in subsection (1)(b) of this section, shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols, incorporated by reference in 503 KAR 1:140:

1. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the recruit's body weight;

2. Sit-ups. Eighteen (18) sit ups in one (1) minute;

3. 300 meter run in sixty-five (65) seconds;

4. Push-ups. Twenty-five (25) push-ups; and

5. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.

(b) If a recruit passes all events when participating in the physical training graduation test, the recruit shall have met the physical training graduation requirements.

(c) Retest. If a recruit fails to pass all events when participating in the physical training graduation test:

1. The recruit shall retest in the failed events no earlier than forty-eight (48) hours after the date of the graduation test, but not later than the last scheduled date of the basic training course;

2. All failed events shall be retested on the same date;

3. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training graduation requirements; and

4. If the recruit does not pass all previously failed events on the date of the retest, the recruit shall fail basic training.

(3) Physical training midpoint test. A physical training midpoint assessment shall be administered to each recruit at the midpoint of the basic training course for purposes of reporting their progress to their respective law enforcement agencies.

Section 3. Failure and Repetition of Basic Training. (1) Failure of Training.

(a) A recruit who is removed from basic training due to a training segment or area failure prior to the successful completion of the first half of the basic training course shall:

1. Be required to repeat the entire basic training course; and

2. Pay all applicable fees in accordance with 503 KAR 3:030.

(b) If a recruit fails a segment or area after the completion of the first half of the basic training course, the recruit shall:

1. Be removed from the basic training class;

2. Reenter basic training in a subsequent class that has the first available vacancy; and

3. Start the training at the beginning of the training area or segment that the recruit did not successfully complete.

(c) Upon the recruit's return, the recruit shall attend and participate in the last area or segment successfully completed, but shall not be retested in the training area or segment that was previously passed.

1. Fees shall be assessed in accordance with 503 KAR 3:030; and

2. If the training area is successfully completed, the recruit shall continue with the remainder of the basic training course.

(2) If a recruit who is permitted to return to basic training in accordance with this section is removed due to failure a second time:

(a) The recruit shall be required to repeat basic training in its entirety; and

(b) The employing agency shall pay all costs in accordance with 503 KAR 3:030.

Section 4. Basic Training Curriculum. The basic training curriculum shall consist of training curriculum as approved by the Kentucky Law Enforcement Council.

Section 5. Examinations. (1) A recruit shall be assessed in those areas of basic training identified in the law enforcement basic training curriculum that is currently approved by the Kentucky Law Enforcement Council.

(2) A recruit shall be permitted one (1) reassessment per assessment failed during basic training but shall not exceed a total of six (6) reassessments during basic training.

(3) A recruit who fails an assessment shall be reassessed:

(a) No sooner than forty-eight (48) hours from the original assessment; and

(b) No later than:

1. Five (5) days after the original assessment. A recruit may submit a written request to the training director or his designee for an additional five (5) days in which to take the reassessment; and

2. The last scheduled day of the basic training course.

(4) A recruit shall fail basic training if the recruit:

(a) Fails a reassessment in accordance with subsection (2) of this section; or

(b) Fails any six (6) reassessments during basic training.

Section 6. Absence. (1) A recruit may have excused absences from the course with approval of the training director or his designee.

(2) An excused absence from the course which causes a recruit to miss any required hours of basic training shall be made up through an additional training assignment.

Section 7. Circumstances Preventing Completion of Basic Training. (1) If a recruit is prevented from completing the basic training course due to extenuating circumstances beyond the control of the recruit, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the course within 180 days immediately following the termination of the extenuating circumstance, if the:

(a) Extenuating circumstance preventing completion of basic training does not last for a period longer than one (1) year; and

(b) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

(2) If a recruit is prevented from completing the basic training course due to being called for active duty in the Kentucky National Guard or other branches of the United States Armed Forces, the recruit shall be permitted to complete the unfinished areas of the course within 180 days immediately following his or her return from active duty service.

Section 8. Termination of Employment while Enrolled. If, while enrolled in the basic training course, a recruit's employment as a police officer is terminated by dismissal, and the recruit is unable to complete the course, the recruit shall complete the remaining training within one (1) year of reemployment as an officer. The recruit shall repeat basic training in its entirety if:

(1) The break in employment exceeds one (1) year; or

(2) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the recruit while enrolled in the basic training course.

Section 9. Maintenance of Records. (1) At the conclusion of each basic training course, the department shall forward a final roster indicating the pass or fail status of each recruit to the Kentucky Law Enforcement Council.

(2) All training records required for Kentucky Law Enforcement Foundation Program fund purposes shall be retained by the department, but a copy of pertinent facts shall be sent to the fund

administrator upon written request.

(3) All training records shall be:

(a) Available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes; and

(b) Maintained in accordance with applicable provisions of KRS Chapter 171.

JOHN W. BIZZACK, Ph.D., Commissioner

APPROVED BY AGENCY: November 10, 2014

FILED WITH LRC: November 13, 2104 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2014 at 9:00 a.m. in Room 211, Funderburk Building, Richmond, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five work days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 December 31, 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: Thor Morrison, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Thor Morrison

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the curriculum and training requirements for those attending the Department of Criminal Justice Training Law Enforcement Basic Training Academy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the Department of Criminal Justice Training Law Enforcement Basic Training, as established in KRS 15A.070, to teach curriculum approved by the Kentucky Law Enforcement Council (KLEC) to certify law enforcement officers as having met the requirements for completion of law enforcement training. Specifically basic training is necessary for participation in the Kentucky Law Enforcement Foundation Program Fund (KLEFPF), and peace officer certification pursuant to KRS 15.380 through 15.404.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and KRS 15.990 to 15.992. KRS 15A.070 obligates DOCJT to establish, supervise, and coordinate training program s and schools for law enforcement personnel. KRS 15A.070 further authorizes DOCJT to promulgate administrative regulations. This administrative regulation is required to establish graduation standards for DOCJT basic training, which is necessary for the administration of KLEFPF (KRS 15.410 through 15.510), and peace officer certification (KRS 15.310, and 15.380 through 15.402).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent rules and procedures for graduation from DOCJT basic training, the successful completion of which is necessary before an officer may achieve active peace officer certification, or participate in KLEFPF.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the Commonwealth that utilize DOCJT basic training, which is approximately 412 agencies, including most state, county and local agencies, but excluding the Kentucky State Police, the Lexington-Fayette Urban County Division of Police, and the Louisville Metro Police Department.

(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 agencies should not experience any detrimental impact. They should be benefited by receiving a quality graduate with modern, up-to-date training consistent with currently approved curriculum as required by KLEC.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the amendments should not cost anything more than what it costs presently. Wages to certified officers may impact police departments and agencies if and when new curriculum is presented that might extend the length of basic training. Officers receive full-time wages from agencies while attending the basic training academy.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The agencies will receive a highly trained, certified police officer in return who will be eligible for participation in KLEFPF as a result of successful completion of basic training approved by KLEC.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE 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 affect all divisions of state or local government that employ peace officers who are required by KRS 15.380 to be certified, including city and county police departments, and county sheriffs' offices. All new city, county, and state law enforcement are required to attend and complete law enforcement basic training.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1), KRS 15.330(1)(a) and (h), and KRS 15.380.

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

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

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

(c) How much will it cost to administer this program for the first year? There should be no additional costs to the KLEC, DOCJT, or the agencies that are affected by this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Costs to DOCJT will be dependent on any KLEC-adopted recommendations from future job task analysis results.

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.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(New Administrative Regulation)

804 KAR 10:031. Local government regulatory license fees.

RELATES TO: KRS 243.075

STATUTORY AUTHORITY: KRS 243.075(5)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.075(5)(a) states that an administrative regulation shall be promulgated to establish a process by which a city of the third or fourth class, or a county that contains a city of the third or fourth class, in the first year following the discontinuance of prohibition, may estimate any additional policing, regulatory, or administrative expenses incurred by that city or county that are directly and solely related to the sale of alcoholic beverages. This administrative regulation establishes what specific costs and expenses may be subject to reimbursement, and a form is incorporated by reference to calculate and document the expense.

Section 1. Definition. "Qualified city or county" means: (1) Before January 1, 2015, a city of the third or fourth class, or a county containing a city of the third or fourth class; or

(2) Beginning January 1, 2015, a city on the registry maintained by the Department for Local Government under KRS 243.075(9)(b), a county containing a city on the registry, or a city or county that had been previously permitted to issue regulatory license fees under subsection (1) of this section.

Section 2. A qualified city or county may impose a regulatory license fee upon the gross receipts of the sale of alcoholic beverages of each establishment therein licensed to sell alcoholic beverages.

Section 3. Allowable costs and expenses. The costs and expenses that may be subject to reimbursement through a regulatory license fee shall directly and solely relate to the discontinuance of prohibition in the qualified city or county, including reasonable costs and expenses of:

(1) Employment, salary, and benefits of the city or county alcoholic beverage control administrator and staff who administer alcoholic beverage control laws;

(2) Office supplies and equipment for the city or county to administer an alcoholic beverage control office;

(3) Office space for an alcoholic beverage control administrator and staff;

(4) Travel costs and expenses for the city or county alcoholic beverage control administrator and staff;

(5) Additional policing expenses directly related to the discontinuance of prohibition. For purposes of this subsection, "additional policing expenses" shall include only those costs and expenses incurred solely as a result of the discontinuance of prohibition that are over and above any policing expenses previously incurred; and

(6) Miscellaneous costs and expenses solely and directly related to the discontinuance of prohibition, if the following information is included on the Calculation Form for Alcohol Regulatory Fee in First Year Following Repeal of Prohibition:

(a) A description of the expenditure;

(b) A detailed explanation of the necessity of the expenditure as it related to the discontinuance of prohibition; and

(c) The cost of the expenditure.

Section 4. To the extent that a qualified city or county incurs the costs or expenses identified in Section 3 of this administrative regulation, a qualified city or county may seek reimbursement only for that portion of the costs and expenses that arise directly and solely because of the discontinuance of prohibition.

Section 5. A qualified city or county shall use the Calculation Form for Alcohol Regulatory Fee in First Year Following Repeal of Prohibition to estimate permissible expenses and to establish the fee.

Section 6. The Calculation Form for Alcohol Regulatory Fee in First Year Following Repeal of Prohibition used by a qualified city or county to determine permissible regulatory fees shall be retained pursuant to 725 KAR 1:061.

Section 7. Incorporation by Reference. (1) "Calculation Form for Alcohol Regulatory Fee in First Year Following Repeal of Prohibition", August 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, http://www.abc.ky.gov.

FREDERICK A. HIGDON, Chairman
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: November 7, 2014

FILED WITH LRC: November 10, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2014 at 9 a.m., EDT, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by December 15, 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 this 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 comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 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: Sam Crain, Paralegal Consultant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sam Crain

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates a mechanism for qualified cities and counties that vote to go wet to establish regulatory licensing fees for the first year after their wet/dry vote.

(b) The necessity of this administrative regulation: KRS 243.075 states that the Department of Alcoholic Beverage Control shall promulgate an administrative regulation to establish how qualified cities and counties estimate regulatory licensing fees for the first year after their wet/dry vote.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.075 requires the Department of Alcoholic Beverage Control to promulgate this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. KRS 243.075 requires the Department of Alcoholic Beverage Control to promulgate this administrative regulation.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Each licensed business physically located within the jurisdictional boundaries of a qualified city or county that votes to go wet will be affected by this administrative regulation. Cities of the third or fourth class, or counties containing a city of the third or fourth class will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities in question (3) will have to take to comply with this administrative regulation or amendment: Qualified cities or counties will be required to complete the incorporated material in order to establish their regulatory licensing fees for the first year after voting to go wet. They will also be required to retain the completed material for auditing purposes.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no additional benefits from this administrative regulation.

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

(a) Initially: No extra costs are anticipated to implement this administrative regulation.

(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: Local government funds will be used to implement and enforce this administrative regulation.

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

(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What unit, part, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation. All qualified city or county governments who vote to go wet after July 15, 2014 will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation. KRS 243.075 requires the Department of Alcoholic Beverage Control to promulgate this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts). Even though a local government's revenue would be affected, any gain would be neutralized by administrative costs.

(a) How much revenue will this administrative regulation general for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Even though a local government's revenue would be affected, any gain would be neutralized by administrative 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? Even though a local government's revenue would be affected, any gain would be neutralized by administrative costs.

(c) How much will it cost to administer this program for the first year? Even though a local government's revenue would be affected, any gain would be neutralized by administrative costs.

(d) How much will it cost to administer this program for subsequent years? Even though a local government's revenue would be affected, any gain would be neutralized by administrative 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: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of November 14, 2014

Call to Order and Roll Call

The November 2014 meeting of the Administrative Regulation Review Subcommittee was held on Friday, November 14, 2014, at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Ernie Harris, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the October 2014 meeting were approved.

Present were:

Members: Senators Sara Beth Gregory, Ernie Harris, and Alice Forgy Kerr; and Representatives Robert Damron and Jimmie Lee.

LRC Staff: Donna Little, Emily Caudill, Sarah Amburgey, Carrie Klaber, Karen Howard, Emily Harkenrider, Ange Bertholf, and Betsy Cupp.

Guests: Alicia Sneed, Education Professional Standards Board; Sharron Burton, Department of Employee Insurance, Personnel; Doug Hendrix, Katrina LeMay, Finance and Administration Cabinet; Chris Griffith, Brian Judy, Board of Licensed Professional Counselors; Ron Brooks, David Wicker, Karen Waldrop, Department of Fish and Wildlife Resources; Michael Haines, Steve Hohmann, Department for Natural Resources; Amy Barker, Department of Corrections; Kay Kennedy, Amy Peabody, Department of Education; Kristi Culpepper, School Facilities Construction Commission; Malinda Shepherd, DJ Wasson, Department of Insurance; Marc Guilfoil, Katherine Paisley, Horse Racing Commission; Stephanie Brammer-Barnes, Stephanie Craycraft, Beth Junek, Natalie Kelly, Maryellen Mynear; Cabinet for Health and Family Services.

The Administrative Regulation Review Subcommittee met on Friday, November 14, 2014, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

EDUCATION PROFESSIONAL STANDARDS BOARD: Teaching Certificates

16 KAR 2:120. Emergency certification and out-of-field teaching. Alicia Sneed, director of legal services, represented the board.

In response to a question by Co-Chair Harris, Ms. Sneed stated that "out-of-field teaching" included teaching pursuant to a teaching certificate but outside of the teacher's content area. "Out-of-field teaching" was necessary, on an emergency basis, because some districts could not obtain a teacher with specific content background, even one without a teaching certificate.

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. Sharron Burton, general counsel for the health plan, represented the cabinet.

FINANCE AND ADMINISTRATION CABINET: Commonwealth Office of Technology: General Administration

200 KAR 1:015. Data Breach Notification Forms. Doug Hendrix, deputy general counsel, and Katrina LeMay, chief of information and security, represented the cabinet.

In response to a question by Co-Chair Harris, Ms. LeMay stated that COT had not experienced any security breaches thus far in calendar year 2014.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (4) to amend Section 2 and the material incorporated by reference for clarity. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Licensed Professional Counselors: Board

201 KAR 36:060. Qualifying experience under supervision. Chris Griffith, chair, and Brian Judy, assistant attorney general, represented the board.

In response to a question by Co-Chair Harris, Mr. Griffith stated that the requirement to allow supervision changed from six (6) to twelve (12) supervisees to ensure a sufficient number of supervisors in the appropriate discipline. The board expected the transition from six (6) to twelve (12) supervisees to be a gradual process, rather than a sudden event.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, 5, 6, 8, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to add a definition for "supervisor of record"; (3) to amend Section 3 to: (a) clarify that a supervisor of record shall be a licensed professional clinical counselor; and (b) establish examples of what circumstances the board may consider for showing that the ability to obtain supervision from a licensed professional clinical counselor is prohibited by difficulty; (4) to amend Section 5 to establish examples of what extenuating circumstances the board may consider in granting a limited waiver from the requirement of one (1) monthly direct in person meeting to satisfy the face-to-face supervision requirements; and (5) to amend the Supervisory Agreement form to; (a) comply with the drafting requirements of KRS Chapter 13A; and (b) update the number of supervisees that a supervisor of record shall be responsible for from six (6) to twelve (12) so that the form is consistent with the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 36:070. Education and examination requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend the RELATES TO paragraph to add a statutory citation; (3) 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 (4) to amend Section 4 to establish the application requirements for licensure. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 36:080. Inactive and retired licensure status.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 1:152. Asian Carp and Scaled Rough Fish Harvest Program. Ron Brooks, fisheries director; Karen Waldrop, wildlife division director; and David Wicker, general counsel, represented the department.

In response to a question by Co-Chair Harris, Mr. Brooks stated that Asian Carp were used for fish meal and fish paste. Thus far, there had been little progress in stopping encroachment of Asian Carp; however, the department expected three (3) Asian Carp processing facilities to begin operating soon, which may assist with the problem.

301 KAR 1:220. Reciprocal agreements regarding fishing.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and

with agreement of the agency, the amendments were approved.

Game

301 KAR 2:225 & E. Dove, wood duck, teal, and other migratory game bird hunting.

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

405 KAR 8:030 & E. Surface coal mining permits. Michael Haines, general counsel, and Steve Hohmann, commissioner, 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 to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 5, 11 through 17, 19 through 28, 30, 32, and 34 through 37 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 8:040 & E. Underground coal mining permits.

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 to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 5, 11 through 30, 32, and 34 through 38 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 6:050. Luther Luckett Correctional Complex. Amy Barker, assistant general counsel, represented the department.

In response to questions by Co-Chair Harris, Ms. Barker stated that this administrative regulation represented the annual review for this facility. The Luther Luckett Correctional Complex had not experienced any problems recently.

A motion was made and seconded to approve the following amendments: (1) to amend LLCC 09-25-01, 10-01-01, 12-01-01, 14-03-01, 15-01-04, 17-03-01, 19-01-02, 23-01-01, and 23-01-03 to make minor clarifications and update cross-references; and (2) to amend Section 1 to update the edition date of the revised policies. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: General Administration

702 KAR 1:160. School health services. Kay Kennedy, division director, and Amy Peabody, assistant general counsel, represented the department.

In response to a question by Co-Chair Harris, Ms. Kennedy stated that schools had developed programs to assist with self administration of medication to students if necessary. These programs helped keep students with chronic conditions in the classroom. The system seemed to be working well.

A motion was made and seconded to approve the following amendments: (1) to amend material incorporated by reference for corrections and clarifications; (2) to amend the RELATES TO paragraph to add a statutory citation; and (3) to amend Sections 1, 2, and 4, 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.

School Terms, Attendance and Operation

702 KAR 7:140. School calendar.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to clarify the basis for an emergency day waiver; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: School Facilities Construction Commission: Procedures

750 KAR 1:030. Emergency and Targeted Investment Fund. Kristi Culpepper, executive director, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 3 to move requirements out of the "Definitions" section; (2) to amend Section 4 to specify requirements and establish a standard for approval of alternative bond structures; (3) 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 (4) to amend Sections 1, 3, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Health and Life Division: Assets and Liabilities

806 KAR 6:070. Valuation of life insurance and annuity reserves. Malinda Shepherd, program manager, and DJ Wasson, administrative coordinator, represented the division.

In response to a question by Co-Chair Harris, Ms. Shepherd stated that the revised mortality information was generationally based and should keep pace with fluctuations without needing to be updated frequently.

In response to a question by Representative Damron, Ms. Shepherd stated that this administrative regulation was not related to issues of principal-based reserving.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, and 4 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.

Horse Racing Commission: Thoroughbred Racing

810 KAR 1:017. Objections and complaints. Marc Guilfoil, director, and Katherine Paisley, deputy general counsel, represented the commission.

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 Section 4 to specify that the stewards shall consider the seriousness and circumstances of the incident in determining the extent of a disqualification; and (4) to amend Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:090. Objections and complaints.

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 Section 4 to specify that the stewards shall consider the seriousness and circumstances of the incident in determining the extent of a disqualification; and (4) to amend Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were ap-

proved.

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. Stephanie Brammer-Barnes, regulation coordinator; Beth Jurek, executive director, Office of Policy and Budget; and Maryellen Mynear, inspector general, represented the cabinet.

In response to questions by Co-Chair Harris, Ms. Mynear stated that the division's statutory mandate required protection for the sick and elderly. Proper funding was crucial to complying with that mandate. The division had not increased fees since 2003, and the 2003 fee increase was minimal, in that it did not keep fees commensurate with costs. The division had repeatedly needed to use General Funds to compensate for inadequate fees. The cost of an inspection of a long-term care facility was between $8,000 and $9,500. The division was experiencing critical staffing shortages. There was one (1) surveyor for approximately every forty (40) facilities, resulting in delays that may affect the economy if, for example, a facility opening was delayed. Inadequate fees also affected Medicaid funding. The division amended this administrative regulation as a result of stakeholder comments in an attempt to make a good-faith compromise regarding fees. Additionally, retirement at the division had increased by 1,000 percent and General Fund appropriations to the division had decreased since 2003, further eroding staffing and funding. The fee increases were annual. Ms. Jurek stated that, in addition to the annual inspections, the division also conducted investigations in response to complaints. The division did not charge for inspections resulting from complaints.

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. Stephanie Brammer-Barnes, regulation coordinator; Natalie Kelly, division director; and Maryellen Mynear, cabinet inspector general, represented the cabinet.

In response to a question by Co-Chair Harris, Ms. Kelly stated that "CADC" means certified alcohol and drug counselor.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 1 to correct citations; (2) to amend Sections 4, 6, 8, 9, and 10 to include cross-references and make minor clarifications; (3) to amend Section 12 to align the hearing procedures with KRS Chapter 13B; and (4) to amend Sections 6, 8, and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 20:440 & E. Facilities specifications, operation and services; residential crisis stabilization units.

In response to a question by Co-Chair Harris, Ms. Brammer-Barnes stated that this administrative regulation pertained to crisis stabilization units.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 1 to correct citations; (2) to amend Sections 4, 5, 7, 10, 11, 12, 14, and 16 to include cross-references and comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend Section 17 to align the hearing procedures with KRS Chapter 13B. Without objection, and with agreement of the agency, the amendments were approved.

Department for Behavioral Health, Developmental and Intellectual Disabilities: **Division of Administration and Financial Management**: **Institutional Care**

908 KAR 3:050. Per diem rates. Stephanie Craycraft, director, represented the cabinet.

In response to a question by Co-Chair Harris, Ms. Craycraft stated that cost fluctuations were based on population fluctuations at individual facilities.

908 KAR 3:060. "Means test" for determining patient liability.

In response to a question by Co-Chair Harris, Ms. Craycraft stated that this administrative regulation was being amended because of federal poverty guideline revisions.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; and (2) to amend Sections 2, 3, 4, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: Co-Chair Harris stated that three (3) Subcommittee members would be leaving the General Assembly. He thanked those members, Senator Sara Beth Gregory, Representative Bob Damron, and Representative Jimmie Lee, and noted that their service would be further discussed at the December 2014 Subcommittee meeting.

The following administrative regulations were deferred to the December 9, 2014, meeting of the Subcommittee:

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.

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.

PUBLIC PROTECTION CABINET: 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: Office of Health Policy: Division of Public

Health Protection and Safety: Radiology

902 KAR 100:010. Definitions for 902 KAR Chapter 100.

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: Hospital Service Coverage and Reimbursement

907 KAR 10:825. Diagnosis-related group (DRG) inpatient hospital reimbursement.

Behavioral Health

907 KAR 15:075 & E. Reimbursement provisions and requirements for behavioral health services provided by residential crisis stabilization units.

The Subcommittee adjourned at 2 p.m. until December 9, 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 HEALTH AND WELFARE
Meeting of November 19, 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 November 19, 2014, having been referred to the Committee on November 5, 2014, pursuant to KRS 13A.290(6):

201 KAR 5:055
201 KAR 32:035
201 KAR 33:010
902 KAR 2:055
921 KAR 3:035
921 KAR 3:090

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

201 KAR 5:055

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 19, 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 **F - 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 **F - 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 **F - 18**

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 **F - 19**

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.

Regulation Number	40 Ky.R. Page No.	Effective Date

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 of Kentucky* but had not yet gone into effect when the *2014 Kentucky Administrative Regulations Service* was published.

SYMBOL KEY:

* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
**** Emergency expired after 180 days
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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:

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.
201 KAR 11:105		
Amended	2811	See 41 Ky.R.
201 KAR 11:121		

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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.
900 KAR 6:075		

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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	9-17-14
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		
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921 KAR 3:070		
Amended	2373	See 41 Ky.R.
922 KAR 1:320		
Amended	2377	See 41 Ky.R.
922 KAR 1:480		
Amended	2382	9-5-14

VOLUME 41

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

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		See 40 Ky.R.
Replaced	10	8-1-14
31 KAR 4:130E	367	7-22-14
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
Replaced	439	10-3-14
301 KAR 2:221E	1300	10-27-14
301 KAR 2:222E	1302	10-27-14
301 KAR 2:225E	719	8-22-14
405 KAR 8:030E	379	8-6-14
405 KAR 8:040E	389	8-6-14
405 KAR 10:025E	235	6-30-14
804 KAR 4:230E	237	7-15-14
Replaced	761	10-31-14
804 KAR 4:400E	239	7-15-14
Replaced	762	10-31-14
804 KAR 4:410E	240	7-15-14
Replaced	762	10-31-14
902 KAR 20:430E	242	7-15-14
902 KAR 20:440E	250	7-15-14
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
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907 KAR 15:050E	1004	9-16-14
907 KAR 15:055E	1010	9-16-14
907 KAR 15:060E	1012	9-16-14
907 KAR 15:065E	1018	9-16-14
907 KAR 15:070E	727	8-20-14
907 KAR 15:075E	732	8-20-14
907 KAR 18:001E		See 40 Ky.R.
Replaced	44	8-1-14
907 KAR 18:005E		See 40 Ky.R.
Replaced	44	8-1-14
922 KAR 1:360E	417	8-1-14
922 KAR 2:160E	423	8-1-14
	1021	10-15-14
922 KAR 5:070E	432	7-23-14
922 KAR 5:120E	436	7-23-14

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	40 Ky.R. Page No.	Effective Date
11 KAR 3:100		
Amended	817	
11 KAR 4:080		
Amended	1124	
11 KAR 5:001		
Amended	828	
11 KAR 5:033		
Amended	831	
11 KAR 5:034		
Amended	832	
11 KAR 5:170		
Amended	834	
11 KAR 8:030		
Amended	835	
11 KAR 15:060		
Amended	839	
11 KAR 15:090		
Amended	1125	
11 KAR 16:001		
Amended	841	
11 KAR 16:010		
Amended	843	
11 KAR 19:010		
Amended	1130	
11 KAR 20:001	1240	
11 KAR 20:010	1241	
11 KAR 20:020	1242	
11 KAR 20:030	1244	
11 KAR 20:040	1245	
11 KAR 20:050	1246	
11 KAR 20:060	1248	
11 KAR 20:070	1249	
16 KAR 2:010		See 40 Ky.R.
As Amended	8	8-1-14
16 KAR 2:120		
Amended	533	
16 KAR 4:060		See 40 Ky.R.
As Amended	256	9-5-14
16 KAR 5:060	1251	
16 KAR 9:080		
Amended	295	
As Amended	736	10-31-14
30 KAR 6:010		See 40 Ky.R.
As Amended	10	8-1-14
31 KAR 3:030	669	
As Amended	1031	
31 KAR 4:130		
Amended	536	
As Amended	1031	
31 KAR 4:140		
Amended	541	
As Amended	1033	
31 KAR 5:010		
Amended	544	
As Amended	1035	
101 KAR 2:210		
Amended	845	
103 KAR 15:180		
Amended	85	
As Amended	439	
103 KAR 43:330		See 40 Ky.R.
As Amended	12	8-1-14
105 KAR 1:291	1253	
105 KAR 1:410	1254	
200 KAR 1:015	670	
As Amended	1308	
201 KAR 1:190		
Amended	548	
As Amended	1036	
201 KAR 2:030		
Amended	298	
As Amended	738	10-15-14
201 KAR 2:040		

Regulation Number	40 Ky.R. Page No.	Effective Date
Amended	300	
As Amended	739	10-15-14
201 KAR 5:055	672	
As Amended	1040	
As Amended	1308	11-19-14
201 KAR 8:016		See 40 Ky.R.
As Amended	257	6-18-14
201 KAR 8:550		See 40 Ky.R.
Am Comments	56	9-5-14
201 KAR 8:571		See 40 Ky.R.
As Amended	257	9-5-14
201 KAR 9:270	1257	
201 KAR 9:305		See 40 Ky.R.
As Amended	12	8-1-14
201 KAR 9:307		See 40 Ky.R.
As Amended	13	8-1-14
201 KAR 9:310		
Amended	1132	
201 KAR 9:450		
Amended	1135	
201 KAR 9:460		
Amended	1136	
201 KAR 11:011		See 40 Ky.R.
As Amended	740	10-31-14
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SYMBOL KEY:

* Statement of Consideration not filed by deadline

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(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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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), a technical change was made to this administrative regulation during the promulgation process.

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